

# CHAPTER 76

## Agriculture

### ARTICLE 1

#### Department of Agriculture

##### **76-1-1. Creation of the New Mexico department of agriculture under the control of the board of regents of New Mexico state university.**

The New Mexico department of agriculture is created under the control of the board of regents of New Mexico state university.

**History:** 1953 Comp., § 45-26-1, enacted by Laws 1974, ch. 35, § 1.

#### ANNOTATIONS

**Cross references.** — For department of agriculture being under control of board of regents, see N.M. Const., art. XV, § 1.

**Temporary provisions.** — Laws 2001, ch. 23, § 1 and Laws 2001, ch. 36, § 1, effective June 15, 2001, provided for the transfer of all assets and obligations of the New Mexico apple commission to the New Mexico department of agriculture following the repeal of the New Mexico Apple Commission Act, Chapter 76, Article 23 NMSA 1978. The use of such assets shall be used to promote New Mexico apples.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 20.

Constitutionality and construction of state farm aid laws, 92 A.L.R. 768.

3 C.J.S. Agriculture § 15.

##### **76-1-2. Powers and authority of board of regents.**

In addition to all other powers and authority that the board of regents of New Mexico state university may have in other areas, the board of regents of New Mexico state university, relative to the New Mexico department of agriculture, has power and authority to:

A. administer and enforce all laws of this state over which the board of regents or its agents have been granted jurisdiction and authority;

B. adopt rules of procedure for the adoption of regulations;

C. adopt, and file in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], regulations as may be necessary to carry out its duties;

D. administer or enforce, through the department of agriculture, all regulations adopted by the board of regents;

E. cooperate and enter into contracts or agreements with local, state and federal government agencies or with any other person to assist the carrying out of the duties of the New Mexico department of agriculture;

F. employ and fix the salaries of employees of the New Mexico department of agriculture;

G. institute legal proceedings in any court of this state, of any other state or of the United States;

H. certify to the appropriate district attorney or to the attorney general of New Mexico any violation of the provisions of law or any rules and regulations administered and enforced by it, when necessary to carry out its duties;

I. accept and administer on behalf of the New Mexico department of agriculture such grants, subsidies, donations, allotments or bequests as may be offered to the state, by the federal government or any department thereof or by any public or private foundation or individuals;

J. accept and administer funds or other assets for the New Mexico department of agriculture;

K. make and perform or direct the performance of such inspections and analyses as are necessary to carry out its duties;

L. issue or direct the issuance of such licenses, permits and other documents as are necessary to carry out its duties;

M. authorize the New Mexico department of agriculture to establish and publish a schedule of fees and collect those fees to recover the cost of services performed at the request of a person or firm. Fees imposed shall be just and equitable and shall not exceed the department's cost for performing the service; and

N. do all other things necessary as permitted by statute to carry out its duties.

**History:** 1953 Comp., § 45-26-2, enacted by Laws 1974, ch. 35, § 2; 1991, ch. 182, § 1.

## **ANNOTATIONS**

**Cross references.** — For administration of Fertilizer Act by board of regents through agriculture department, see 76-11-2 NMSA 1978.

For administration and enforcement of agricultural and horticultural laws by board, see 21-8-8 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, made minor stylistic changes in the introductory paragraph and Subsection A, added Subsection M, made a related stylistic change, and redesignated former Subsection M as Subsection N.

**Authority over wild horses.** — This chapter does not grant the department or the county farm and livestock bureaus authority to regulate the treatment of wild horses. 1994 Op. Att'y Gen. No. 94-06.

**Law reviews.** — For article, "Farmland Preservation Policy and Programs," see 24 Nat. Resources J. 592 (1984).

### **76-1-3. Director of New Mexico department of agriculture; salary; duties.**

In order to execute its functions, the board of regents of New Mexico state university shall appoint and fix the salary of a full-time director of the New Mexico department of agriculture. The director shall administer, execute and implement the directives and policy decisions of the said board of regents and its agents and shall serve as a representative of agriculture on the executive cabinet, as provided in the Executive Reorganization Act [9-1-1 through 9-1-10 NMSA 1978]. The director shall serve at the pleasure of the said board of regents.

**History:** 1953 Comp., § 45-26-3, enacted by Laws 1974, ch. 35, § 3; 1977, ch. 256, § 2.

#### **ANNOTATIONS**

**Cross references.** — For duties under Cotton District Act, see 76-18-4 NMSA 1978.

For duties and powers concerning weights and measures, see 57-17-7 and 57-17-8 NMSA 1978.

**Severability.** — Laws 1974, ch. 35, § 4, provided for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 20.

### **76-1-4. Agricultural building repair and maintenance fund; agricultural facilities.**

The board of regents of New Mexico state university shall establish an "agricultural building repair and maintenance fund" to provide for repairs and maintenance at the agricultural experiment stations, agriculture science centers and other agriculture-related facilities of the university or the New Mexico department of agriculture that are located off-campus or outside the boundaries used for expenditures from other university building repair and maintenance funds. Money appropriated to the agricultural building repair and maintenance fund shall not be used for any other purpose.

History: Laws 2004, ch. 6, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

## ARTICLE 2 Agricultural Extension Service

### 76-2-1. [Matching federal allotment to state.]

That for the maintenance of the cooperative agricultural extension work provided for in the act of congress entitled: "An act to provide for cooperative agricultural extension work between the agricultural colleges in the several states receiving the benefits of an act of congress approved July second, one thousand eight hundred and sixty-two, and all acts supplementary thereto, and the United States department of agriculture," approved May 8, 1914, there is hereby permanently appropriated out of any money in the state treasury, except interest upon the public debt, the sum of one dollar [(\$1.00)] for each dollar allotted annually by the secretary of agriculture as provided in said act of congress to the state of New Mexico above the sum of ten thousand dollars [(\$10,000)] regularly appropriated to each state which shall by action of its legislature assent to the provisions of said act, the said appropriation not to exceed the sum of thirty-four hundred dollars [(\$3,400)] for the fiscal year ending June 30, 1916, and for each year thereafter for seven years, a sum exceeding, by not more than three thousand dollars [(\$3,000)], the sum appropriated for each preceding year, after which time the said appropriation shall continue annually in accordance with the provisions of said act of congress, such appropriations being required by said act of congress, in order that the state may obtain the benefit of the said annual allotments of money by the secretary of agriculture over and above the said sum of ten thousand dollars [(\$10,000)].

**History:** Laws 1915, ch. 29, § 1; 1941 Comp., § 48-101; 1953 Comp., § 45-1-1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The specific appropriations in this section may be affected by Laws 1917, ch. 109, § 4, which provided: "The appropriations herein made or heretofore made by any legislature of this state, except as to unexpended portions carried forward, shall cease and determine on and after December 1, 1919." Appropriations were made each year for the purpose of the work required by this section, until the year 1937, when the designation in the appropriation act was changed to refer to § 130-1010, C.S. 1929. This practice was discontinued in 1949. Subsequent appropriation acts appropriated a lump sum for extension work and research activities.

**Cross references** — For the act of congress of July 2, 1862, commonly known as the "Morrill Land-Grant Act," see 7 U.S.C. §§ 301 to 305, 307 and 308.

For the act of congress of May 8, 1914, see 7 U.S.C. §§ 341 to 343, 344 to 346, 347a, 348 and 349.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 22.

3 C.J.S. Agriculture § 57.

## **76-2-2. Disposition of state and federal money.**

The money by this act [76-2-1, 76-2-2 NMSA 1978] appropriated shall be paid to the treasurer of the board of regents of New Mexico state university upon the warrant of the secretary of finance and administration to be drawn on the request, in writing, of said board and the said treasurer of said board is hereby authorized to receive the moneys payable under the provisions of Section 4 of the said act of congress by the secretary of the treasury upon the warrant of the United States secretary of agriculture, out of the treasury of the United States.

**History:** Laws 1915, ch. 29, § 2; 1941 Comp., § 48-102; 1953 Comp., § 45-1-2; Laws 1977, ch. 247, § 152.

### **ANNOTATIONS**

**Cross references.** — For county agricultural and home economics extension fund, see 76-2-4 NMSA 1978.

For disposition of state and county appropriations, see 76-2-6 NMSA 1978.

For the act of congress referred to in this section, the act of congress of May 8, 1914, Section 4, see 7 U.S.C. § 344.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 24.

3 C.J.S. Agriculture § 10.

### **76-2-3. [Assent to act of congress.]**

That pursuant to and in accordance with the provisions of the act of congress entitled, "An act to provide for the further development of agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act entitled, 'An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts,' approved July 2, 1862, and all acts supplementary thereto, and the United States department of agriculture," approved May 22, 1928, and commonly known as the "Capper-Ketcham Act," the assent of the legislature of the state of New Mexico shall be and hereby is given to the provisions and requirements of said act, and the regents of the agricultural college of New Mexico [New Mexico state university] are hereby authorized and empowered to receive the grants of money appropriated under said act, and to organize and conduct agricultural extension work which shall be carried on by and in connection with said agricultural college, and to direct the expenditure of such grants of money appropriated under the aforesaid act, in accordance with the terms and conditions as expressed in said act.

**History:** Laws 1929, ch. 115, § 1; C.S. 1929, § 130-1010; 1941 Comp., § 48-103; 1953 Comp., § 45-1-3.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The name of the agricultural college of New Mexico, i.e., the New Mexico college of agriculture and mechanic arts, was changed to New Mexico state university by N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960.

**Cross references.** — For the act of congress of July 2, 1862, commonly known as the "Morrill Land-Grant Act," see 7 U.S.C. §§ 301 to 305, 307 and 308.

The act of May 22, 1928, was repealed by act of June 26, 1953, ch. 157. For present law, see 7 U.S.C. §§ 390 to 390j.

### **76-2-4. Cooperative agricultural extension.**

For the purpose of extending cooperative agricultural extension work provided for by the act of congress, entitled "An act to provide for cooperative agricultural extension work between agricultural colleges in the several states receiving the benefits of an act of congress approved July 2, 1862, and all acts supplemental thereto, and the United States department of agriculture," approved May 8, 1914, in any county employing a county agent under the terms of said acts, the board of county commissioners is

authorized, upon petition of at least one hundred bona fide taxpayers within the county, to provide and appropriate such funds as are necessary for maintenance of cooperative extension work in agriculture and home economics within the county.

**History:** Laws 1917 (S.S.), ch. 1, § 1; 1941 Comp., § 48-104; 1953 Comp., § 45-1-4; Laws 1973, ch. 4, § 15; 1973, ch. 258, § 144.

#### **ANNOTATIONS**

**Compiler's notes.** — Laws 1973, ch. 4, § 20, provided that any balance remaining in an agricultural extension fund (county agricultural agent fund) as of June 30, 1973, be transferred to the county general fund.

**Cross references.** — For the act of congress of July 2, 1862, commonly known as the "Morrill Land-Grant Act," see 7 U.S.C. §§ 301 to 305, 307 and 308.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 22.

3 C.J.S. Agriculture § 59.

#### **76-2-5. Matching county appropriations.**

For each dollar so provided by said county there is hereby appropriated the sum of one dollar (\$1.00) to be paid out of any funds in the state treasury except money set aside for the payment of interest or sinking fund on the public debt, and the secretary of finance and administration is hereby authorized and directed to draw his warrant for the payment of moneys so allotted to any such county upon the certificate of the board of county commissioners of such county, countersigned by the extension director of New Mexico state university, certifying that a stated amount of money has been so provided by said county and that an agreement has been entered into between such county and said college for such cooperative extension work; provided, however, that in no case shall the total amount so allotted to any one county by the state exceed the sum of two thousand dollars (\$2,000) during any one year.

**History:** Laws 1917 (S.S.), ch. 1, § 2; 1941 Comp., § 48-105; 1953 Comp., § 45-1-5; Laws 1977, ch. 247, § 153.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 22.

3 C.J.S. Agriculture § 57.

#### **76-2-6. Disposition of state and county appropriations.**

All funds appropriated by Sections 76-2-4 through 76-2-9 NMSA 1978 and by the board of county commissioners under authority of Section 76-2-4 NMSA 1978, shall be paid over to the treasurer of the board of regents of New Mexico state university upon warrant drawn by the secretary of finance and administration, as to state funds, and by the county treasurer as to county funds, and shall be expended under the supervision of the extension service of said university solely for the purposes contemplated by this act [76-2-4 through 76-2-9 NMSA 1978], and the treasurer of the board of regents of New Mexico state university shall file with the secretary of finance and administration copies of all vouchers covering the expenditure of all such moneys appropriated by the state.

**History:** Laws 1917 (S.S.), ch. 1, § 3; 1941 Comp., § 48-106; 1953 Comp., § 45-1-6; Laws 1977, ch. 247, § 154.

### **76-2-7. [Cooperation between county and New Mexico state university.]**

Every such agreement made relating to county demonstration work in agriculture and home economics shall continue in force until the board of county commissioners, or the New Mexico college of agriculture and mechanic arts [New Mexico state university], shall terminate the agreement by notice to the other party or parties, such notice to be in writing delivered at least three months prior to the time fixed for termination of the agreement, and at the expiration of such period of three months, the cooperative relationship between said parties shall cease, unless otherwise agreed upon between the several parties.

**History:** Laws 1917 (S.S.), ch. 1, § 4; 1941 Comp., § 48-107; 1953 Comp., § 45-1-7.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The name of the agricultural college of New Mexico, i.e., the New Mexico college of agriculture and mechanic arts, was changed to New Mexico state university by N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960.

### **76-2-8. [County agents; selection; supervision; duties.]**

The county agents to be appointed in pursuance of this act [76-2-4 through 76-2-9 NMSA 1978], shall be selected by the extension service of the New Mexico college of agriculture and mechanic arts [New Mexico state university] and a committee appointed by the boards of county commissioners of the respective counties from nominations made by the extension service of said college. The said county agents shall work under the direction of the extension service of said college and shall devote their entire time to the discharge of their duties under this act. It shall be their duty to demonstrate as far as possible the improved agricultural and home economics practices and systems of



farming and homemaking, so far as the same may be applicable to local conditions, which have been developed by the investigations of the United States department of agriculture and the agricultural colleges and the experiment stations; to aid in the organization and direction of agricultural work and homemaking in the several counties; to cooperate with agricultural and home economics clubs and other associations and organizations having for their object the betterment of agriculture and home and rural conditions.

**History:** Laws 1917 (S.S.), ch. 1, § 5; 1941 Comp., § 48-108; 1953 Comp., § 45-1-8.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The name of the agricultural college of New Mexico, i.e., the New Mexico college of agriculture and mechanic arts, was changed to New Mexico state university by N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960.

**County appropriations optional.** — Although counties are authorized to appropriate for county agricultural agents, it is optional. 1917-18 Op. Att'y Gen. No. 17-2008.

### 76-2-9. [Agent for two or more counties.]

In order to obtain the advantages or to increase the benefits to be derived from the provisions of this act [76-2-4 through 76-2-9 NMSA 1978] any two or more contiguous counties may, subject to the approval of the extension service of the New Mexico college of agriculture and mechanic arts [New Mexico state university], unite in the employment of a county agent or agents under an agreement between the board of county commissioners of each of said counties and the extension service of said college, which agreement shall fix the amount of money to be provided by each county, in which case the funds to be provided by the state, in accordance with the provisions of Section two [76-2-5 NMSA 1978] hereof, shall be available, and shall be paid to the treasurer of said board of regents upon the certificates of said boards of county commissioners, countersigned by said extension director, stating the amounts of monies so provided by said counties, and that such agreement has been executed.

**History:** Laws 1917 (S.S.), ch. 1, § 6; 1941 Comp., § 48-109; 1953 Comp., § 45-1-9.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The name of the agricultural college of New Mexico, i.e., the New Mexico college of agriculture and mechanic arts, was changed to New Mexico state university by N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960.

**Compiler's notes.** — Laws 1917 (S.S.), ch. 1, § 7, read: "Because a state of war exists between the United States of America and the Imperial German Government and it is necessary for the successful prosecution of such war that the production and conservation of foods be promoted and encouraged, it is hereby declared that this act is necessary to provide for the public defense."

## **76-2-10. County farm and livestock bureaus.**

A. For the purpose of further extending the cooperative work provided in Sections 76-2-1 and 76-2-2 NMSA 1978 and the work provided in Sections 76-2-4 through 76-2-9 NMSA 1978, there may be created in each county a public corporation known as the county farm and livestock bureau.

B. Whenever any number of bona fide farmers and stockmen comprising not less than five percent of the total number of farmers and stockmen within any county, as determined by the last United States decennial census, desire to form an organization for doing extension work in agriculture, home economics and marketing and have held a meeting at which the organization is approved by a majority of those present, application may be made to the secretary of state for incorporation as a nonprofit corporation or association under the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978]. When such corporation or association has been effected, it shall be recognized as the official body within the county for carrying on extension work in agriculture and home economics in cooperation with New Mexico state university. When its charter has been issued, the corporation may make regulations and bylaws for its government and the carrying on of its work, not inconsistent with the provisions of this section and Sections 76-2-11 and 76-2-12 NMSA 1978.

C. Any county farm and livestock bureau or other county organization that is now doing extension work in agriculture and home economics in cooperation with New Mexico state university may be incorporated by furnishing satisfactory evidence of compliance with this section to the secretary of state; provided that only one such corporation may be formed in any county.

**History:** Laws 1919, ch. 74, § 1; C.S. 1929, § 3-201; 1941 Comp., § 48-110; 1953 Comp., § 45-1-10; Laws 1959, ch. 240, § 1; 1975, ch. 217, § 96; 2013, ch. 75, § 48.

## **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, required that applications for incorporation of a nonprofit corporation by farmers and stockmen be filed with the secretary of state; in Subsection B, in the first sentence, after "application may be made

to the", deleted "state corporation commission" and added "secretary of state"; and in Subsection C, after "with this section to the", deleted "state corporation commission" and added "secretary of state".

**Authority over wild horses.** — This chapter does not grant the department or the county farm and livestock bureaus authority to regulate the treatment of wild horses. 1994 Op. Att'y Gen. No. 94-06.

**Law reviews.** — For article, "Farmland Preservation Policy and Programs," see 24 Nat. Resources J. 592 (1984).

### **76-2-11. [Appropriations by county commissioners; acceptance of gifts.]**

The county commissioners may make appropriations for the support of the county farm and livestock bureau and said bureau shall be authorized to accept same and at its discretion may accept gifts or bequests of funds, real estate or other property to any extent for carrying out the provisions of this act [76-2-10 through 76-2-12 NMSA 1978].

**History:** Laws 1919, ch. 74, § 2; C.S. 1929, § 3-202; 1941 Comp., § 48-111; 1953 Comp., § 45-1-11.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 59.

### **76-2-12. [County commissioners to aid in creation of farm and livestock bureau.]**

It shall be the duty of boards of county commissioners in the various counties to cooperate with the county agricultural agents and other extension representatives in the creation, as far as possible in each county, of a farm and livestock bureau whose business it shall be to aid farmers and stockmen in every possible way in solving their production and marketing problems.

**History:** Laws 1919, ch. 74, § 3; C.S. 1929, § 3-203; 1941 Comp., § 48-112; 1953 Comp., § 45-1-12.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## ARTICLE 3

### County Board of Horticultural Commissioners

#### 76-3-1. [Petition for board; appointment, qualifications and terms of members.]

It shall be incumbent upon the county commissioners of each county of New Mexico, on petition of ten taxpaying citizens of said county, to select three competent persons, fruit growers or owners of orchards, residents of such county, who shall be known as the county board of horticultural commissioners. The board of county commissioners shall fill any vacancy that may occur in said board by death, resignation or otherwise, and appoint one horticultural commissioner each year, or thereabouts, one month, or thereabouts, previous to the expiration of the term of office of any member of the said county board of horticultural commissioners. Said county board of horticultural commissioners shall serve for a term of three years from date of appointment, except the commissioners first appointed, one of whom shall serve for one year, one of whom for two years and one of whom for three years from date of appointment. The commissioners first appointed shall themselves decide by lot or otherwise, who shall serve for one year, who shall serve for two years and who shall serve for three years, and shall notify the board of county commissioners of the result of their choice.

**History:** Laws 1903, ch. 107, § 1; Code 1915, § 2729; C.S. 1929, § 66-101; 1941 Comp., § 48-201; 1953 Comp., § 45-2-1.

#### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Prior to the 1915 Code, this section began with the language: "Within twenty days after the passage of this act."

**Cross references.** — For enforcement of statutes relating to agriculture and horticulture by regents of New Mexico state university, see 21-8-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 20.

3 C.J.S. Agriculture §§ 15, 16.

#### 76-3-2. County boards of horticultural commissioners; powers; inspection; spraying trees; tax levy.

A. It shall be the duty of the board of horticultural commissioners of each county, when it deems necessary, to cause an inspection to be made of any orchard, nursery,

trees, shrubs, plants, seeds, vines, fruit, fruit packing house, storehouse, storeroom, salesroom or other place in its county to determine if the orchard, nursery, shrubs, plants, trees, seeds, vines, fruit, fruit packing house, storehouse, storeroom, salesroom or other place is infested with any insects, fungus, or plant or fruit disease, or the eggs or larvae thereof, which is deemed injurious to fruit or horticultural plants. If, from an inspection of the orchard, nursery, trees, shrubs, plants, seeds, vines, fruit, fruit packing house, storehouse, storeroom, salesroom or other place in the county, any insects, fungus growth or other pests, or the eggs or larvae thereof, are found to exist, the inspector appointed by the board of horticultural commissioners shall serve written notice on the owner or person in charge of the premises on which the insects, fungus growth or other insect pests, or eggs or larvae thereof, are found to exist, that the same are infested with insects, fungus growth or other pests, or the eggs or larvae thereof, and shall require the owner or person in charge of the premises to disinfect by proper spray or other treatment the orchard, trees, nursery, shrubs, plants, seeds, vines, fruit, fruit packing house, storehouse, storeroom, salesroom or other place found to be infested with insects, fungus growth or other pests, which are injurious to horticultural plants or the fruit therefrom, for the eradication of the insects, fungus growth or other pests, or the eggs or larvae thereof. It is the duty of the owner or person in charge of any premises found to be infested with insects, fungus growth or other pests, to eradicate by proper spraying or other proper treatment the insects, fungus growth or other pests injurious to horticultural plants, or the eggs or larvae thereof. The neglect, failure or refusal of the owner or person in charge of any premises found infested with insects, fungus growth or other pests injurious to horticultural plants or fruit, or the eggs or larvae thereof, to take proper measures for the eradication of the pests within the time specified in the notice from the inspector shall cause him to be deemed guilty of a misdemeanor and he shall be punished by fine of not less than five dollars (\$5.00) and not more than fifty dollars (\$50.00) for each offense, and each day the insects, fungus growth or other pests injurious to horticultural plants or the fruit therefrom, or the eggs or larvae thereof, are not eradicated from the premises on which they are found shall constitute a separate offense.

B. If after the inspector has served notice upon the owner or person in charge of any premises on which are situate any orchard, nursery, trees, shrubs, plants, seeds, vines, fruit, fruit packing house, salesroom, storeroom, storehouse or other place where fruit or plants are stored or handled that the premises are infested with insects, fungus disease or other pests which are injurious to horticultural plants or the fruit therefrom, or the eggs or larvae thereof, and the owner or person in charge of the premises neglects, fails or refuses to eradicate the insects, fungus, disease or other pests, or the eggs or larvae thereof, within the time specified in the notice, then the board of horticultural commissioners of the county in which the premises are situated shall cause the inspector to eradicate from the premises the insects, fungus disease or other pests injurious to horticultural plants or the fruit therefrom, or the eggs or larvae thereof, either by spraying or other proper treatment. In the event the pests cannot be eradicated by spraying or other proper treatment, or the spread of the insects, fungus disease or other pests, or the eggs or the larvae thereof, cannot be prevented from spreading to other premises on which are growing or situate horticultural plants or the fruit therefrom, then

it shall be the duty of the board of horticultural commissioners to cause all orchards, nurseries, trees, shrubs, vines, plants, seeds, fruit, storehouses, storerooms, salesrooms, fruit packing houses or other objects or things which are infested with insects, fungus disease or pests, or the eggs or larvae thereof, to be so destroyed, either in whole or in part, as to eradicate the insects, fungus disease or other pests, or the eggs or larvae thereof. The expense of spraying or treatment for the eradication of the insects, fungus disease or other pests, or the eggs or larvae thereof, or of destroying, in whole or in part, any orchard, trees, shrubs, plants, vines, seeds, nursery, salesroom, packingroom, fruit or other thing infested with the pests, to eradicate or prevent the spread of the pests to other premises shall be a lien upon the land on which the same are situate, and foreclosed as provided in Section 76-3-5 NMSA 1978. When it is necessary for the board of horticultural commissioners to cause spraying to be done or orchards, trees or other objects to be destroyed as provided in this section, the board of county commissioners shall pay the costs out of the general funds of the county and repay those costs to the general funds of the county from the money received from the foreclosure of the lien.

C. The inspectors appointed by any county board of horticultural commissioners shall receive compensation for services performed by them under orders of the board at a per diem rate to be fixed from time to time by the county board of horticultural commissioners, and the county commissioners shall allow and pay the compensation out of the horticultural commission fund upon vouchers signed by the chairman of the board. For the purpose of providing funds for the payment of the inspectors and other necessary expenses incurred by the board, the county commissioners of every county where there is a county board of horticultural commissioners appointed as provided by law are authorized and directed to levy a special tax not exceeding five dollars (\$5.00), or any lower amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the special tax authorized by this subsection, upon each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], of all orchard lands and lands used for nurseries within the county, which tax shall be levied, assessed and collected as other taxes in the county, and the proceeds shall be credited to the horticultural commission fund of the county. All money collected by enforcement of the liens provided for in Sections 76-3-1 through 76-3-14 NMSA 1978 shall be credited to the horticultural fund.

**History:** Laws 1903, ch. 107, § 2; 1909, ch. 69, § 1; 1912, ch. 59, § 1; Code 1915, § 2730; C.S. 1929, § 66-102; Laws 1931, ch. 116, § 1; 1941 Comp., § 48-202; 1953 Comp., § 45-2-2; Laws 1986, ch. 32, § 40.

## ANNOTATIONS

**Cross references.** — For insect pests and plant diseases, see 76-5-11 to 76-5-28 NMSA 1978.

**Compiler's notes.** — The first sentence of the 1903 act, except for its proviso, and the entire 1912 act were used by the compilers of the 1915 Code. The 1931 act enacted the section in its present form.

**Power to condemn orchards having peach mosaic.** — Where peach mosaic, which has infected orchards, cannot be controlled by spraying or other treatment, the board of horticultural commissioners has power to condemn the orchards. 1947-48 Op. Att'y Gen. No. 48-5165.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 42, 46, 49 to 51.

3 C.J.S. Agriculture §§ 85, 91.

### **76-3-3. [Expense of abatement; lien; recording claim.]**

The expense incurred by the county board of horticultural commissioners in abating the nuisance aforesaid shall become a lien upon the land where such orchards, nurseries, trees or articles are situated and upon such nurseries, orchards, trees or articles and the said county board of horticultural commissioners within ten days after the completion of the work necessary to abate said nuisance as set out, shall file for record, with the county clerk of the county in which said land, nurseries, orchards, trees or articles are situated, a statement of the expense and amount thereof, the name of the owner or reputed owner of the land, nurseries, orchards, trees or articles, and a description of the land, nurseries, orchards, trees or articles to be charged with the lien, sufficient for identification, which claim must be verified by the oath of the officer or representative of the county board of horticultural commissioners under whose direction or supervision the work necessary to the abatement of said nuisance was done.

**History:** Laws 1909, ch. 69, § 2; Code 1915, § 2731; C.S. 1929, § 66-103; 1941 Comp., § 48-203; 1953 Comp., § 45-2-3.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **76-3-4. [Clerk to record lien; fee.]**

The clerk must record the claim of lien in the book kept by him for the recording of liens generally, and his fee for recording same shall be included in and be a part of the said lien.

**History:** Laws 1909, ch. 69, § 3; Code 1915, § 2732; C.S. 1929, § 66-104; 1941 Comp., § 48-204; 1953 Comp., § 45-2-4.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **76-3-5. Foreclosure; deficiency judgment.**

If said lien is not discharged and paid within sixty days from the date of its filing with the county clerk, the county board of horticultural commissioners shall in its official capacity and name institute suit in the district court for the foreclosure of said lien, and the procedure therefor shall be the same as is provided by law for the foreclosure of a materialman's or mechanic's lien on real estate, and if said property does not bring enough to satisfy said lien claim, a deficiency judgment shall be had against the defendant, upon which execution shall issue. The lien claim herein provided for shall take priority over any mortgage, attachment, other lien or other claim against the premises against which such lien is filed.

**History:** Laws 1909, ch. 69, § 4; Code 1915, § 2733; C.S. 1929, § 66-105; Laws 1931, ch. 116, § 2; 1941 Comp., § 48-205; 1953 Comp., § 45-2-5.

## ANNOTATIONS

**Cross references.** — For materialmen's and mechanics' liens generally, see 48-2-1 NMSA 1978 et seq.

### **76-3-6. [District attorney's duty.]**

The district attorney shall represent the county board of horticultural commissioners in suits for the foreclosure of liens as provided in the preceding sections [76-3-1 through 76-3-5 NMSA 1978] of this chapter.

**History:** Laws 1909, ch. 69, § 5; Code 1915, § 2734; C.S. 1929, § 66-106; 1941 Comp., § 48-206; 1953 Comp., § 45-2-6.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The compilers of the 1915 Code substituted "as provided in the preceding sections of this chapter" for "as above provided" and deleted "and shall receive a fee for his services of ten per cent of the amount received in said suits to be taxed as costs in said suits" at the end of the section.

The words "this chapter" refer to Chapter 54 of the 1915 Code, the provisions of which are presently compiled as 76-3-1 to 76-3-14 and 76-5-1 NMSA 1978.



### **76-3-7. [District inspectors; quarantine guardian commissions; right of entry.]**

The said county board of horticultural commissioners shall have power to divide the county into districts and to appoint a local inspector for each of said districts. The board of county commissioners of each county shall issue commissions as quarantine guardians to the members of said county board of horticultural commissioners, and to the local inspectors thereof. The said quarantine guardians, local inspectors or members of said county boards of horticultural commissioners shall have the authority to enter into any orchard, nursery or place or places where trees or plants are kept and offered for sale, or otherwise, or any house, storeroom, salesroom, depot or any other such place in their jurisdiction, to inspect the same, or any part thereof.

**History:** Laws 1903, ch. 107, § 6 [3]; Code 1915, § 2735; C.S. 1929, § 66-107; 1941 Comp., § 48-207; 1953 Comp., § 45-2-7.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1909, ch. 69, § 6, renumbered Laws 1903, ch. 107, §§ 3 to 10 as §§ 6 to 13 of the latter act. The bracketed number in the history line of this section indicates the original section number of the 1903 act.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 42, 44, 45.

3 C.J.S. Agriculture §§ 85, 89.

### **76-3-8. [Records and reports of board.]**

It shall be the duty of said county board of horticultural commissioners to keep a record of their official doings, and to make a report to the board of county commissioners on or before the first day of October of each year, of the condition of the fruit interests in their several districts, what is being done to eradicate insect pests, also to the disinfecting and as to quarantine against insects, pests and diseases, and as to carrying out all laws relative to the greatest good of the fruit interest. Said board of county commissioners shall incorporate so much of said report as may be of general interest in their annual report which they shall make to the governor of the state on or before the first day of December of each year.

**History:** Laws 1903, ch. 107, § 7 [4]; Code 1915, § 2736; C.S. 1929, § 66-108; 1941 Comp., § 48-208; 1953 Comp., § 45-2-8.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1909, ch. 69, § 6, renumbered Laws 1903, ch. 107, §§ 3 to 10 as §§ 6 to 13 of the latter act. The bracketed number in the history line of this section indicates the original section number of the 1903 act.

### **76-3-9. [Compensation of members; inspectors.]**

Each member of the county board of horticultural commissioners, and each local inspector, shall be paid for each day actually engaged in the performance of his duties under this chapter, payable out of the county treasury of his county, such compensation as shall be determined by resolution of the board of county commissioners of the county, before entering into the discharge of his or their duties.

**History:** Laws 1903, ch. 107, § 8 [5]; Code 1915, § 2737; C.S. 1929, § 66-109; 1941 Comp., § 48-209; 1953 Comp., § 45-2-9.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1909, ch. 69, § 6, renumbered Laws 1903, ch. 107, §§ 3 to 10 as §§ 6 to 13 of the latter act. The bracketed number in the history line of this section indicates the original section number of the 1903 act.

The words "this chapter" were substituted by the compilers of the 1915 Code for "this act" and refer to Chapter 54 of the 1915 Code compiled herein as 76-3-1 to 76-3-14 and 76-5-1 NMSA 1978.

### **76-3-10. [Removal of inspectors; members of board; monthly reports.]**

Said county board of horticultural commissioners shall have power to remove any local inspector who shall fail to perform the duties of his office. If any member of the county board of horticultural commissioners shall fail to perform the duties of his office, as required by this chapter, he may be removed from office by the board of county commissioners, and the vacancy thus formed may be filled by appointment by said board of county commissioners. In addition to the annual report required by Section 76-3-8 NMSA 1978, the county board of horticulture [horticultural] commissioners shall make a monthly report of their doings to the board of county commissioners and the board of county commissioners may withhold warrant for their salary or compensation of said members and inspectors thereof until such time as said report is made.

**History:** Laws 1903, ch. 107, § 9 [6]; Code 1915, § 2738; C.S. 1929, § 66-110; 1941 Comp., § 48-210; 1953 Comp., § 45-2-10.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1909, ch. 69, § 6, renumbered Laws 1903, ch. 107, §§ 3 to 10 as §§ 6 to 13 of the latter act. The bracketed number in the history line of this section indicates the original section number of the 1903 act.

The words "this chapter" were substituted by the compilers of the 1915 Code for "this act" and refer to Chapter 54 of the 1915 Code compiled herein as 76-3-1 to 76-3-14 and 76-5-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 17.

### **76-3-11. [Donations and bequests; meetings; lecturers; officers of board; bonds.]**

The county board of horticultural commissioners may receive, manage, use and hold donations and bequests for promoting the objects of its formation. It shall meet semiannually, and as much oftener and at such places as it may deem expedient, to consult and adopt such measures as may best promote the horticultural industry of the county. It may, but without expense to the county, select and appoint competent and qualified persons to lecture in the county, for the purpose of illustrating practical horticultural topics, and imparting instruction in the methods of culture, pruning, fertilizing and also in the best methods of treating diseases of fruits and fruit trees, cleansing orchards and exterminating insect pests. The county board of horticultural commissioners shall at their first meeting select from among themselves a chairman, a secretary and a treasurer who shall furnish bond to the county commissioners in the sum of five hundred dollars (\$500.00) for the faithful discharge of his duties.

**History:** Laws 1903, ch. 107, § 10 [7]; Code 1915, § 2739; C.S. 1929, § 66-111; 1941 Comp., § 48-211; 1953 Comp., § 45-2-11.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1909, ch. 69, § 6, renumbered Laws 1903, ch. 107, §§ 3 to 10 as §§ 6 to 13 of the latter act. The bracketed number in the history line of this section indicates the original section number of the 1903 act.

## **76-3-12. [Chairman's duties and powers.]**

The chairman shall preside at all meetings of the board, shall countersign all checks for moneys paid out, and shall sign all contracts to which the county board of horticultural commissioners is a party: provided, the same shall have been approved by the board. He shall have power to call a meeting of the board at any time he deems it necessary, whenever requested by a majority of the board, or when requested in writing by six of the resident fruit growers.

**History:** Laws 1903, ch. 107, § 11 [8]; Code 1915, § 2740; C.S. 1929, § 66-112; 1941 Comp., § 48-212; 1953 Comp., § 45-2-12.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1909, ch. 69, § 6, renumbered Laws 1903, ch. 107, §§ 3 to 10 as §§ 6 to 13 of the latter act. The bracketed number in the history line of this section indicates the original section number of the 1903 act.

## **76-3-13. [Secretary's duties.]**

The secretary shall attend all meetings of the board, and preserve records of its proceedings and all its correspondence, collect and preserve such books, pamphlets, periodicals and other documents as may be of interest to the horticulturalist [horticulturist], and to [sic] correspond with agricultural and horticultural societies and colleges and what other persons and bodies as he may be directed by the board. He shall also prepare such reports as are required by the board, and perform such other duties as will pertain to the office.

**History:** Laws 1903, ch. 107, § 12 [9]; Code 1915, § 2741; C.S. 1929, § 66-113; 1941 Comp., § 48-213; 1953 Comp., § 45-2-13.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1909, ch. 69, § 6, renumbered Laws 1903, ch. 107, §§ 3 to 10 as §§ 6 to 13 of the latter act. The bracketed number in the history line of this section indicates the original section number of the 1903 act.

## **76-3-14. [Treasurer's duties.]**

The duties of the treasurer shall be to receive and safely keep all moneys of the board. He shall pay out the same only for bills approved by the board, and shall render a detailed account to the board before the first of October of each year, or as often as may be required by the board, showing the amount of money received by the board and paid out by him. At the expiration of his term of office he shall turn over to his successor in office all moneys, books and papers of the board. He shall give bond in sum as provided for.

**History:** Laws 1903, ch. 107, § 13 [10]; Code 1915, § 2742; C.S. 1929, § 66-114; 1941 Comp., § 48-214; 1953 Comp., § 45-2-14.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1909, ch. 69, § 6, renumbered Laws 1903, ch. 107, §§ 3 to 10 as §§ 6 to 13 of the latter act. The bracketed number in the history line of this section indicates the original section number of the 1903 act.

## ARTICLE 4

### Pesticide Control

#### 76-4-1. Title.

This act [76-4-1 through 76-4-39 (except 76-4-20.1) NMSA 1978] may be cited as the "Pesticide Control Act."

**History:** 1953 Comp., § 45-25-1, enacted by Laws 1973, ch. 366, § 1.

### ANNOTATIONS

**Compiler's notes.** — Laws 1973, ch. 366, which originally enacted the Pesticide Control Act, is presently compiled as 76-4-1 to 76-4-20, 76-4-21 to 76-4-28, and 76-4-30 to 76-4-39 NMSA 1978. Laws 1992, ch. 25, § 1 enacted 76-4-9.1 NMSA 1978 as part of the Pesticide Control Act.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 55.

Exterminator's tort liability for personal injury or death directly resulting from operations, 29 A.L.R.4th 987.

Anticompetitive covenants: aerial spray dust business, 60 A.L.R.4th 965.

Federal pre-emption of state common-law products liability claims pertaining to pesticides, 101 A.L.R. Fed. 887.

## **76-4-2. Enforcing agency.**

The Pesticide Control Act shall be administered and enforced by the state department of agriculture, under the direction of the board of regents, New Mexico state university.

**History:** 1953 Comp., § 45-25-2, enacted by Laws 1973, ch. 366, § 2.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 20, 21.

3 C.J.S. Agriculture §§ 8 to 24.

## **76-4-3. Definitions.**

As used in the Pesticide Control Act:

A. "equipment" means any type of ground, water or aerial equipment, device or contrivance using motorized, mechanical or pressurized power to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but does not include any pressurized hand-sized household device used by a homeowner to apply a pesticide or any equipment, device or contrivance of which the person who is applying the pesticide on the person's own land is the source of power or energy in making the pesticide application;

B. "board" means the board of regents of New Mexico state university;

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

D. "device" means any instrument or contrivance other than a firearm that is intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life, other than humans and other than bacteria, viruses or other microorganisms on or in any living thing other than plants, but does not include equipment used for the application of pesticides when sold separately therefrom, or traps used to control predators or rodents or sterilization using dry heat or steam;

E. "distribute" means to offer for sale, hold for sale, sell, barter or supply in this state;

F. "environment" includes water, air and land and all plants and every living thing in water, in air and on land and the existing interrelationships;

G. "insect" means any of the numerous small invertebrate animals belonging principally to the class insecta, including beetles, bugs, bees, flies, and to other allied classes of arthropods, including spiders, mites, ticks, millipedes, centipedes and sowbugs;

H. "ingredient statement" means a statement that contains the name and percentage of each ingredient of any pesticide that is intended for one of the purposes under Paragraphs (1) through (4) of Subsection N of this section, and the total percentage of all ingredients in the pesticide not for one of those purposes. If the pesticide contains arsenic in any form, the ingredient statement shall contain a statement of the percentages of total and water-soluble arsenic, calculated as elemental arsenic;

I. "label" means the written, printed or graphic matter on or attached to the pesticide or device or any of its containers or wrappers;

J. "labeling" means all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the department, the United States environmental protection agency, United States departments of agriculture, the interior and health and human services, state agricultural universities and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides;

K. "land" means all land and water areas, including air space, and all living things and all structures, buildings, contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation;

L. "person" has the extended meaning ascribed to it in Subsection E of Section 12-2A-3 NMSA 1978;

M. "pest" means any living organism injurious to other living organisms, except humans, viruses, bacteria or other microorganisms in or on other living organisms other than plants, that the board by rule declares to be a pest;

N. "pesticide" means any substance or mixture of substances intended for:

- (1) preventing, destroying, repelling or mitigating any pest;
- (2) causing the leaves or foliage to drop from a plant, with or without causing abscission;
- (3) artificially accelerating the drying of plant tissue; or
- (4) 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,

through physiological action, but not including substances that are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments;

O. "pesticide dealer" means any person who distributes highly toxic pesticides, restricted use pesticides or both, which pesticides are restricted by rule to distribution only by licensed pesticide dealers;

P. "pest management consultant" means any individual who offers or supplies technical advice or makes recommendations to the user of highly toxic pesticides, restricted use pesticides or both, which pesticides are restricted by rule to distribution only by licensed pesticide dealers;

Q. "registrant" means a person who has registered any pesticide pursuant to the provisions of the Pesticide Control Act;

R. "restricted use pesticide" means any pesticide or device designated by the board as requiring specific restrictions to prevent unreasonable adverse effects on the environment, including humans, beneficial insect predators and parasites, pollinating insects, animals, crops, wildlife and lands but excluding the pests the pesticide or device is intended to prevent, destroy, control or mitigate;

S. "unreasonable adverse effects on the environment" means an unreasonable risk to humans or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide;

T. "noncommercial applicator" means a person who uses or demonstrates restricted use pesticides and does not qualify as a private applicator and is not required to have a commercial applicator's license;

U. "private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the certified applicator or the certified applicator's employer or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities;

V. "public applicator" means a certified applicator who as an employee of a federal, state, county or municipal agency or municipal corporation uses any pesticide that is classified for restricted use or any general use pesticide, when applied to sites or under conditions identified by rule promulgated by the board; and

W. "commercial applicator" means a certified applicator, whether or not the certified applicator is a private applicator with respect to some uses, who for compensation uses or supervises the use of any pesticide for any purpose on any property other than as provided by Sections 76-4-19 and 76-4-20.1 NMSA 1978.



History: 1953 Comp., § 45-25-3, enacted by Laws 1973, ch. 366, § 3; 1979, ch. 394, § 1; 2009, ch. 101, § 1; 2009, ch. 109, § 1.

## ANNOTATIONS

**The 2009 amendment**, effective June 19, 2009, in Subsection L, changed the reference from Section 12-2-2 NMSA 1978 to Section 12-2A-3 NMSA 1978; in Subsection V, after "restricted use", deleted "only by certified applicators or persons under their direct supervision" and added the remainder of the sentence; and in Subsection W, added the reference to Section 76-4-19 NMSA 1978.

Laws 2009, ch. 101, § 1 and Laws 2009, ch. 109, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2009, ch. 109, § 1. See 12-1-8 NMSA 1978.

### **76-4-4. Misbranded.**

A pesticide or device is misbranded if:

A. its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading;

B. it is contained in a package or other container or wrapping which does not conform to the standards established by the board;

C. it is an imitation of or is distributed under the name of another pesticide or device;

D. any word, statement or other information, required by the Pesticide Control Act or regulations adopted thereunder to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or graphic matter in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

E. the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product was intended and if complied with, together with any requirements imposed by the Pesticide Control Act and regulations adopted by the board, are adequate to prevent injury to plants and animals including man, and protect against any unreasonable adverse effects on the environment;

F. the labeling bears any reference to registration under the provisions of the Pesticide Control Act unless such reference is required by regulations adopted pursuant to the Pesticide Control Act;

G. the label does not bear:

- (1) the name and address of the producer, registrant or person for whom produced;
- (2) the name, brand or trademark under which the pesticide is distributed;
- (3) an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase. However, the department may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase;
- (4) directions for use and a warning or caution statement which are necessary and which, if complied with, would be adequate for the protection of health and protection against injury to plants and animals including man and protection against any unreasonable adverse effects on the environment;
- (5) the net weight or measure of the contents;
- (6) the registration number assigned the pesticide and the registration number of the person formulating the pesticide by the United States environmental protection agency; and
- (7) a statement of the use classification under which the product is registered, if required by federal or state regulations;

H. the pesticide contains any substance or substances in quantities highly toxic to man, as determined by the board unless the label bears, in addition to any other matter required by the Pesticide Control Act:

- (1) the skull and crossbones or any other symbol required for registration by the United States environmental protection agency;
- (2) the word "POISON" prominently printed in red on a background of distinctly contrasting color; and
- (3) a statement of an antidote or practical treatment in case of poisoning by the pesticide;

I. the pesticide container does not bear a label or if the label does not contain all the information required by the Pesticide Control Act and the regulations adopted pursuant to the act, or both;

J. the label for a spray adjuvant fails to state the type or function of the functioning agents; or

K. the label is not printed in English and Spanish, as prescribed by the United States environmental protection agency and by regulations of the board.

**History:** 1953 Comp., § 45-25-4, enacted by Laws 1973, ch. 366, § 4.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 55.

### **76-4-5. Prohibited acts.**

A. It is unlawful for any person to distribute within the state, to deliver for transportation or transport in intrastate commerce, or between points within this state through any point outside this state, or use any of the following:

(1) any pesticide which has not been registered in accordance with the Pesticide Control Act or regulations adopted pursuant to that act;

(2) any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition as represented in connection with its registration, differs. However, at the discretion of the department, a change in the labeling of a pesticide except changes in the ingredient statement may be made within a registration period without requiring reregistration of the product if the change will not have unreasonable adverse effects on the environment;

(3) any pesticide, unless it is in the unbroken immediate container of the registrant or manufacturer and there is affixed to the container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing information required in the Pesticide Control Act and the regulations adopted pursuant to that act;

(4) any pesticide which has not been colored or discolored as required by the Pesticide Control Act;

(5) any pesticide which does not meet the professed standard of quantity or quality, as expressed on the labeling under which it is sold, or in which any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent has been wholly or in part abstracted or if any contaminated is misbranded or is present in an amount determined by the department to be a hazard;

(6) any device which is misbranded; or

(7) any pesticide in containers violating regulations adopted pursuant to the Pesticide Control Act, or pesticides found in damaged containers which constituted a hazard to the environment.

B. It is unlawful:

(1) to distribute a restricted use pesticide to any person who is required by law or regulations promulgated pursuant to the Pesticide Control Act to have a permit to use or purchase restricted use pesticides, unless the person or his agent, to whom sale or delivery is made, has a valid permit to use or purchase the kind and quantity of the restricted use pesticide. However, subject to conditions established by the department, such permit may be obtained from any person designated by the department immediately prior to distribution;

(2) for any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in the Pesticide Control Act or regulations adopted pursuant to that act, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of the Pesticide Control Act or the regulations adopted thereunder;

(3) for any person to use or cause to be used any restricted use pesticide contrary to directions on the label or to regulations of the board if those regulation differ from or further restrict the labeling;

(4) for any person to use for his own advantage or to reveal, other than to the department, or to the courts of the state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of a practical treatment including first aid, in case of poisoning, any information relative to formulas of products acquired by authority of the Pesticide Control Act;

(5) for any person to handle, transport, store, display, distribute or use pesticides in such a manner as to endanger man and his environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with such pesticides; or

(6) for any person to dispose of, discard or store any pesticides or pesticide containers in a manner that may cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or to pollute any water supply or waterway.

**History:** 1953 Comp., § 45-25-5, enacted by Laws 1973, ch. 366, § 5.

### ANNOTATIONS

**Cross references.** — For penalties, see 76-4-34 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 42, 50, 51.

3 C.J.S. Agriculture § 87.

### **76-4-6. Registration.**

A. Each pesticide or device that is distributed within the state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered with the department subject to the provisions of the Pesticide Control Act. However, the registration is not required if a pesticide is shipped from one plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of the Pesticide Control Act.

B. The applicant for registration shall file a statement with the board which includes:

- (1) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;
- (2) the name of the pesticide or device;
- (3) other necessary information required for completion of the application for registration form;
- (4) a complete copy of the labeling accompanying the pesticide or device and a statement of all claims including the directions and precautions for use; and
- (5) the use classification of the pesticide, if required by federal or state regulations.

C. The department when it deems it necessary in the administration of the Pesticide Control Act, may require the submission of the complete formula of any pesticide including all ingredients which will prevent, destroy, repel, control or mitigate pests, or which will act as a plant regulator, defoliant, desiccant or those which act as a functioning agent in a spray adjuvant, and all ingredients which do not perform these functions.

D. The department may require a full description of the tests made and the results thereof upon which the claims are based on any pesticide, device or on any pesticide or device on which restrictions are being considered. In the case of renewal of registration, the applicant shall be required to furnish only information which is different from that furnished when the pesticide was registered or reregistered during the previous license year.

E. The board may prescribe other necessary information by regulation.

F. The applicant desiring to register a pesticide or device shall pay an annual prescribed registration fee for each pesticide or device registered.

G. Any registration approved by the department and in effect on December 31 of the year for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until the department notifies the applicant that the registration has been renewed or denied in accord with the provisions of the Pesticide Control Act. Forms for reregistration shall be mailed to registrants at least thirty days prior to the due date.

H. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide or device and its labeling and other material submitted comply with the requirements of the Pesticide Control Act, the department shall register the pesticide or device.

I. All federal, state and county agencies or municipalities shall register all pesticides or devices distributed by them but shall not be required to pay the registration fee.

**History:** 1953 comp., § 45-25-6, enacted by Laws 1973, ch. 366, § 6.

## **ANNOTATIONS**

**Law reviews.** — For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 42.

3 C.J.S. Agriculture §§ 95, 97.

### **76-4-7. Experimental use permits.**

A. No person shall conduct field tests using a pesticide not registered with the department or a registered pesticide for a use not previously approved in the registration without first having obtained an experimental use permit from the department.

B. Any person may apply to the department for an experimental use permit for a pesticide. The department may issue an experimental use permit if it determines that the applicant needs the permit in order to accumulate information necessary to register a pesticide. The department may refuse to issue an experimental use permit if it determines that issuance of such permit is not warranted or that the pesticide use to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment.

C. Use of a pesticide under an experimental use permit shall be under the supervision of the department and shall be subject to the terms and conditions and be for the period of time prescribed by the department in the permit.

D. The department may revoke any experimental use permit at any time, if it finds that the terms or conditions of the permit are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

**History:** 1953 Comp., § 45-25-7, enacted by Laws 1973, ch. 366, § 7; 1979, ch. 394, § 2.

#### **76-4-8. Refusal to register; cancellation; suspension.**

A. If it does not appear to the department that the pesticide or device warrants the proposed claims or if the pesticide or device and its labeling and other required material do not comply with the provisions of the Pesticide Control Act or regulations adopted thereunder, the department shall notify the applicant of the manner in which the pesticide, device, labeling or other required material fails to comply with the provisions of the Pesticide Control Act and permit the applicant to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the required changes, the department may refuse to register the pesticide or device.

B. The department may, when it determines that a pesticide or device or its labeling does not comply with the provisions of the Pesticide Control Act or the regulations adopted thereunder, cancel the registration of a pesticide or device.

C. The department shall, when it determines that a situation exists in which the continued use of a pesticide during the time required for cancellation under the Pesticide Control Act would likely result in unreasonable adverse effects on the environment, suspend on their own motion, the registration of a pesticide or device.

**History:** 1953 Comp., § 45-25-8, enacted by Laws 1973, ch. 366, § 8.

#### **ANNOTATIONS**

**Cross references.** — For stop sale, use or removal order, see 76-4-11 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 42.

3 C.J.S. Agriculture §§ 98, 100.

#### **76-4-9. Department to administer and enforce act; board to adopt regulations; scope of regulations.**

The department shall administer and enforce the provisions of the Pesticide Control Act and regulations promulgated by the board.

A. The board may after notice and public hearing adopt regulations for carrying out the purpose and provisions of the Pesticide Control Act, including regulations providing for:

(1) declaring as a pest any form of plant or animal life or virus, other than man and other than bacteria, viruses and other microorganisms on or in living man or other living animals, which is injurious to health or the environment;

(2) designating certain pesticides to be highly toxic to any animal including man;

(3) determining standards for identifying pesticides by color, taste, odor or form;

(4) the collection and examination of devices or samples of pesticides for analysis;

(5) requiring pesticide applicators to notify land owners of property adjoining the property to be treated, or in the immediate vicinity thereof, of a proposed application of a pesticide, if such a notice is necessary to carry out the purpose of the Pesticide Control Act; and for a hearing before the director of the department of any objecting owner of property adjoining the property to be treated before the application of the pesticide;

(6) the safe handling, transportation, storage, display, distribution, use and disposal of pesticides and their containers;

(7) establishing standards with respect to the package, container or wrapping in which a pesticide is distributed;

(8) restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength and size or any combination thereof to alleviate danger of spillage, breakage, misuse or any other hazard to the public;

(9) procedures for making pesticide recommendation;

(10) adopting a list of restricted use pesticides for the state or for designated areas within the state;

(11) regulating the time and conditions of distribution, sale or use of the restricted use pesticides;

(12) requiring all persons issued licenses to offer technical advice, to sell or to use restricted use pesticides to maintain records as prescribed by the department;

(13) certification of private applicators;

(14) label requirements of all pesticides required to be registered under provisions of the Pesticide Control Act;



- (15) regulating the labeling of devices;
- (16) procedures and techniques to be used in sampling land, including agricultural products that are to be consumed by man or animals for pesticide residues;
- (17) classifying pesticides for general use, restricted use or both;
- (18) prescribing methods to be used in the application of pesticides where the department finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Control Act. Such regulations may relate to the time, manner, methods, materials and amounts and concentrations in connection with the application of the pesticides and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to plants, including forage plants, or adjacent or nearby lands; wildlife in the adjoining or nearby areas; fish and other aquatic life in waters in reasonable proximity to the area to be treated; and humans, animals or beneficial insects. In issuing such regulations, the board shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government or other reliable sources;
- (19) requiring any pesticide use dilution to be colored or discolored if it determines that such requirement is feasible and is necessary for the protection of health and the environment;
- (20) establishing good pesticide use and handling practices for commercial pesticide applicators;
- (21) establishing requirements for supervision of servicemen of structural pest control applicators; and
- (22) regulating false or misleading advertisement in the sales or use of pesticides and devices.

B. The board shall adopt regulations that are consistent with regulations of the New Mexico environmental improvement board, the New Mexico water quality control commission and the laws administered by the regulations of the United States environmental protection agency.

C. The department is authorized to specify the quantities and concentrations of restricted use pesticides that may be applied.

**History:** 1953 Comp., § 45-25-9, enacted by Laws 1973, ch. 366, § 9; 1979, ch. 394, § 3.

## ANNOTATIONS

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 20, 21.

3 C.J.S. Agriculture § 96.

### **76-4-9.1. State preemption.**

Except as otherwise authorized in the Pesticide Control Act, no city, county or other political subdivision of the state and no home rule municipality shall adopt or continue in effect any ordinance, rule, regulation or statute regarding the registration, labeling, distribution, sale, handling, use, application, transportation or disposal of pesticides.

**History:** Laws 1992, ch. 25, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 1992, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art IV, § 23, was effective on May 20, 1992.

### **76-4-10. Sampling and examination of pesticides or devices; residue analysis.**

A. The sampling and examination of pesticides or devices shall be made under the direction of the department for the purpose of determining if they comply with the requirements of the Pesticide Control Act.

B. The sampling of land, including agricultural products that are to be consumed by man or animals, may be made by the department to determine if pesticide residues are present that will cause unreasonable adverse effects on the environment or if the residues exceed the tolerance established by the United States environmental protection agency, New Mexico environmental improvement agency [department of environment] or restrictions established by other federal or state regulatory agencies.

**History:** 1953 Comp., § 45-25-10, enacted by Laws 1973, ch. 366, § 10.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The environmental improvement agency was abolished by Laws 1977, ch. 253, § 5. Section 4 of that act established the health and environment department, consisting of several divisions, including the environmental improvement division. Section 14 of that act provided that all references in law to the agency shall be construed to be references

to the environmental improvement division. Laws 1991, ch. 25, § 4 established the department of environment and provided that all references to the environmental improvement division of the health and environment department shall be construed to mean the department of environment.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 53.

3 C.J.S. Agriculture § 99.

### **76-4-11. "Stop sale, use or removal" order.**

When the department has reasonable cause to believe a pesticide or device is being distributed, used, stored or transported in violation of any of the provisions of the Pesticide Control Act or regulations adopted pursuant thereto, the department may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of the pesticide or device. If the owner or custodian is not available to receive the order, the department may attach the order to the pesticide or device and notify the registrant. The pesticide or device shall not be distributed, used or removed until the provisions of the Pesticide Control Act have been complied with and the pesticide or device has been released in writing under conditions specified by the department or the alleged violation has been otherwise disposed of as provided in the Pesticide Control Act by a court of competent jurisdiction.

**History:** 1953 Comp., § 45-25-11, enacted by Laws 1973, ch. 366, § 11.

### **ANNOTATIONS**

**Cross references.** — For judicial action after stop sale, use or removal order, see 76-4-12 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 42.

### **76-4-12. Judicial action after "stop sale, use or removal" order.**

A. After service of a "stop sale, use or removal" order is made upon any person, that person or the registrant or the department may file an action in a court of competent jurisdiction, in the county in which a violation of the Pesticide Control Act or regulations adopted thereunder is alleged to have occurred, for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions, mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device that does not meet the requirements of the Pesticide Control Act or regulations adopted thereunder.

B. If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs. However, the pesticide or device shall not be sold contrary to the provisions of the Pesticide Control Act or regulations

adopted thereunder. Upon payment of the costs of the condemnation proceedings and the execution and delivery of a bond as prescribed by the court to assure the pesticide or device shall not be sold or disposed of contrary to the provisions of the Pesticide Control Act or regulations adopted pursuant thereto, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling, reprocessing or otherwise bringing the product into compliance.

C. When a decree of condemnation is entered against the pesticide or device, court costs, fees, storage and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide or device.

**History:** 1953 Comp., § 45-25-12, enacted by Laws 1973, ch. 366, § 12.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 42.

3 C.J.S. Agriculture § 100.

#### **76-4-13. Pesticide dealer license.**

A. It is unlawful for any person to act in the capacity of a pesticide dealer, or advertise as, or assume to act as a pesticide dealer at any time without first having obtained an annual license from the department. A license shall be required for each location or outlet located within this state from which pesticides are distributed. Any manufacturer, registrant or distributor who has no pesticide dealer outlet licensed within this state and who distributes pesticides directly into this state shall obtain a pesticide dealer license for his principal out-of-state location or outlet.

B. Application for a license shall be accompanied by the prescribed annual license fee and shall be on a form provided by the department. The application shall include:

- (1) the full name and title of the person applying for the license;
- (2) the address of each outlet to be licensed;
- (3) the principal business address of the applicant;
- (4) the name of a person domiciled in this state authorized to receive and accept service of summons and legal notices of all kinds for the applicant; and
- (5) any other necessary information prescribed by the department.

C. Provisions of this section shall not apply to a licensed pesticide applicator who sells pesticides only as an integral part of his pesticide application service when the pesticides are dispensed only through an apparatus used for such pesticide application,

or any federal, state or county agency, or municipality which provides pesticides only for its own programs.

D. Each pesticide dealer shall be responsible for the acts of each individual employed by him in the solicitation and sale of pesticides and all claims and recommendations for the use of pesticides. The dealer license shall be subject to denial, suspension or revocation after a hearing for any violation of the Pesticide Control Act or regulations adopted thereunder, whether committed by the dealer or by an officer, agent or employee of the dealer.

**History:** 1953 Comp., § 45-25-13, enacted by Laws 1973, ch. 366, § 13.

### **ANNOTATIONS**

**Cross references.** — For grounds for denial, suspension or revocation of license, see 76-4-23 NMSA 1978.

#### **76-4-14. Pest management consultant.**

No individual shall perform services as a pest management consultant without first obtaining from the department an annual license. Application for a license shall be on a form provided by the department and shall be accompanied by the prescribed fee. Licensed pesticide applicators and operators and employees of federal, state and county agencies, or municipalities, when acting in their official capacities, shall be exempt from this licensing provision.

**History:** 1953 Comp., § 45-25-14, enacted by Laws 1973, ch. 366, § 14.

#### **76-4-15. Public pest management consultant.**

A "public pest management consultant" means any individual who is employed by a governmental agency or municipality to act as a pest management consultant. No person shall act as a public pest management consultant without first obtaining an annual nonfee license from the department. Application for a license shall be on a form provided by the department. The nonfee license shall be valid only when the consultant is acting in that capacity as an employee of his governmental employer. Federal and state employees whose principal responsibilities are in pesticide research shall be exempt from this licensing provision while acting in their official capacities.

**History:** 1953 Comp., § 45-25-15, enacted by Laws 1973, ch. 366, § 15.

#### **76-4-16. Examinations for pest management consultant license.**

The department shall require each applicant for a pest management consultant license or a public pest management consultant license to demonstrate the applicant's knowledge of pesticide laws and regulations, pesticide hazards and the safe

distribution, use, application and disposal of pesticides by satisfactorily passing a written examination for the classification for which he has applied, prior to issuing his license. The prescribed examination fee shall be paid for the initial examination and other examinations needed to qualify the applicant to perform services as a pest management consultant. The public pest management consultant shall not be required to pay the examination fee and an examination shall be administered upon request.

**History:** 1953 Comp., § 45-25-16, enacted by Laws 1973, ch. 366, § 16.

### **76-4-17. Commercial pesticide applicator license.**

A. It is unlawful for any person to engage in the business of applying pesticides at any time to land not owned or occupied by him without a commercial pesticide applicator license issued by the department. The commercial pesticide applicator shall pay an annual prescribed fee for each license issued. Should any apparatus fail to pass inspection making it necessary for an additional inspection to be made, the department shall require a prescribed inspection fee. In addition to the required inspection, additional inspections may be made to determine if equipment is properly calibrated and maintained in conformance with the Pesticide Control Act and regulations adopted pursuant thereto.

B. Application for a license shall be on a form provided by the department.

C. The department shall not issue a commercial pesticide applicator license until the applicant has passed an examination to demonstrate his knowledge of how to apply pesticides under the classification or classifications he has applied for, and his knowledge of the nature and effect of pesticides he may apply. The department shall charge the prescribed examination fee for the initial examination and other examinations needed to qualify the applicant to apply pesticides.

D. The department shall renew any applicant's license under the classification for which the applicant is certified; provided that the applicant's license is not under a suspension or revocation order and he has met the provisions of the Pesticide Control Act.

E. The department shall not issue a commercial applicator license if it has been determined that:

(1) the applicant has been convicted within the last five years of a felony involving fraud;

(2) the applicant has had revoked within the last two years a previous license authorized by the Pesticide Control Act;

(3) the applicant has been unable to satisfactorily fulfill the certification requirements; or

(4) [the applicant] has had any pesticide application or a license denied, revoked or suspended in any state in the last five years.

F. All applicants for a commercial applicator license shall meet at least one of the following requirements prior to being issued a license and shall file proof of compliance as specified by the department:

(1) documentation of two years of pesticide application experience in the category or related category for which application is being made; or

(2) documentation of one year of pesticide application experience in the category or related category for which application is being made and not less than twenty college credit hours in biological or agricultural sciences.

**History:** 1953 Comp., § 45-25-17, enacted by Laws 1973, ch. 366, § 17; 1979, ch. 394 § 4.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and it is not part of the law.

**Cross references.** — For inspection of apparatus, see 76-4-26 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 101.

### 76-4-18. Operator license.

A. It is unlawful for any individual to act as an employee of a commercial pesticide applicator and apply pesticides without having obtained an operator license from the department.

B. The department shall issue an operator license when the applicant has passed an examination to demonstrate his ability to apply pesticides safely and effectively with the type of apparatus and in the classification for which he has applied. The department shall charge the prescribed examination fee for each examination administered.

C. The provisions of this section shall not apply to any individual who is a licensed commercial pesticide applicator.

**History:** 1953 Comp., § 45-25-18, enacted by Laws 1973, ch. 366, § 18; 1979, ch. 394, § 5.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 101.

## **76-4-19. Application of act to governmental entities; public applicator's license required.**

A. A public applicator shall be subject to the provisions of the Pesticide Control Act and rules adopted pursuant to that act.

B. Public applicators shall be subject to examinations or other licensing provisions as provided in the Pesticide Control Act or by rule promulgated by the board. The department shall issue a limited license without fee to the public applicator who has qualified for the license. The public applicator license shall be valid only when the applicator is acting as an applicator applying pesticides used by federal, state, county or municipal agencies or municipal corporations. Government research personnel shall be exempt from this licensing requirement only when applying general use pesticides to experimental plots.

History: 1953 Comp., § 45-25-19, enacted by Laws 1973, ch. 366, § 19; 1979, ch. 394, § 6; 2009, ch. 101, § 2; 2009, ch. 109, § 2.

### **ANNOTATIONS**

**The 2009 amendment**, effective June 19, 2009, in Subsection A, at the beginning of the sentence, deleted "All state agencies, federal agencies and municipal corporations or any other governmental agency", added "A public applicator"; and at the end of the sentence, deleted "thereunder concerning the application of pesticides unless exempt under other sections of the Pesticide Control Act"; and added "pursuant that act"; in Subsection B, after "Public applicators", deleted "for agencies listed in this section"; after "examinations", added "or other licensing provisions"; added "or by rule promulgated by the board; after "applicator applying", deleted "or supervising application of restricted use"; and after "pesticides used by", deleted "such entities"; and added "federal, state, county or municipal agencies or municipal corporations".

Laws 2009, ch. 101, § 2 and Laws 2009, ch. 109, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2009, ch. 109, § 2. See 12-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 43.

3 C.J.S. Agriculture § 101.

## **76-4-20. Private applicators.**

A. No private applicator shall use a restricted use pesticide without first complying with the certification requirements determined by the department as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons.



B. In determining these certification requirements, the board shall take into consideration standards of the United States environmental protection agency. Certification requirements for a private applicator to be certified to use restricted use pesticides may include but shall not be limited to the following:

(1) the applicant shall acknowledge that he understands and will abide by the label precautions by signing a dealer's pesticide register. The register shall include the name and address of the private applicator and other information as prescribed by the department. The dealer shall keep a record of all restricted use pesticides distributed to a private applicator;

(2) the applicant shall obtain a user permit prior to purchase and use of the pesticide. The department may issue restricted use pesticide permits to private applicators who have documented the crops, location and acreage on the permit for the seasonal or temporary period for which their permit is issued. User permits shall only be issued for registered or experimental uses and shall be subject to other limitations as specified by the department. The limitations may include limiting the areas of use, the timing or method of application and limiting the amount of the pesticide to that needed to cover the acreage to be treated;

(3) the applicant shall be required to pass a written examination demonstrating his competency with respect to the use and handling of the pesticide or pesticides covered by his certification prior to purchase and use of the product; and

(4) the applicant shall be required to obtain approval from the department for each application involving a specific risk to the environment. The applicant shall submit to the department an application form for a special review permit. The application shall include detailed information on the intended use, the responsible person in charge and the equipment and conditions under which the pesticide application is to be made. The department in reviewing the application for a special review permit may require additional restrictions such as on-site inspection or supervision.

C. The department shall charge the prescribed fee for each certification.

D. If a private applicator does not qualify, the department shall inform the applicant in writing.

E. Private applicator certification shall be valid for a period of not less than three years, established by the board.

**History:** 1953 Comp., § 45-25-20, enacted by Laws 1973, ch. 366, § 20; 1979, ch. 394, § 7.

### **76-4-20.1. Noncommercial applicator license.**

A. A noncommercial applicator shall not use a restricted use or state restricted use pesticide without having a valid current noncommercial applicator license issued by the department for the license use categories and subcategories in which the pesticide application is made.

B. Application for an original or renewal license shall be on a form prescribed by the department. An annual prescribed fee shall be charged for each noncommercial applicator license issued.

C. The department shall not issue a noncommercial applicator license until the applicant has passed a written certification examination to demonstrate to the department the applicant's knowledge of how to apply pesticides under the classifications for which the applicant has applied and the applicant's knowledge of the nature and effect of pesticides the applicant may apply under such classifications.

D. The department shall renew any applicant's license under the classification for which the applicant is certified; provided that the applicant's license is not under a suspension or revocation order and the applicant has complied with the provisions of the Pesticide Control Act.

E. Nothing in this section shall imply the right to apply pesticides for hire without first having obtained a commercial applicator license.

History: Laws 1979, ch. 394, § 8; 2009, ch. 101, § 3; 2009, ch. 109, § 3.

#### **ANNOTATIONS**

**The 2009 amendment**, effective June 19, 2009, in Subsection A, at the beginning of the sentence, deleted the phrase "Any person who is not a private applicator, commercial applicator or public applicator, except a person working under their direct supervision" and added the phrase "A noncommercial applicator".

Laws 2009, ch. 101, § 3 and Laws 2009, ch. 109, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2009, ch. 109, § 3. See 12-1-8 NMSA 1978.

#### **76-4-21. Expiration date of licenses.**

The board shall set by regulation the expiration date for the annual pesticide registration or any license provided for in the Pesticide Control Act.

**History:** 1953 Comp., § 45-25-21, enacted by Laws 1973, ch. 366, § 21; 1979, ch. 394, § 9.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 101.

## **76-4-22. Fees.**

A. Fees for the registration of pesticides, the various licenses, inspection of apparatuses and examination of applicants required by the Pesticide Control Act shall be set by the board not to exceed the amount authorized below:

- (1) annual registration fee for each pesticide or device registered, not more than \$150;
- (2) annual pesticide dealer license for each location or outlet within the state or, if there is no outlet in the state, for the principal out-of-state location or outlet, not more than \$100;
- (3) annual pest management consultant license, not more than \$100;
- (4) annual commercial pesticide applicator license, not more than \$100;
- (5) annual operator license, not more than \$75.00;
- (6) annual noncommercial applicator license, not more than \$100;
- (7) private applicator certification or renewal, not more than \$25.00;
- (8) additional inspection required to certify each unit of aircraft, ground or manual equipment that fails to pass inspection, not more than \$25.00; and
- (9) examination fee for each examination needed to qualify the applicant as a pest management consultant, commercial pesticide applicator, noncommercial applicator or operator or any combination thereof, not more than \$20.00.

B. If the application for the renewal of a pesticide registration or any annual license provided for in the Pesticide Control Act is not filed prior to the expiration date of the prior registration or license, the fee for renewal of registration or license shall be double the amount specified in this section and shall be paid by the applicant before the renewal registration or license is issued. Any person holding a current valid license may renew the license for the next year without taking an examination unless the department determines that additional knowledge relating to the classification for which the applicant has applied makes a new examination necessary. However, if the license is not renewed within thirty days after expiration, the licensee shall be required to take new certification examinations.

**History:** 1953 Comp., § 45-25-22, enacted by Laws 1973, ch. 366, § 22; 1979, ch. 394, § 10; 2005, ch. 200, § 1.

## ANNOTATIONS

The **2005 amendment**, effective June 17, 2005, increased the registration fees in Subsection A(1) through (7) and (9).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 95.

### **76-4-23. Grounds for denial, suspension or revocation of license, permit or certification; acts constituting a violation of the Pesticide Control Act.**

A. The department may deny application for any license, permit or certification or may suspend any license, permit or certification when it has reason to believe that the applicant for or the holder of such license, permit or certification has violated any of the provisions of Subsection B of this section.

B. It is a violation of the Pesticide Control Act for any person to:

(1) make a false or fraudulent claim through any media which misrepresents the effect of material or methods to be used;

(2) make a pesticide recommendation or to use a pesticide in a manner inconsistent with the labeling;

(3) apply known ineffective or improper materials;

(4) operate faulty or unsafe apparatus;

(5) operate in a faulty, careless or negligent manner;

(6) refuse or, after notice, neglect to comply with the provisions of the Pesticide Control Act or the rules and regulations adopted pursuant thereto;

(7) refuse or neglect to keep and maintain the records or to make reports when and as required by the Pesticide Control Act or rules and regulations adopted pursuant thereto;

(8) make false or fraudulent records, invoices or reports;

(9) engage in the business of applying a pesticide on the land of another without having a licensed applicator or operator in direct "on-the-job" supervision;

(10) use fraud or misrepresentation in making an application for a license or renewal of a license;

(11) refuse or neglect to comply with any limitation or restriction on or in a duly issued license or permit;

(12) aid or abet a licensed or an unlicensed person to evade any provision of the Pesticide Control Act, conspire with a licensed or an unlicensed person to evade the provisions of the Pesticide Control Act or allow one's license to be used by an unlicensed person;

(13) make false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;

(14) impersonate any state, county or city inspector or official;

(15) perform the type of pest control under the conditions and in the locality in which he operates or has operated, whether or not he has previously passed an examination, when not qualified;

(16) use, or supervise the use of, a pesticide which is restricted to use by certified applicators when not qualified as a certified applicator; or

(17) make pesticide recommendations or apply pesticides without having the proper certification or license.

C. Any person who has had a license, permit or certification denied, suspended or revoked by the department may request a hearing before the department. The request for a hearing shall be made within fifteen days of receipt of a certified letter notifying him of the department's action.

**History:** 1953 Comp., § 45-25-23, enacted by Laws 1973, ch. 366, § 23; 1979, ch. 394, § 11.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 20.

Liability of termite or other pest control or inspection contractor for work or representations, 32 A.L.R.4th 682.

### **76-4-24. Surety bond or insurance required of commercial pesticide applicators.**

The department shall not issue a commercial pesticide applicator license until the applicant has furnished evidence of financial responsibility with the department consisting either of a surety bond or a liability insurance policy or certification thereof, protecting persons who may suffer legal damages as a result of the operations of the applicant. However, the surety bond or liability insurance policy need not apply to

damages or injury to land being worked upon by the applicant. The department shall not accept a surety bond or liability insurance policy except from authorized insurers or surplus line brokers authorized to do business in the state.

A. The amount of the surety bond or liability insurance as provided for in this section shall be set by the board. The surety bond or liability insurance shall be maintained, at a sum not less than that specified by the board, at all times during the license period. The department shall be notified ten days prior to any reduction made at the request of the applicant or cancellation of the surety bond or liability insurance by the surety or insurer. The department may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount prescribed by the board. If the applicant has not satisfied the requirements of the deductible amount in any prior legal claim, such deductible clause shall not be accepted by the department unless the applicant furnishes the department with a surety bond or liability insurance which shall satisfy the amount of the deductible pertaining to all claims that may arise in his application of pesticides.

B. The applicator license shall, whenever the surety bond or insurance policy of the licensee is reduced below the requirements of the Pesticide Control Act and regulations adopted pursuant thereto, be automatically suspended until the surety bond or insurance policy again meets these requirements. The department may retrieve the license plates or decal of the licensee during the period of automatic suspension and return them only when the licensee has furnished the department with written proof that he is again in compliance.

C. Nothing in the Pesticide Control Act shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides, even though such use conforms to the rules and regulations of the board.

**History:** 1953 Comp., § 45-25-24, enacted by Laws 1973, ch. 366, § 24.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 101.

### **76-4-25. Damaged person must file report of loss; contents; time of filing; effect of failure to file.**

A. Any person suffering a loss or damage resulting from the use or application by others of any pesticide shall file with the department a verified report of loss setting forth, so far as known to the claimant, the following:

- (1) the name and address of the claimant;
- (2) the type of land alleged to be injured or damaged;

- (3) the name of the person applying the pesticide and allegedly responsible;
- (4) the name of the owner or occupant of the property for whom the pesticide application was made; and
- (5) additional information as requested by the department.

B. The report must be filed within sixty days from the time that the loss or damage becomes known to the claimant. If a growing crop is alleged to have been damaged, the report must be filed prior to harvest of fifty percent of that crop, unless the loss or damage was not then known. The department may prepare a form to be furnished to persons making a report of alleged damages. This form shall contain other requirements as the department deems necessary. The department may, upon receipt of the alleged damage report, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility, of the damages claimed, and furnish copies of the statements as may be requested. The department shall inspect damages whenever possible, and when they determine that the complaint has sufficient merit, they shall make the information available to the person claiming damage and to the person who is alleged to have caused the damage.

C. The filing of a report or the failure to file a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any action.

D. The failure to file the report shall not be a violation of this act. However, if the person failing to file the report is the only one injured from the use or application of a pesticide by others, the department may, when in the public interest, refuse to hold a hearing for the denial, suspension or revocation of a license or permit issued under the Pesticide Control Act until the report is filed.

E. Where damage is alleged to have occurred, the claimant shall permit the department, the licensee and his representatives, such as bondsman or insurer, to observe and examine the lands or nontarget organism alleged to have been damaged. Failure of the claimant to permit the observation and examination of the damaged lands shall automatically bar the claim against the licensee.

**History:** 1953 Comp., § 45-25-25, enacted by Laws 1973, ch. 366, § 25.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 47.

Infliction of emotional distress: toxic exposure, 6 A.L.R.5th 162.

3 C.J.S. Agriculture § 86.

## **76-4-26. Inspection of equipment.**

A. The department shall provide for an annual inspection of any equipment used for the application of pesticides by a commercial pesticide applicator and may require repairs or other changes before the equipment is used to apply pesticides. A list of requirements that the equipment shall meet shall be provided by the department.

B. Any piece of equipment which fails inspection shall have affixed to it an out-of-order seal. The equipment shall not be put back into service until it has passed reinspection and the out-of-order seal is removed by the department. A prescribed inspection fee shall be charged for each reinspection.

**History:** 1953 Comp., § 45-25-26, enacted by Laws 1973, ch. 366, § 26; 1979, ch. 394, § 12.

## **76-4-27. License plates or decals for apparatus.**

Each licensed apparatus shall be identified by a license plate or decal furnished by the department, at no cost to the licensee. The license plate or decal shall be affixed in a location and manner upon the application apparatus as prescribed by the department.

**History:** 1953 Comp., § 45-25-27, enacted by Laws 1973, ch. 366, § 27.

## **76-4-28. Farmer or rancher exemption.**

Except for the use of restricted use pesticides the provisions of the Pesticide Control Act relating to licenses and requirements for their issuance shall not apply to any farmer or rancher owner of a ground or manual apparatus applying pesticides for himself or his farmer or rancher neighbors, when he:

A. operates farm or ranch property and operates and maintains pesticide application equipment primarily for his own use;

B. is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation and he does not publicly solicit business as a pesticide applicator; or

C. operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his neighbors.

**History:** 1953 Comp., § 45-25-28, enacted by Laws 1973, ch. 366, § 28.

### **ANNOTATIONS**

## **76-4-29. Repealed.**



## ANNOTATIONS

**Repeals.** — Laws 1979, ch. 394, § 15, repealed 76-4-29 NMSA 1978, as enacted by Laws 1973, ch. 366, § 29, relating to the exemption of landscape gardeners from the provisions of the Pesticide Control Act.

### **76-4-30. Discarding and storing of pesticides and pesticide containers.**

No person shall discard, transport or distribute any pesticide or pesticide container in a manner that may cause injury to humans, vegetation, crops, livestock, wildlife or beneficial insects or pollute any waterway.

**History:** 1953 Comp., § 45-25-30, enacted by Laws 1973, ch. 366, § 30.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 42.

### **76-4-31. Access to public or private premises.**

A. For the purpose of carrying out the provisions of the Pesticide Control Act, the department is authorized upon presentation of proper identification and with consent of the owner or by court order, to enter any public or private premises, in order to:

- (1) inspect any apparatus subject to the Pesticide Control Act and the premises on which the apparatus is kept or stored;
- (2) inspect lands actually or reported to be exposed to pesticides;
- (3) inspect storage or disposal areas;
- (4) inspect or investigate complaints of injury to humans or land;
- (5) sample pesticides being applied or to be applied; or
- (6) sample land, including agricultural products, for pesticide residues.

B. If it appears that a pesticide apparatus or device fails to comply with the provisions of the Pesticide Control Act or regulations adopted thereunder, and if the department contemplates instituting proceedings against any person, the department shall cause notice to be given to the person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to the contemplated proceedings. If thereafter, in the opinion of the department, it appears that the provisions of the Pesticide Control Act or regulations adopted thereunder have been violated by the person, the department shall refer a copy of the results of the analysis or

the examination of the pesticide apparatus or device to the district attorney for the county in which the violation occurred. It is the duty of the district attorney to whom any violation of the Pesticide Control Act is reported to cause appropriate proceedings to be instituted and prosecute in a court of competent jurisdiction without delay.

C. Nothing in the Pesticide Control Act shall be construed as requiring the department to report, for prosecution or the institution of condemnation proceedings, minor violations of the Pesticide Control Act when the department believes that the public interest will be best served by a notice of warning in writing.

D. Should the department be denied access to any land where access was sought for the purposes set forth in the Pesticide Control Act, they may apply to any court of competent jurisdiction for a search warrant for the purpose requested.

**History:** 1953 Comp., § 45-25-31, enacted by Laws 1973, ch. 366, § 31.

## **ANNOTATIONS**

**Cross references.** — For inspection of apparatus, see 76-4-26 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 42, 50.

3 C.J.S. Agriculture § 83.

### **76-4-32. Classification of licenses.**

A. The department may classify licenses to be issued under the Pesticide Control Act. Such classifications may include recommending pesticides to be used in or on land, including but not limited to agricultural crops, ornamentals, structures and noncrop land or to treat regulated products or equipment. If the licensee has a classified license, he shall be limited to practicing within such classification. Each classification shall be subject to separate testing procedures and requirements. No person shall be required to pay an additional license fee if he desires to be licensed in one or all of the license classifications.

B. The department may classify pesticide applicator and operator licenses to be issued under the Pesticide Control Act. the classifications may include, but not be limited to pest control operations, fumigators, ornamental or agricultural pesticide applicators or right-of-way pesticide applicators. Separate classifications may be specified for ground, aerial or manual methods used by any licensee to apply pesticides or to the use of pesticides to control pests. Each classification shall be subject to separate testing procedures and requirements. No person shall be required to pay an additional license fee if the person desires to be licensed in one or all of the license classifications.

**History:** 1953 Comp., § 45-25-32, enacted by Laws 1973, ch. 366, § 32.

## ANNOTATIONS

### 76-4-33. Records.

A. Any person issued a license or permit under the provisions of the Pesticide Control Act shall keep such records as required by regulation of the board.

B. Commercial pesticide applicators licensed under the provisions of the Pesticide Control Act shall keep such records as prescribed by regulation of the board.

C. The department shall have access to the records at any reasonable time to copy or make copies of the records for the purpose of carrying out the provisions of the Pesticide Control Act. Unless required for the enforcement of the Pesticide Control Act, the information shall be confidential and, if summarized, shall not identify any individual person.

**History:** 1953 Comp., § 45-25-33, enacted by Laws 1973, ch. 366, § 33.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 95.

### 76-4-34. Penalties.

A. Any person violating any provision or requirement of the Pesticide Control Act or regulations adopted by the board pursuant to that act is guilty of a petty misdemeanor.

B. In addition to any other penalties imposed by the Pesticide Control Act, any person who willfully or repeatedly violates any provision of that act may be assessed by the court a civil penalty not to exceed one thousand dollars (\$1,000) for each violation.

C. The board may bring an action to enjoin the violation or threatened violation of any provision of the Pesticide Control Act or any regulation made pursuant thereto in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

D. The department, acting as a law enforcement officer, is authorized to file a criminal complaint in a magistrate court for violations of the Pesticide Control Act or regulations adopted pursuant thereto and shall not be required to pay the docket fee.

**History:** 1953 Comp., § 45-25-34, enacted by Laws 1973, ch. 366, § 34; 1979, ch. 394, § 13.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 42, 50, 51.

3 C.J.S. Agriculture § 7.

### **76-4-35. Persons exempted from certain penalties.**

A. The penalties provided for violations of Paragraphs (1) through (5) of Subsection A of Section 5 [76-4-5 NMSA 1978] of the Pesticide Control Act shall not apply to:

(1) any carrier while lawfully engaged in transporting a pesticide within this state, if such carrier shall, upon request, permit the department to copy all records showing the transactions in and movement of the pesticides or devices;

(2) public officials of this state and the federal government while engaged in the performance of their official duties in administering state or federal pesticide laws or regulations or while engaged in pesticide research; or

(3) the manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides if the manufacturer or shipper holds a valid experimental use permit issued by the department and by the United States environmental protection agency.

B. No pesticide or device shall be deemed in violation of the Pesticide Control Act when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of the Pesticide Control Act and regulations adopted thereunder shall apply.

**History:** 1953 Comp., § 45-25-35, enacted by Laws 1973, ch. 366, § 35.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 21, 66.

3 C.J.S. Agriculture § 53.

### **76-4-36. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 235, § 1 repealed 76-4-36 NMSA 1978, as enacted by Laws 1973, ch. 366, § 36, relating to the pesticide advisory board, effective June 17, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMONESOURCE.COM*.

### **76-4-37. Publication of information.**

The department may publish, in the form it deems proper, results of products analyzed, based on official samples as compared with the guaranteed analysis and information concerning the distribution and use of pesticides. Individual distribution and use information shall not be a public record. The department may also publish results of samples analyzed for pesticide residues.

**History:** 1953 Comp., § 45-25-37, enacted by Laws 1973, ch. 366, § 37.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 95.

### **76-4-38. Cooperation.**

The department may cooperate, receive grants-in-aid and enter into cooperative agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, in order to:

- A. secure uniformity of regulations;
- B. enter into cooperative agreements with the United States environmental protection agency to register pesticides under the authority of the Pesticide Control Act and the federal Environmental Pesticide Control Act;
- C. cooperate in the enforcement of the federal Environmental Pesticide Control Act and regulations through the use of state or federal personnel and facilities or both and to implement cooperative enforcement programs including but not limited to the registration of pesticides, collection and analysis of pesticides and devices, inspection of storage facilities and certification of applicators;
- D. enter into contracts with other agencies including federal agencies for the purpose of training pesticide dealers, pesticide management consultants, pesticide applicators or operators;
- E. publish information and conduct short courses on the storage, transportation, distribution, application, use, registration and disposal of pesticides and devices and environmental implications thereof;
- F. enter into contracts for either monitoring pesticides, or analyzing land, including agricultural products that will be consumed by any living organism other than plants, for pesticide residues, or both;
- G. prepare and submit a state plan to meet federal certification standards including issuing experimental use permits; and
- H. regulate pesticide applicators and operators.

**History:** 1953 Comp., § 45-25-38, enacted by Laws 1973, ch. 366, § 38.

### **ANNOTATIONS**

**Cross references.** — For the federal Environmental Pesticide Control Act, see 7 U.S.C. § 136 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 22 to 37, 43.

3 C.J.S. Agriculture §§ 25 to 56.

### **76-4-39. Disposition of funds.**

All moneys received by the department under the provisions of the Pesticide Control Act shall be expended for the purpose of carrying out the provisions of the Pesticide Control Act.

**History:** 1953 Comp., § 45-25-39, enacted by Laws 1973, ch. 366, § 39.

### **ANNOTATIONS**

**Severability.** — Laws 1973, ch. 366, § 43, provided for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 5**

### **Insect Pests and Plant Diseases**

#### **76-5-1. [County commissioners to prohibit importation of "codlin moth" or other worms or insects destructive to fruit.]**

Boards of county commissioners in the various counties of this state are authorized and empowered and it is hereby made their duty whenever a petition is presented to them signed by twenty-five fruit growers, owners of orchards and residents of the county, stating in substance that there is danger in the introduction in said county of the "codlin moth," or other worms or insects destructive to fruit by reason of the shipment of apples or other fruits into said county, and when said commissioners upon examination are satisfied of the truth of the petition presented, they may by proclamation prohibit the shipment of fruit into said county by an imposition of a license or other lawful means, which said commissioners may deem best and most effective to accomplish the purpose of this chapter.

**History:** Laws 1899, ch. 56, § 1; Code 1915, § 2743; C.S. 1929, § 66-115; 1941 Comp., § 48-804; 1953 Comp., § 45-8-4.

## ANNOTATIONS

**Compiler's notes.** — The 1915 Code compilers substituted "chapter" for "act." The former would refer to Chapter 54 of the 1915 Code, the sections of which are now compiled as 76-3-1 to 76-3-14 NMSA 1978, and this section. This was the only operative section in the 1899 act.

**Law reviews.** — For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 85.

### 76-5-2. Short title.

This act may be cited as the "Grasshopper and Other Range Pest Control Act."

**History:** 1953 Comp., § 45-8-13, enacted by Laws 1957, ch. 212, § 1; 1967, ch. 63, § 1.

## ANNOTATIONS

**Compiler's notes.** — The words "this act" refer to Laws 1957, ch. 212, compiled herein as 76-5-2, 76-5-3, 76-5-5, 76-5-8 to 76-5-10 NMSA 1978.

**Constitutionality.** — The grasshopper control program meets the tests which have been established by the supreme court of this state as meeting the requirements of N.M. Const., art. IX, § 14; that is (1) a public purpose is being served; and (2) complete control of the expenditure of the state's contribution rests in a state agency. Therefore, the appropriation made by the legislature through house bill no. 193 of the twenty-third regular session of the state legislature and codified as this section and following, is constitutional and is not in violation of N.M. Const., art. IX, § 14. 1959-60 Op. Att'y Gen. No. 59-92.

**Law reviews.** — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

### 76-5-3. Purpose of act.

It has been determined that areas of New Mexico are endangered by grasshopper and other range pest infestation which would result in the loss of valuable pasturage. The division of plant pest control of the United States department of agriculture has funds available with which to match state moneys appropriated for grasshopper and other range pest control. It is therefore desirable to establish uniform methods of control to protect New Mexico pasturage.

**History:** 1953 Comp., § 45-8-14, enacted by Laws 1957, ch. 212, § 2; 1967, ch. 63, § 2.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 49.

### **76-5-4. Definition; transfer.**

As used in the Grasshopper and Other Range Pest Control Act, "state grasshopper and other range pest control board," "control board" or "board" means the New Mexico department of agriculture. All property, appropriations, money, powers and duties of the state grasshopper and other range pest control board are hereby transferred to the New Mexico department of agriculture. The department shall administer the act and may secure United State department of agriculture contributions.

**History:** 1953 Comp., § 45-8-14.1, enacted by Laws 1976, ch. 28, § 1.

## ANNOTATIONS

**Cross references.** — For the Grasshopper and Other Range Pest Control Act, see 76-5-2 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 21, 22.

### **76-5-5. Duties and powers of the board.**

It shall be the primary function of the board [New Mexico department of agriculture] to determine the critically infested grasshopper and other range pest areas within New Mexico and to formulate and carry out plans for the control of infestation. In the performance of its primary function, the board [department] shall:

- A. cooperate with all agencies of the United States, which are interested in the control of grasshoppers and other range pests;
- B. coordinate and utilize the available facilities and personnel of the New Mexico college of agriculture and mechanic arts [New Mexico state university] extension service;
- C. hire such additional help and facilities as may be necessary to carry out the purpose of this act;
- D. buy, rent, lease or otherwise provide and dispose of equipment, materials and supplies necessary to carry out the purpose of this act;
- E. adopt rules and regulations consistent with the purpose of this act including:
  - (1) the method and manner of rendering aid and assistance;



(2) the care, use and preservation of equipment, materials and supplies purchased by the board [New Mexico department of agriculture];

(3) the keeping of accounts and records of the board's [New Mexico department of agriculture] activities; and

(4) a classification of all insects, including grasshoppers, coming within the meaning of the term "range pests";

F. supervise and allocate the expenditures from the "grasshopper and other range pest control fund"; provided, however, all vouchers representing payments from the grasshopper and other range pest control fund shall be signed by the chairman of the grasshopper and other range pest control board [director of the New Mexico department of agriculture]; and

G. compromise, settle or pay just claims arising from negligent operations under the Grasshopper and Other Range Pest Control Act, and prescribe a procedure for the preservation and proof of claims.

**History:** 1953 Comp., § 45-8-17, enacted by Laws 1957, ch. 212, § 5; 1967, ch. 63, § 4.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and it is not part of the law.

Section 76-5-4 NMSA 1978 provided that references to the "grasshopper and other range pest control board" means the New Mexico department of agriculture, which is under the control of the board of regents of New Mexico state university, and is administered by a director appointed by that body. See N.M. Const., art. XIV, § 1, and 76-1-2 and 76-1-3 NMSA 1978.

The name of the New Mexico college of agriculture and mechanic arts was changed to New Mexico state university by N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960.

**Cross references.** — For the Grasshopper and Other Range Pest Control Act, see 76-5-2 NMSA 1978 and notes thereto.

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 40, 42, 50.

3 C.J.S. Agriculture §§ 19, 20.

## **76-5-6. Land users' consent; control districts; local control committees.**

Before expending or obligating moneys from the grasshopper and other range pest control fund, except for the payment of preliminary organizational costs the board [New Mexico department of agriculture] shall consult with the land users within the infested areas proposed to be treated. When fifty-one percent of the land users who represent eighty percent of the land within an infested area agree in writing to the extermination program proposed and further agree in writing to pay one-half of the sum expended by the state in the proposed extermination program for the infested area, a control district shall be created. The land users within a control district shall promptly establish, and shall elect three members to a local control committee. The members of the control committee shall, as nearly as possible, give equal area or geographical representation to the land users within a control district.

**History:** 1953 Comp., § 45-8-18, enacted by Laws 1957, ch. 212, § 6; 1967, ch. 63, § 5.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and it is not part of the law. Section 76-5-4 NMSA 1978 provided that references to the "grasshopper and other range pest control board" means the New Mexico department of agriculture.

## **76-5-7. Alternative method when disaster area declared.**

If the governor declares an area in New Mexico to be a disaster area because an area critically infested by range caterpillars or other range pests is endangering remaining areas of the state, the provisions of Sections 76-5-6 and 76-5-8 NMSA 1978 shall not apply.

**History:** 1953 Comp., § 45-8-18.1, enacted by Laws 1977, ch. 383, § 2.

## **76-5-8. Duties and powers of local control committees.**

Local control committees shall:

A. cooperate with all federal and state agencies to facilitate the execution of the grasshopper and other range pest extermination program within control districts;

B. levy and collect a special assessment, based on acreage sprayed or baited, against the land users within a control district whose lands have benefited from the extermination program; the special assessment against each land user shall be the sum equal to the land user's ratable share, as defined by proportional acreage treated, of

one-half the state moneys expended for the extermination program within the control district;

C. pay over to the state grasshopper and other range pest control board [New Mexico department of agriculture] moneys assessed and collected from land users within a control district; and

D. render a complete report to the state grasshopper and other range pest control board [department] after the completion of the extermination program in the control district.

**History:** 1953 Comp., § 45-8-19, enacted by Laws 1957, ch. 212, § 7; 1967, ch. 63, § 6.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and it is not part of the law. Section 76-5-4 NMSA 1978 provided that references to the "grasshopper and other range pest control board" means the New Mexico department of agriculture.

**Law reviews.** — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

### **76-5-9. Special land user's assessment; enforced collection.**

Payment of the special assessment levied by a local control committee against a land user shall be due and payable upon the land user's receipt of an assessment statement from the committee. The committee's statements shall indicate:

A. the total number of acres treated within the control district during the extermination program;

B. the total acres treated which are under the control of the land user assessed;

C. the total amount of state funds expended in the control district for the extermination program; and

D. the amount assessed against the land user. Assessments by local control committees shall be subject to the same delinquency period, discounts, penalties and interest as are applied to the collection of ad valorem taxes.

The control committees shall refer a delinquent assessment to a district attorney in the county of the land user's residence. It shall be the duty of the district attorney to sue and obtain judgment, and thereafter to enforce and satisfy the judgment so obtained.

**History:** 1953 Comp., § 45-8-20, enacted by Laws 1957, ch. 212, § 8.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 9.

### **76-5-10. Disposition of assessments proceeds.**

The control board [New Mexico department of agriculture] shall remit assessment moneys received from local control committees to the state treasurer for the credit of the grasshopper and other range pest control fund; provided, however, the state range pest control board [department] shall credit moneys received from each local control committee to the account of the control district from which the money was received.

**History:** 1953 Comp., § 45-8-21, enacted by Laws 1957, ch. 212, § 9; 1967, ch. 63, § 7.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and it is not part of the law. Section 76-5-4 NMSA 1978 provided that references to the "grasshopper and other range pest control board" means the New Mexico department of agriculture.

### **76-5-11. Short title.**

Sections 76-5-11 through 76-5-28 NMSA 1978 may be cited as the "Plant Protection Act".

**History:** 1953 Comp., § 45-8-22, enacted by Laws 1959, ch. 195, § 1; 2013, ch. 15, § 1.

## ANNOTATIONS

**The 2013 amendment,** effective June 14, 2013, changed "This act" to "Sections 76-5-11 through 76-5-28 NMSA 1978".

**Purpose of this act** is to insure that only disease-free nursery products are shipped into New Mexico. In order to accomplish this purpose there is a provision for the inspection of out-of-state nurseries to insure that such nursery is free from diseased plants and shrubs. The fee charged is merely for the purpose of providing means for the enforcement of the act and is not an unreasonable amount. 1955-56 Op. Att'y Gen. No. 56-6377 (rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 88.

### **76-5-12. Definitions.**

As used in the Plant Protection Act [76-5-11 through 76-5-28 NMSA 1978]:

A. "board" means the board of regents of New Mexico state university, the board controlling the New Mexico department of agriculture;

B. "plant pests" or "pests" means any organisms injurious to plants and plant products that in the normal course of events could be transported with the plant, including but not limited to the phyla arthropoda, mollusca or nematoda as well as weeds, fungi, bacteria, viruses or parasitic plants that cause pathological or detrimental physiological conditions in plants;

C. "nursery stock" means any plant grown, propagated or collected for planting or propagated for landscaping or decorative purposes but does not include field, vegetable and flower seeds;

D. "florist stock" means any parts of a plant used for decorative purposes, such as cut flowers, evergreens, annuals or perennials;

E. "nursery" means any ground or premises on or in which nursery stock is propagated, grown or cultivated and from which source nursery stock is offered for distribution or sale;

F. "dealer" means any person who buys and resells nursery or florist stock, or who is engaged in handling nursery or florist stock on a consignment basis, when the stock was not grown on the person's premises;

G. "agent" means any person selling or taking orders for nursery or florist stock not sold from any stock on hand for display purposes and is being offered directly to the consumer;

H. "facilities" means all buildings, greenhouses, vehicles, storage places, cellars, pits, trenches, bins, containers, packing material, crates and any other facilities and materials used in storing and distributing nursery or florist stock;

I. "collected plants" means those plants dug or gathered from any location in which plants are found growing wild;

J. "inspector" means any qualified person employed by the department to carry out the provisions of the Plant Protection Act;

K. "landscaper" means any person who buys and resells, in connection with the person's design services, plants used in landscaping;

L. "plant" means any part of any living thing not classified as an animal, which under the proper conditions can either continue to or resume growing;

M. "stock" means nursery or florist stock or both;

N. "department" means the New Mexico department of agriculture;

O. "package" means any bundle, parcel, box, carton, crate or container used in shipping or displaying nursery or florist stock; and

P. "license year" means a period of twelve months ending on a date specified by the board."

**History:** 1953 Comp., § 45-8-23, enacted by Laws 1959, ch. 195, § 2; 1967, ch. 53, § 1; 1973, ch. 97, § 1; 1979, ch. 193, § 1; 2013, ch. 15, § 2.

### ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, deleted the definition of "person"; in Subsection B, after "plant pests", added "or 'pests'" and after "mollusca or", deleted "nematelminthes" and added "nematoda", and deleted former Subsection P, which defined "person" as the meaning ascribed in Subsection E of Section 12-2-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of statutes for protection of vegetation against disease or infection, 70 A.L.R.2d 852.

### 76-5-13. Authority to inspect.

The department may inspect any nursery or other place or vehicle that might become infested or infected with plant pests or that may contain from time to time plants so infested or infected. The department may inspect or reinspect any nursery or florist stock within the state and inspect associated documentation. Nursery or florist stock or other plant material not found to meet viability standards as provided in Section 76-5-20 NMSA 1978 may be destroyed or removed from sale or managed in a manner deemed necessary by the department until the conditions are corrected.

**History:** 1953 Comp., § 45-8-24, enacted by Laws 1959, ch. 195, § 3; 1967, ch. 53, § 2; 1973, ch. 97, § 2; 2013, ch. 15, § 3.

### ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, authorized the department of agriculture to inspect documentation associated with nursery and florist stock and to destroy or remove from sale nursery or florist stock that does not meet viability standards; in the second sentence, after "within the state", added "and inspect associated documentation"; and added the last sentence.

**Purpose of this act** is to insure that only disease-free nursery products are shipped into New Mexico. In order to accomplish this purpose there is a provision for the inspection of out-of-state nurseries to insure that such nursery is free from diseased

plants and shrubs. The fee charged is merely for the purpose of providing means for the enforcement of the act and is not an unreasonable amount. 1955-56 Op. Att'y Gen. No. 56-6377 (rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 1, 4, 63 to 66, 69, 70, 72, 87, 88, 90, 94, 97, 99, 113, 120, 122 to 126.

3 C.J.S. Agriculture § 90.

### **76-5-14. Inspection before sale.**

Every person growing or producing nursery stock for sale in this state shall, before selling, shipping or transporting, or offering for sale, shipment or transportation, any nursery stock so grown or produced, apply for an annual inspection of his nursery and nursery stock. The application for inspection shall be accompanied by the prescribed fee for the payment of such inspections. Persons who grow only vegetable plants for sale may obtain a special certificate for the prescribed fee.

**History:** 1953 Comp., § 45-8-26, enacted by Laws 1959, ch. 195, § 5; 1967, ch. 53, § 4; 1973, ch. 97, § 3; 1979, ch. 193, § 2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 90.

### **76-5-15. Inspection of nurseries.**

The department is authorized to inspect all nurseries in the state and all nursery stock grown within the state. If the nursery stock is found to be free of plant pests, an inspection certificate shall be issued certifying that the nursery stock has been inspected and is believed to be free from plant pests. The certificate shall be valid for one license year. If, at any subsequent inspection, the nursery is found to be infested with plant pests, the certificate may be canceled until the conditions are corrected.

**History:** 1953 Comp., § 45-8-27, enacted by Laws 1959, ch. 195, § 6; 1967, ch. 53, § 5; 1973, ch. 97, § 4; 1979, ch. 193, § 3; 2013, ch. 15, § 4.

#### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, expanded the scope of the department of agriculture's authority to inspect nurseries; and in the first sentence, after "The department", deleted "shall make an annual inspection of" and added "is authorized to inspect" and after "stock grown within the state", deleted "before the stock is offered for sale".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 68.

## **76-5-16. Dealers' or agents' licenses.**

Every in-state dealer or agent selling, importing into the state or storing in this state nursery or florist stock shall, before October 1 of each year and before engaging in the business of soliciting, landscaping, taking orders, selling, storing or delivering any such stock, apply to the department for a nursery or florist dealer's, landscaper's or agent's license. Dealers or agents distributing stock directly or on a consignment basis for more than one store or place of business or sales ground or selling stock from motor vehicles or other vehicles shall secure a license for each place or each vehicle from which the stock is sold. The application for license shall designate each place of business of the person applying. The application shall be accompanied by the prescribed fee for each place or each vehicle from which the stock is sold. Upon proper application and receipt of the proper fee, the department shall issue the license, which shall be valid for one license year. If any licensee is found to have violated any of the provisions of the Plant Protection Act or rules, regulations or orders of the department, the license may be revoked and, in the discretion of the department, the person may be refused a license in the state. Those dealers who sell only vegetable plants that are sold for food production or dealers selling only cactus plants may obtain a special dealer's license for the prescribed fee. Applicants for the special dealer's license shall state that they will handle only vegetable plants or cactus plants and that the plants will be from stock certified by an inspector.

**History:** 1953 Comp., § 45-8-28, enacted by Laws 1959, ch. 195, § 7; 1967, ch. 53, § 6; 1973, ch. 97, § 5; 1979, ch. 193, § 4; 2013, ch. 15, § 5.

### **ANNOTATIONS**

**The 2013 amendment,** effective June 14, 2013, limited the requirement that dealers and agents obtain a license to in-state dealers and agents; in the first sentence, at the beginning of the sentence, after "The" added "in-state" and after "October 1 of each year", added "and".

**Requirement for certificate.** — Every person, firm or corporation soliciting or taking orders for the sale of nursery stock is required to secure the nursery salesman's certificate unless they come within the proviso formerly contained in the last portion of the section. 1955-56 Op. Att'y Gen. No. 56-6446 (rendered under former law).

**Question of agency only arises where** persons work and sell products exclusively from New Mexico nurseries. If such persons are actual agents of the New Mexico nursery, such persons would come within the former exception. 1955-56 Op. Att'y Gen. No. 56-6446 (rendered under former law).

**Control necessary to make agent.** — A New Mexico state nursery could have actual agents under its complete control and such agents would not be required to secure a



salesman's certificate under this proviso. The amount of control necessary to make a party an agent would be as follows: (a) the principal would have to control the price to be charged; (b) the principal would control the territory wherein the agent operated; (c) the agent would take orders in the name of the principal and hold himself out as a representative of such principal. 1955-56 Op. Att'y Gen. No. 56-6446 (rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 64, 66, 67, 70, 94, 103, 104, 127 to 130.

3 C.J.S. Agriculture § 167.

### **76-5-17, 76-5-18. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 193, § 10, repealed 76-5-17 and 76-5-18 NMSA 1978, as enacted by Laws 1959, ch. 195, §§ 8 and 9, respectively, relating to the exemption of amateur gardeners from the Plant Protection Act and permits for shipping from out-of-state.

### **76-5-19. Labels.**

All nursery stock and collected plants sold or trafficked in the state shall be securely and correctly labeled either as to common or botanical names based on a current and recognized industry reference.

**History:** 1953 Comp., § 45-8-31, enacted by Laws 1959, ch. 195, § 10; 1967, ch. 53, § 9; 1973, ch. 97, § 8; 2013, ch. 15, § 6.

#### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, generalized the source that may be used for common or botanical names; and after "botanical names", deleted "as recognized by 'Standardized Plant Names' prepared by the American joint committee on horticultural nomenclature or the 'Manual of Cultivated Plants' by L. H. Bailey", and added "based on a current and recognized industry reference".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 55.

3 C.J.S. Agriculture § 90.

### **76-5-20. Viability standards.**

Only pest-free, sound and healthy nursery stock stored, offered or displayed under conditions that will maintain its vigor shall be offered for sale or sold. The offering for

sale or sale of dead nursery stock or nursery stock so seriously weakened by drying or by excessive heat or cold or nursery stock that has been mechanically or otherwise treated to the extent of concealing its true condition or stock that for any cause is in such a condition that it is unable to grow satisfactorily with reasonable care or stock that may potentially be infested with a plant pest, is a violation of the Plant Protection Act. Florist stock offered for sale must be such that it is pest-free and will maintain its aesthetic value for a reasonable period of time after sale.

**History:** 1953 Comp., § 45-8-31.1, enacted by Laws 1973, ch. 97, § 9; 2013, ch. 15, § 7.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, prohibited the sale of nursery stock that is infested with a plant pest; in the first sentence, at the beginning of the sentence, after "Only", added "pest-free"; in the second sentence, after "satisfactorily with reasonable care", added "or stock that may potentially be infested with a plant pest"; and in the third sentence, after "sale must be such that it", added "is pest-free and".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 Am. Jur. 2d Occupations, Trades, and Professions § 136.

3 C.J.S. Agriculture § 68.

### **76-5-21. Collected plants.**

All persons collecting plants for sale must file with the department an application for a collected plants permit. The board may adopt regulations relative to collected plants.

**History:** 1953 Comp., § 45-8-32, enacted by Laws 1959, ch. 195, § 11; 1973, ch. 97, § 10; 1979, ch. 193, § 5.

### **76-5-22. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2013, ch. 15, § 10 repealed 76-5-22 NMSA 1978, as enacted by Laws 1959, ch. 195, § 12, relating to certificates of inspection on stock brought into the state, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

### **76-5-23. Transporting within the state.**

The department may require a person producing, selling or offering for sale or shipping or transporting any nursery or florist stock within the state to affix or have printed on each package of stock a certification statement as prescribed by the

department. When a certification statement is required, it is unlawful for any transportation company, public carrier, commercial truck or other agency engaged in the business of transportation to ship, transport or accept for shipment any package of nursery or florist stock until the required certification statement is attached to the package.

**History:** 1953 Comp., § 45-8-34, enacted by Laws 1959, ch. 195, § 13; 1973, ch. 97, § 12; 1979, ch. 193, § 7; 2013, ch. 15, § 8.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, permitted the department of agriculture to require persons selling or transporting nursery or florist stock to affix a certification statement to each package of stock; prohibited the transportation of nursery or florist stock without fixing a certification statement to the package when a certification statement is required; in the first sentence, at the beginning of the sentence, deleted "Every" and added "The department may require a", after "stock within the state", deleted "shall have affixed", after "stock within the state to", added "affix", and after "within the state to affix or", added "have"; and in the second sentence, at the beginning of the sentence, added "When a certification statement is required" and after "certification statement is attached", deleted "thereto" and added "to the package".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 90.

### 76-5-24. Forms.

It is duty of the department to prescribe all forms to be used in the administration and enforcement of the Plant Protection Act and to compile and furnish a list of all nurseries which have been certified to sell nursery or florist stock within the state and all the persons who have been certified to sell, ship, store or solicit orders for nursery or florist stock within the state.

**History:** 1953 Comp., § 45-8-35, enacted by Laws 1959, ch. 195, § 14; 1973, ch. 97, § 13; 1979, ch. 193, § 8.

## ANNOTATIONS

### 76-5-25. Powers of board and department.

The department shall enforce the provisions of the Plant Protection Act. The board shall adopt and promulgate such rules as may be necessary for its administration and enforcement. The board may adopt sets of standards and grades for nursery stock and, if it so desires, adopt those standards and grades recommended by an industry-recognized reference, to take any action necessary to ensure that all nursery stock sold in the state meets the standards and grades established and to stop sales of any substandard stock.

**History:** 1953 Comp., § 45-8-36, enacted by Laws 1959, ch. 195, § 15; 1973, ch. 97, § 14; 2013, ch. 15, § 9.

## ANNOTATIONS

**The 2013 amendment,** effective June 14, 2013, authorized the board of regents to adopt standards and grades recommended by an industry-recognized reference; and in the third sentence, after "adopt those standards and grades recommended by", deleted "the American association of nurserymen" and added "an industry-recognized reference".

**Violation of rules as punishable offenses.** — Absent a statement in the penalty section that violations of rules promulgated under the section and violations of the act itself would be equally punishable as misdemeanors, the courts found no legislative directive that violations of the rules are punishable as offenses. *State v. Allen*, 1967-NMSC-029, 77 N.M. 433, 423 P.2d 867 (now see 76-5-28 NMSA 1978).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 42, 50.

3 C.J.S. Agriculture §§ 19, 20.

### 76-5-26. Fees.

A. Fees paid for the licenses, certificates and permits required under the Plant Protection Act shall be set by regulation of the board, but shall not exceed the following amounts:

(1) annual inspection fee of nursery and nursery stock, seventy-five dollars (\$75.00) plus two dollars (\$2.00) per acre of nursery stock inspected;

(2) annual special inspection fee for person growing only vegetable plants, twenty-five dollars (\$25.00);

(3) annual nursery or florist dealer's, landscaper's or agent's license fee, seventy-five dollars (\$75.00);

(4) annual special dealer's license for persons who handle only vegetable or cactus plants, twenty-five dollars (\$25.00); and

(5) annual fee for collected plants permit, seventy-five dollars (\$75.00).

B. If the application for renewal of any annual license, permit or certificate provided for in the Plant Protection Act is not filed prior to the expiration of the prior license, permit or certificate, the fee for such license, permit or certificate shall be double the amount specified in this section. However, this double fee shall not apply if the applicant

has not engaged in business subsequent to the expiration of his license, permit or certificate, and furnishes an affidavit certifying to that fact.

C. The board may adopt regulations to exempt a person from the payment of fees.

**History:** 1953 Comp., § 45-8-36.1, enacted by Laws 1973, ch. 97, § 15; 1979, ch. 193, § 9.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 10, 66, 88, 94, 113, 127.

#### **76-5-27. Fees collected.**

All fees collected under the provisions of the Plant Protection Act shall be deposited in the treasury of the New Mexico state university and be expended for the purpose of its administration and enforcement.

**History:** 1953 Comp., § 45-8-37, enacted by Laws 1959, ch. 195, § 16; 1967, ch. 53, § 10; 1973, ch. 97, § 16.

#### **ANNOTATIONS**

#### **76-5-28. Penalties.**

Any person violating the provisions of the Plant Protection Act or, after a notice to cease and desist, violating any rule, regulation or order promulgated under the Plant Protection Act, upon conviction thereof shall be guilty of a petty misdemeanor. Each day the person remains in violation constitutes a separate offense. The license of any such person may also be revoked.

**History:** 1953 Comp., § 45-8-38, enacted by Laws 1959, ch. 195, § 17; 1967, ch. 53, § 11; 1973, ch. 97, § 17.

#### **ANNOTATIONS**

**Severability.** — Laws 1959, ch. 195, § 19, provided for the severability of the act if any part or application thereof was held invalid.

**Violation of rules as punishable offenses.** — Absent a statement in the penalty section that violations of rules promulgated under the section and violations of the act itself would be equally punishable as misdemeanors, the courts found no legislative directive that violations of the rules are punishable as offenses. *State v. Allen*, 1967-NMSC-029, 77 N.M. 433, 423 P.2d 867 (now see 76-5-28 NMSA 1978).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 64, 66, 67, 70, 94, 103, 104, 127 to 130.

3 C.J.S. Agriculture § 94.

## **ARTICLE 6**

### **Pest Control**

#### **76-6-1. Short title.**

This act [76-6-1 through 76-6-9 NMSA 1978] may be cited as the "Pest Control Act."

**History:** 1953 Comp., § 45-8-39, enacted by Laws 1969, ch. 41, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of statutes for protection of vegetation against disease or infection, 70 A.L.R.2d 852.

3 C.J.S. Agriculture § 83.

#### **76-6-2. Definitions.**

As used in the Pest Control Act [76-6-1 through 76-6-9 NMSA 1978]:

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. "pest" means any insect, disease or other organism of any character causing or capable of causing injury or damage to any plants or parts thereof or any processed, manufactured or other products of plants;

C. "host" means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle;

D. "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;

E. "person" means any individual, corporation, company, society, association or other business entity;

F. "move" means to ship, offer for shipment, receive for transportation, carry or otherwise transport, move or allow to be moved;

G. "regulated article" means any article of any character as described in the quarantine carrying or capable of carrying the plant pest against which the quarantine is directed;

H. "certificate" means a document issued or authorized by the board indicating that a regulated article is not contaminated with a pest; and

I. "permit" means a document issued or authorized by the board to provide for the movement of regulated articles to restricted destinations for limited handling, utilization or processing.

**History:** 1953 Comp., § 45-8-40, enacted by Laws 1969, ch. 41, § 2.

### **76-6-3. Administration; rules and regulations.**

The board shall have the responsibility for the administration of the Pest Control Act [76-6-1 through 76-6-9 NMSA 1978]. The board may assign functions or delegate any authority provided for in the Pest Control Act to any of its officers or employees; provided, that such functions or authority be exercised under the general supervision of the board. The board shall promulgate all rules and regulations necessary for the efficient execution of the provisions of the Pest Control Act.

**History:** 1953 Comp., § 45-8-41, enacted by Laws 1969, ch. 41, § 3.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 21, 22.

3 C.J.S. Agriculture § 85.

### **76-6-4. Voluntary measures.**

The board, either independently or in cooperation with counties, cities, towns or other political subdivisions of the state, farmers' associations or similar organizations, individuals, [the] federal government or of [with] other states, is authorized to carry out operations or measures to locate, suppress, control, eradicate or prevent or retard the spread of pests with the consent of the owners of the property involved.

**History:** 1953 Comp., § 45-8-42, enacted by Laws 1969, ch. 41, § 4.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 58.

## **76-6-5. Plant quarantine; authority.**

A. The board is authorized to quarantine this state or any portion thereof when they determine that such action is necessary to prevent or retard the spread of a pest within or from this state and to quarantine any other state or portion thereof whenever they determine that a pest exists therein and that such action is necessary to prevent or retard its spread into this state. Before promulgating their determination that a quarantine is necessary, the board shall, after due notice to interested parties, hold a public hearing under such rules as they shall promulgate, at which hearing any interested party may appear and be heard either in person or by attorney; provided, the board may impose a temporary quarantine for a period not to exceed ninety days during which time a public hearing, as provided herein shall be held if it appears that a quarantine for more than the ninety-day period will be necessary to prevent or retard the spread of the pest. The board shall give notice of the establishment of the quarantine in such newspapers in the quarantined area as they may select. The board may limit the application of the quarantine to the infested portion of the quarantined area and appropriate environs, to be known as the regulated area, and may, without further hearing, extend the regulated area to include additional portions of the quarantined area upon publication of a notice to that effect in such newspapers in the quarantined area as they may select or by direct written notice to those concerned.

B. Following establishment of the quarantine, no person shall move any regulated article described in the quarantine or move the pest against which the quarantine is established, within, from, into or through this state contrary to regulations promulgated by the board. Notice of the regulations shall be published in such newspapers in the quarantined area as the board may select.

C. The regulations may restrict the movement of the pest and any regulated articles from the quarantined or regulated area in this state into or through other parts of this state or other states and from the quarantined or regulated area in other states into or through this state and shall impose such inspection, disinfection, certification or permit and other requirements as the board deems necessary to effectuate the purposes of the Pest Control Act [76-6-1 through 76-6-9 NMSA 1978].

**History:** 1953 Comp., § 45-8-43, enacted by Laws 1969, ch. 41, § 5.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 43 to 45.

3 C.J.S. Agriculture § 89.

## **76-6-6. Abatement and emergency measures authorized.**

A. Whenever the board finds any article that is infested or reasonably believed to be infested or a host or pest exists on any premises or is in transit in this state, it may,



upon giving notice to the owner or his agent in possession thereof, seize, quarantine, treat or otherwise dispose of the pest, host or article in such manner as the board deems necessary to suppress, control, eradicate or prevent or retard the spread of a pest, or the board may order the owner or agent to so treat or otherwise dispose of the pest, host or article.

B. When the board finds that a continuing threat of the spread of a pest exists, and after appropriate notice, an owner or his agent does not take immediate measures to prevent or retard the spread of the pest, the board may take reasonable emergency action as necessary in accordance with the provisions of the Pest Control Act [76-6-1 through 76-6-9 NMSA 1978] and regulations of the board. The board may assess an emergency action fee to recover the cost of the emergency action, not to exceed one thousand dollars (\$1,000), against the owner of the property that was subject to the board's emergency action.

**History:** 1953 Comp., § 45-8-44, enacted by Laws 1969, ch. 41, § 6; 1997, ch. 176, § 1.

### **ANNOTATIONS**

**The 1997 amendment**, effective June 20, 1997, designated the existing language as Subsection A; added Subsection B; and made stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 49 to 51.

3 C.J.S. Agriculture § 83.

### **76-6-7. Inspections authorized; warrants.**

A. To effectuate the purposes of the Pest Control Act [76-6-1 through 76-6-9 NMSA 1978], the board may, with the consent of the owner or by court order, make reasonable inspection of any premises in this state and any property therein or thereon and may without a warrant stop and inspect, in a reasonable manner, any means of conveyance moving within this state, upon probable cause to believe that it contains or carries any pest, host or other article subject to the Pest Control Act. The board may make any other reasonable inspection of any premises or means of conveyance for which, under the constitution of the United States and the constitution of this state, no warrant is required.

B. The appropriate district courts in this state shall have authority to issue orders for such inspections upon a showing by the board that there is probable cause to believe that there exists in or on the property to be inspected a pest, host or other article subject to the Pest Control Act.

**History:** 1953 Comp., § 45-8-45, enacted by Laws 1969, ch. 41, § 7.

### **ANNOTATIONS**

**Cross references.** — For constitutional provision as to searches and seizures, see N.M. Const., art. II, § 10.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 44, 45, 50.

3 C.J.S. Agriculture § 83.

### **76-6-8. Cooperation.**

A. The board is authorized to cooperate with any agency of the federal government in such operations and measures as they deem necessary to suppress, control, eradicate, prevent or retard the spread of any plant pest. The board is authorized to expend state funds on federal lands.

B. The board is authorized to cooperate with agencies of adjacent states in such operations and measures as they deem necessary to locate, suppress, control, eradicate, prevent or retard the spread of any pest.

**History:** 1953 Comp., § 45-8-46, enacted by Laws 1969, ch. 41, § 8.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 43.

3 C.J.S. Agriculture § 96.

### **76-6-9. Penalties.**

A. Any person who shall violate any of the provisions of the Pest Control Act [76-6-1 through 76-6-9 NMSA 1978], or any rule, regulation or quarantine promulgated by the board, or who shall alter, forge or counterfeit, or use without authority any certificate or permit or other document provided for in the Pest Control Act or in the regulations of the board provided for in the Pest Control Act, shall be deemed guilty of a misdemeanor.

B. Any person who has knowingly moved any regulated article into this state from any quarantined area of any other state, which article has not been treated or handled under provisions of the quarantine and regulations in effect at the point of origin, shall be guilty of a misdemeanor.

**History:** 1953 Comp., § 45-8-47, enacted by Laws 1969, ch. 41, § 9.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 42, 50, 51.

3 C.J.S. Agriculture § 87.

## **76-6-10. Compact enacted and entered into.**

The "Pest Control Compact" is enacted into law and entered into with all other jurisdictions legally joining therein, in the form substantially as follows:

### PEST CONTROL COMPACT

#### Article I

#### Findings

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately ten billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an insurance fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

#### Article II

#### Definitions

As used in this compact, unless the context clearly requires a different construction:

(a) "state" means a state, territory or possession of the United States, the District of Columbia, and the commonwealth of Puerto Rico;

(b) "requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states;

(c) "responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this Article;

(d) "pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value;

(e) "insurance fund" means the pest control insurance fund established pursuant to this compact;

(f) "governing board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact; and

(g) "executive committee" means the committee established pursuant to Article V (e) of this compact.

### Article III

#### The Insurance Fund

There is hereby established the "Pest Control Insurance Fund" for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The insurance fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the insurance fund shall not accept any donation or grant whose terms are inconsistent with any provisions of this compact.

### Article IV

#### The Insurance Fund, Internal Operations and Management

(a) The insurance fund shall be administered by a governing board and executive committee as hereinafter provided. The actions of the governing board and executive committee pursuant to this compact shall be deemed the actions of the insurance fund.

(b) The members of the governing board shall be entitled to one vote each on such board. No action of the governing board shall be binding unless taken at a meeting at which a majority of the total number of votes on the governing board are cast in favor thereof. Action of the governing board shall be only at a meeting at which a majority of the members are present.

(c) The insurance fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the governing board may provide.

(d) The governing board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The governing board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the governing board. The governing board shall make provision for the bonding of such of the officers and employees of the insurance fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the insurance fund and shall fix the duties and compensation of such personnel. The governing board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The insurance fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(g) The insurance fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the governing board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the insurance fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and identity of the donor or lender.

(h) The governing board shall adopt bylaws for the conduct of the business of the insurance fund and shall have the power to amend and rescind these bylaws. The insurance fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The insurance fund annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. The insurance fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the insurance fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

## Article V

### Compact and Insurance Fund Administration

(a) In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the compact in his state; and
2. Represent his state on the governing board of the insurance fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the governing board of the insurance fund by not to exceed [exceed] three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but not such representative shall have a vote on the governing board or on the executive committee thereof.

(c) The governing board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the insurance fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the insurance fund. Additional meetings of the governing board shall be held on call of the chairman, the executive committee, or a majority of the membership of the governing board.

(d) At such times as it may be meeting, the governing board shall pass upon applications for assistance from the insurance fund and authorize disbursements therefrom. When the governing board is not in session, the executive committee thereof shall act as agent of the governing board, with full authority to act for it in passing upon such applications.

(e) The executive committee shall be composed of the chairman of the governing board and four additional members of the governing board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The governing board shall make such geographic groupings. If there is representation of the United States on the governing board, one such representative may meet with the executive committee. The chairman of the governing board shall be chairman of the executive committee. No action of the executive committee shall be binding unless taken at a meeting at which at least four members of such committee are present and vote in favor thereof. Necessary expenses of each of the five members of the executive committee incurred in attending meetings of such committee, when not held at the same time and place as a meeting of the governing board, shall be charges against the insurance fund.

## Article VI

## Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.

2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the governing board to authorize expenditures from the insurance fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the insurance fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the insurance fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.

2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.

3. A statement of the extent of the present and projected program of the requesting state and its subdivision, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.

4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the insurance fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

6. Such other information as the governing board may require consistent with the provisions of this compact.

(d) The governing board or executive committee shall give due notice of any meeting at which an application for assistance from the insurance fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the governing board or executive committee shall authorize support of the program. The governing board or the executive committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the governing board or executive committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the executive committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the governing board. Determinations of the executive committee shall be reviewable only by the governing board at one of its regular meetings, or at a special meeting held in such manner as the governing board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the insurance fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the insurance fund. The governing board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and payment thereof.

(h) Before authorizing the expenditure of moneys from the insurance fund pursuant to an application of a requesting state, the insurance fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.



(i) The insurance fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the insurance fund, cooperating federal agencies, states and any other entities concerned.

## Article VII

### Advisory and Technical Committees

The governing board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the governing board or executive committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance [assistance] from the insurance fund being considered by such board or committee and the board or committee may receive and consider the same; provided that any participant in a meeting of the governing board or executive committee held pursuant to Article VI(d) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the governing board or executive committee makes its disposition of the application.

## Article VIII

### Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the insurance fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the governing board or executive committee in the same manner as an application with respect to a pest within a party state except as provided in this Article.

(b) At or in connection with any meeting of the governing board or executive committee held pursuant to Article VI(d) of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the governing board or executive committee may provide. A nonparty state shall not be entitled to review of any determination made by the executive committee.

(c) The governing board or executive committee shall authorize expenditures from the insurance fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The governing board or executive committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the insurance fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or

appropriate to protect the interests of the insurance fund with respect to expenditures and activities outside of party states.

## Article IX

### Finance

(a) The insurance fund shall submit to the executive head or designated officer or officers of each party state a budget for the insurance fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriation shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the insurance fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the insurance fund shall be maintained in two accounts to be designated respectively as the "operating account" and the "claims account". The operating account shall consist only of those assets necessary for the administration of the insurance fund during the next ensuing two-year period. The claims account shall contain all moneys not included in the operating account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the insurance fund for a period of three years. At any time when the claims account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the governing board shall reduce its budget request on a pro rata basis in such manner as to keep the claims account within such maximum limit. Any moneys in the claims account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.

(d) The insurance fund shall not pledge the credit of any party state. The insurance fund may meet any of its obligations in whole or in part with moneys available to it under Article IV(g) of this compact, provided that the governing board takes specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the insurance fund makes use of moneys available to it under Article IV(g) hereof, the insurance fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The insurance fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the insurance fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the insurance fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the insurance fund.

(f) The accounts of the insurance fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the insurance fund.

## Article X

### Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any five or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

## Article XI

### Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**History:** Laws 1981, ch. 281, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **76-6-11. Cooperation with pest control insurance fund.**

Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the insurance fund established by the Pest Control Compact [76-6-10 NMSA 1978].

**History:** Laws 1981, ch. 281, § 2.

### **76-6-12. Filing of compact.**

Pursuant to Article IV (h) of the compact, copies of bylaws and amendments thereto shall be filed with the state department of agriculture.

**History:** Laws 1981, ch. 281, § 3.

### **76-6-13. Compact administrator.**

The compact administrator for this state shall be the director of the state department of agriculture.

**History:** Laws 1981, ch. 281, § 4.

### **76-6-14. Applications for assistance.**

Within the meaning of Article VI (b) or VIII (a) [of the compact], a request or application for assistance from the insurance fund may be made by the compact administrator for this state, whenever in his judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request.

**History:** Laws 1981, ch. 281, § 5.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **76-6-15. Disposition of money from compact insurance fund.**

The department, agency or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the compact shall have credited to his account in the state treasury the amount of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof.

**History:** Laws 1981, ch. 281, § 6.

### **76-6-16. "Executive head" defined.**

As used in the compact, with reference to this state, "executive head" means the governor.

**History:** Laws 1981, ch. 281, § 7.

## **ARTICLE 6A Cotton Boll Weevil Control**

### **76-6A-1. Short title.**

Chapter 76, Article 6A NMSA 1978 may be cited as the "Cotton Boll Weevil Control Act".

**History:** Laws 1996, ch. 77, § 1; 1997, ch. 57, § 1.

### **ANNOTATIONS**

**The 1997 amendment**, effective June 20, 1997, substituted "Chapter 76, Article 6A NMSA 1978" for "This act".

### **76-6A-2. New Mexico department of agriculture.**

The Cotton Boll Weevil Control Act is to be administered by the New Mexico department of agriculture, under the direction of the board of regents of New Mexico state university.

**History:** Laws 1996, ch. 77, § 2.

### **76-6A-3. Definitions.**

As used in the Cotton Boll Weevil Control Act:

- A. "board" means the board of regents of New Mexico state university;
- B. "cotton boll weevil" means any life stage of the cotton insect *Anthonomus grandis* Boheman;
- C. "cotton boll weevil control committee" means the persons, not less than three nor more than seven, elected by a majority of the cotton producers voting in a designated cotton boll weevil control district;

D. "cotton boll weevil control district" means a designated area duly established under the Cotton Boll Weevil Control Act wherein a program to monitor, suppress or eradicate the cotton boll weevil is administered;

E. "cotton producer" means any person growing five or more acres of cotton plants. For the purposes of the Cotton Boll Weevil Control Act, only one person from any farm, sole proprietorship, corporation, partnership or any other legal business arrangement shall be eligible to vote to establish or dissolve a cotton boll weevil control district;

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

G. "director" means the director of the New Mexico department of agriculture; and

H. "organic cotton producer" means any person growing cotton who is certified by the organic commodity commission [New Mexico department of agriculture] as a producer of organic or transitional cotton.

History: Laws 1996, ch. 77, § 3; 1997, ch. 57, § 2; 2000, ch. 35, § 1; 2005, ch. 14, § 1; 2005, ch. 18, § 1.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2011, ch. 29, § 6 provided that all references to the organic commodity commission be deemed references to the New Mexico department of agriculture.

**The 2005 amendment**, effective June 17, 2005, revised the definition of cotton boll weevil control district to add designated areas where a program to monitor the cotton boll weevil is administered.

Laws 2005, ch. 14, § 1 and Laws 2005, ch. 18, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2005, ch. 18, § 1. See 12-1-8 NMSA 1978.

**The 2000 amendment**, effective March 6, 2000, inserted "voting" following "cotton producers" in Subsection C.

**The 1997 amendment**, effective June 20, 1997, added Subsection H and made related stylistic changes.

### **76-6A-4. Duties and powers.**

The director shall determine any critically infested or threatened agricultural areas within New Mexico, hold public hearings within the proposed cotton boll weevil control

district determined to be critically infested or at risk and provide technical support and advice in the formulation of plans for the monitoring, control or eradication of such infestation.

History: Laws 1996, ch. 77, § 4; 2005, ch. 14, § 2; 2005, ch. 18, § 2.

### **ANNOTATIONS**

**The 2005 amendment**, effective June 17, 2005, added to the duties of the director the duty to provide technical support and advice in the formulation of plans for monitoring cotton boll weevil infestation.

Laws 2005, ch. 14, § 2 and Laws 2005, ch. 18, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2005, ch. 18, § 2. See 12-1-8 NMSA 1978.

### **76-6A-5. Cotton boll weevil control committee; duties and powers.**

A. A cotton boll weevil control committee shall prescribe control measures for any cotton planted within a cotton boll weevil control district. When prescribing control measures, the cotton boll weevil control committee shall make every effort to adhere to integrated pest management practices, to allow organic cotton producers to choose organic pest management practices that will allow them to maintain their organic certification and to adhere to the management goals of individual cotton producers consistent with the goal of complete eradication of the cotton boll weevil.

B. A cotton boll weevil control committee may adopt regulations to set the method for determining the yield per acre of cotton lands under the control of a cotton producer for purposes of calculating the assessment amount due.

**History:** Laws 1996, ch. 77, § 5; 1997, ch. 57, § 3.

### **ANNOTATIONS**

**The 1997 amendment**, effective June 20, 1997, rewrote Subsection A and made minor stylistic changes in Subsection B.

### **76-6A-5.1. Exemption from Procurement Code and Personnel Act.**

Cotton boll weevil control committees are exempt from the provisions of the Procurement Code [13-1-28 through 13-1-199 NMSA 1978], and the Personnel Act [Chapter 10, Article 9 NMSA 1978]. The committee members and committee employees are public employees for the purposes of the Tort Claims Act [41-4-1 through 41-4-27 NMSA 1978] and shall be provided all insurance and self-insurance coverage provided by the risk management division of the general services department.

**History:** Laws 1999, ch. 8, § 3.

## ANNOTATIONS

**Effective dates.** — Laws 1999, ch. 8, § 3 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1999, 90 days after adjournment of the legislature.

### **76-6A-6. Establishment of cotton boll weevil control district.**

Any five or more persons producing cotton for which it is proposed to establish a cotton boll weevil control district may file a petition with the department asking that a cotton boll weevil control district be established. The petition shall set forth:

- A. a concise statement of the reasons for the establishment of a cotton boll weevil control district;
- B. a request that a referendum be held among the cotton producers on the question of the establishment of a cotton boll weevil control district;
- C. the name and address of the individual who is authorized to represent the petitioners;
- D. the maximum per unit assessment on the cotton acreage or production for which the cotton boll weevil control district is established; and
- E. the method of levy and collection of an assessment upon cotton producers for the support of the cotton boll weevil control district.

**History:** Laws 1996, ch. 77, § 6.

### **76-6A-7. Petition filing fee.**

The director shall prepare and deliver to the petitioners an original budget estimate of the cost of the proposed hearings and referendum. The petitioners, within thirty days after receipt of the cost estimate, shall remit to the director the amount of the cost estimate.

**History:** Laws 1996, ch. 77, § 7.

### **76-6A-8. Hearings.**

Within sixty days after a petition has been filed with the director and upon payment of the cost estimate, the director shall cause notices to be given of the proposed hearings in areas of the state where the cotton boll weevil is of economic importance. The notices of hearing shall be published in a newspaper of general circulation in the



proposed cotton boll weevil control district, and shall be sent directly to the organic commodity commission [New Mexico department of agriculture], at least fourteen days prior to the date of the hearing.

**History:** Laws 1996, ch. 77, § 8; 1997, ch. 57, § 4.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2011, ch. 29, § 6 provided that all references to the "organic commodity commission" be deemed references to the "New Mexico department of agriculture".

**The 1997 amendment**, effective June 20, 1997, deleted "at least fourteen days prior to the date of hearing" following "shall be published" in the second sentence and added "and shall be sent directly to the organic commodity commission, at least fourteen days prior to the date of the hearings" to the end of the second sentence.

### **76-6A-9. Determination by director.**

After the public hearing, the director shall determine, based upon the facts presented and other relevant data available, if there is a need for the creation of a cotton boll weevil control district and if the need is sufficient to justify the holding of a referendum thereon. Subsequent petitions relating to the same locale may not be filed or action taken thereon within one year from the date the director has recorded a determination denying the need for the creation of a cotton boll weevil control district.

**History:** Laws 1996, ch. 77, § 9.

### **76-6A-10. Referendum; cotton boll weevil control districts; cotton boll weevil control committees.**

After public hearing, if the director decides there is justification for creating a cotton boll weevil control district, the department shall hold a referendum. When cotton producers who represent sixty-six percent of the cotton acreage within the area threatened with or infested by the cotton boll weevil vote in favor of the establishment of a cotton boll weevil control district, a cotton boll weevil control district shall be created. The cotton producers within a cotton boll weevil control district shall promptly establish, and shall elect not less than three nor more than seven members to, a cotton boll weevil control committee. Cotton boll weevil control committee members shall not receive per diem or compensation for their services. Cotton boll weevil control districts and cotton boll weevil control committees shall cease to exist when the cotton boll weevil control committee and the director determine that all financial and legal obligations have been satisfied.

**History:** Laws 1996, ch. 77, § 10; 1999, ch. 8, § 1.

## **ANNOTATIONS**

**The 1999 amendment**, effective June 18, 1999, deleted "local" preceding "cotton boll weevil" in the catchline and throughout the section; in the fourth sentence substituted "Cotton boll weevil control" for "The" at the beginning, in the fifth sentence substituted the language beginning "when the" to the end of the section for "six months after the successful eradication of the agricultural cotton boll weevil, as determined by the director, or at the end of five years from the date of their creation, whichever is sooner", and deleted the last two sentences, relating to petitions and public hearings to extend the termination date of a cotton boll weevil district.

### **76-6A-11. Cotton boll weevil control committees; additional duties and powers.**

A. Cotton boll weevil control committees may:

(1) conduct programs to monitor, suppress or eradicate cotton boll weevils within their cotton boll weevil control districts;

(2) cooperate in the administration of the Cotton Boll Weevil Control Act through the use of state or federal personnel and facilities or both;

(3) contract for services or enter into cooperative agreements;

(4) publish information and conduct seminars on the distribution and control of the cotton boll weevil;

(5) levy and collect a special assessment, based on cotton acreage or cotton yield per acre within the cotton boll weevil control districts; and

(6) borrow money or accept grants, donations or contributions for any purpose consistent with the powers and duties of the cotton boll weevil control committee.

B. Cotton boll weevil control committees shall provide a complete accounting of the funds collected through the special assessment to all participating cotton producers in the cotton boll weevil control districts.

C. The cotton boll weevil control committee shall send notice of the establishment of a cotton boll weevil control district and its defined boundaries to the organic commodity commission [New Mexico department of agriculture] within fourteen days of its establishment.

D. If the cotton boll weevil control district includes certified organic acreage, the cotton boll weevil control committee shall select an organic cotton producer operating within the district, who shall have all the powers of a committee member, to serve on the cotton boll weevil control committee.

History: Laws 1996, ch. 77, § 11; 1997, ch. 57, § 5; 1999, ch. 8, § 2; 2005, ch. 14, § 3; 2005, ch. 18, § 3.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2011, ch. 29, § 6 provided that all references to the organic commodity commission be deemed references to the New Mexico department of agriculture.

**The 2005 amendment**, effective June 17, 2005, permitted cotton boll weevil control committees to conduct programs to monitor cotton boll weevils within their districts; and in Subsection D, changed "organic farmer" to "organic cotton producer".

Laws 2005, ch. 14, § 3 and Laws 2005, ch. 18, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2005, ch. 18, § 3. See 12-1-8 NMSA 1978.

**The 1999 amendment**, effective June 18, 1999, added Paragraph A(6).

**The 1997 amendment**, effective June 20, 1997, deleted "local" preceding "cotton boll weevil" in the section heading and throughout the section; substituted "districts" for "district" throughout the section; in paragraph A(3), substituted "state, federal or local" for "other agencies, including federal"; and added Subsections C and D.

### **76-6A-11.1. Organic cotton regulations.**

A. Each organic cotton producer within an established cotton boll weevil control district shall notify the cotton boll weevil control committee in writing of the number of acres on which the organic cotton producer intends to plant organic cotton at least thirty days prior to planting.

B. The cotton boll weevil committee shall require all organic producers to pay the assessment established for the cotton boll weevil control district in the same manner as producers of conventionally grown cotton in the cotton boll weevil control district.

C. After crop planting, the cotton boll weevil control committee shall notify an organic cotton producer as to the boll weevil status of his cotton acres, as well as the boll weevil status of surrounding acres, as documented by the committee's normal boll weevil trapping program.

D. The cotton boll weevil control committee shall confer with the organic cotton producer to determine measures that might be taken to attempt to keep all or a portion of the organic cotton producer's cotton acreage below trigger levels for required treatment. If the organic cotton producer chooses to use a nonconventional method, the cotton boll weevil control committee shall pay the costs of the nonconventional method used by the organic cotton producer, provided the costs do not exceed the equivalent costs of conventional control methods. If boll weevil trigger levels are reached on the organic cotton producer's acres and boll weevil migration from outside these acres has been eliminated as a cause of these levels, then the organic cotton producer shall be allowed to harvest these acres, but shall not be allowed to grow cotton on the acreage for one year. If the organic cotton producer chooses to use conventional methods of treatment, the cotton boll weevil committee shall proceed accordingly.

**History:** Laws 1997, ch. 57, § 6.

### **76-6A-12. Agricultural land assessment; enforced collection.**

Payment of the special assessment levied by a local cotton boll weevil control committee against a cotton producer shall be due and payable upon the cotton producer's receipt of an assessment statement from the local cotton boll weevil control committee. The committee's statement shall indicate:

- A. the total number of acres treated within the cotton boll weevil control district during the control program;
- B. the total acres treated, if any, that are under the control of the land user assessed;
- C. the total amount of funds expended, or estimated to be spent, in the cotton boll weevil control district for the control program;
- D. the total acres and yield per acre of lands under the control of the land user assessed; and
- E. the amount assessed against the land user.

**History:** Laws 1996, ch. 77, § 12.

### **76-6A-13. Petition for abolishment of a cotton boll weevil control district.**

Any five or more persons producing cotton within a cotton boll weevil control district may file a petition with the department asking that a cotton boll weevil control district be abolished. The petition shall set forth:

- A. the name and description of the cotton boll weevil control district to be abolished;

B. a concise statement of the reasons for the abolishment of the cotton boll weevil control district;

C. a request that a referendum be held among the producers of the crop on the question of the abolishment of the cotton boll weevil control district; and

D. the name and address of the individual who is authorized to represent the petitioners.

**History:** Laws 1996, ch. 77, § 13.

#### **76-6A-14. Petition filing fee.**

The director shall prepare and deliver to the petitioners an original budget estimate of the cost of the proposed hearings and referendum. The petitioners, within thirty days after receipt of the cost estimate, shall remit to the director the amount of the cost estimate.

**History:** Laws 1996, ch. 77, § 14.

#### **76-6A-15. Hearings regarding abolishment of a cotton boll weevil control district; notice of hearings.**

Within thirty days after the petition has been filed with the director and upon payment of the cost estimate, the director shall cause notices to be given of the hearing in the affected cotton boll weevil control district. The notice of hearing shall be published at least fourteen days prior to the date of hearing in a newspaper of general circulation in the affected cotton boll weevil control district. After public hearing, if the director decides there is justification for abolishing a cotton boll weevil control district, the department shall hold a referendum. When cotton producers who represent sixty-six percent of the cotton acreage within a cotton boll weevil control district vote in favor of the abolishment of the cotton boll weevil control district, such a cotton boll weevil control district shall be abolished. The local cotton boll weevil control committee shall promptly move to cease expenditures of cotton boll weevil control district funds and make an accounting of funds spent and return remaining funds in accordance with Section 16 [76-6A-16 NMSA 1978] of the Cotton Boll Weevil Control Act.

**History:** Laws 1996, ch. 77, § 15.

#### **76-6A-16. Disposition of assessment proceeds.**

Funds collected by the local cotton boll weevil control committee are not state funds and are not required to be deposited in the state treasury. A local cotton boll weevil control committee shall deposit all money collected in a state chartered bank or other insured depository. Funds collected by one local cotton boll weevil control committee

shall be held separate from funds collected by another local cotton boll weevil control committee. Funds remaining at the termination of a cotton boll weevil control district shall be distributed to cotton producers in proportion to the percentage they contributed during the life of the cotton boll weevil control district.

**History:** Laws 1996, ch. 77, § 16.

## **ARTICLE 6B**

### **Pink Bollworm Control**

#### **76-6B-1. Short title.**

This act [76-6B-1 through 76-6B-12 NMSA 1978] may be cited as the "Pink Bollworm Control Act".

**History:** Laws 2001, ch. 13, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

#### **76-6B-2. Definitions.**

As used in the Pink Bollworm Control Act:

- A. "board" means the board of regents of New Mexico state university;
- B. "cotton producer" means any person growing five or more acres of cotton plants. For the purposes of the Pink Bollworm Control Act, only one person from any farm, sole proprietorship, corporation, partnership or any other legal business arrangement shall be eligible to vote to establish or dissolve a pink bollworm control district;
- C. "department" means the New Mexico department of agriculture;
- D. "director" means the director of the New Mexico department of agriculture;
- E. "organic cotton producer" means any person growing cotton who is certified by the organic commodity commission [New Mexico department of agriculture] as a producer of organic or transitional cotton;
- F. "pink bollworm" means any life stage of the cotton insect *Pectinophora gossypiella*;

G. "pink bollworm control committee" means the persons, not less than three nor more than seven, elected by a majority of the cotton producers voting in a designated pink bollworm control district; and

H. "pink bollworm control district" means a designated area duly established under the Pink Bollworm Control Act wherein a program to suppress or eradicate the pink bollworm is administered.

**History:** Laws 2001, ch. 13, § 2.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2011, ch. 29, § 6 provided that all references to the organic commodity commission be deemed references to the New Mexico department of agriculture.

**Effective dates.** — Laws 2001, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

### 76-6B-3. Department administration.

The department shall administer the Pink Bollworm Control Act.

**History:** Laws 2001, ch. 13, § 3.

### ANNOTATIONS

**Effective dates.** — Laws 2001, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

### 76-6B-4. Exemption from Procurement Code and Personnel Act.

Pink bollworm control committees are exempt from the provisions of the Procurement Code [13-1-28 through 13-1-199 NMSA 1978] and the Personnel Act [Chapter 10, Article 9 NMSA 1978]. The committee members and committee employees are public employees for the purposes of the Tort Claims Act [41-4-1 through 41-4-27 NMSA 1978] and shall be provided all insurance and self-insurance coverage provided by the risk management division of the general services department.

**History:** Laws 2001, ch. 13, § 4.

### ANNOTATIONS

**Effective dates.** — Laws 2001, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

### **76-6B-5. Establishment of pink bollworm control district.**

Any five or more persons producing cotton for which it is proposed to establish a pink bollworm control district may file a petition with the department asking that a pink bollworm control district be established. The petition shall set forth:

- A. a concise statement of the reasons for the establishment of a pink bollworm control district;
- B. a request that a referendum be held among the cotton producers on the question of the establishment of a pink bollworm control district;
- C. the name and address of the individual who is authorized to represent the petitioners;
- D. the maximum per unit assessment on the cotton acreage or production for which the pink bollworm control district is established; and
- E. the method of levy and collection of an assessment upon cotton producers for the support of the pink bollworm control district.

**History:** Laws 2001, ch. 13, § 5.

### **ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

### **76-6B-6. Director; duties and powers.**

A. The director shall:

- (1) determine any critically infested or threatened agricultural areas within New Mexico, hold public hearings within the proposed pink bollworm control district determined to be critically infested or at risk and provide technical support and advice in the formulation of plans for the control or eradication of such infestation;
- (2) estimate the cost of the proposed hearings and referendum for the creation or abolishment of a pink bollworm control district and prepare a budget for the petitioners who shall remit to the director the amount of the cost within thirty days of receiving it;



(3) within sixty days after a petition has been filed and payment of the cost received, publish a notice in a newspaper of general circulation in the proposed pink bollworm control district of the proposed hearings;

(4) send a copy of the public hearing notice directly to the organic commodity commission [New Mexico department of agriculture], at least fourteen days prior to the date of the hearing; and

(5) after the public hearing, based on facts and other relevant data, determine if there is a need for the creation or abolishment of a pink bollworm control district and if the need is sufficient to justify the holding of a referendum.

B. The director may not take action on a second petition relating to the same locale within one year from the date the director denies the need for establishment or abolishment of a pink bollworm control district.

**History:** Laws 2001, ch. 13, § 6.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2011, ch. 29, § 6 provided that all references to the organic commodity commission be deemed references to the New Mexico department of agriculture.

**Effective dates.** — Laws 2001, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

### **76-6B-7. Referendum; pink bollworm control districts; local pink bollworm control committees.**

A. If the director decides there is justification for creating or abolishing a pink bollworm control district, the department shall hold a referendum. A pink bollworm control district shall be created or abolished if:

(1) two-thirds or more of the eligible cotton producers voting vote in favor of the referendum; or

(2) those voting in favor of the referendum represent more than fifty percent, as determined by the director, of the cotton acreage within the area threatened with or infested by the pink bollworm.

**History:** Laws 2001, ch. 13, § 7.

## ANNOTATIONS

**Effective dates.** — Laws 2001, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

**Compiler's notes.** — Laws 2001, ch. 13, § 7 was enacted without a Subsection B.

### **76-6B-8. Pink bollworm control committees established; duties and powers.**

A. Cotton producers within a pink bollworm control district shall establish and elect a local pink bollworm control committee composed of not less than three or more than seven members. The committee members shall not receive per diem or compensation for their services.

B. A pink bollworm control committee may:

- (1) adopt regulations to set the method for determining the assessment amount due;
- (2) conduct programs to suppress or eradicate pink bollworms within a pink bollworm control district;
- (3) cooperate with and enter into contracts or cooperative agreements with state, federal or local agencies;
- (4) publish information and conduct seminars on the distribution and control of the pink bollworm;
- (5) levy and collect a special assessment, based on cotton acreage or cotton yield per acre, within the pink bollworm control districts; or
- (6) borrow money or accept grants, donations or contributions for any purpose consistent with the powers and duties of the pink bollworm control committee.

C. A pink bollworm control committee shall:

- (1) prescribe control measures for any cotton planted within a pink bollworm control district. When prescribing control measures, the committee shall make every effort to adhere to integrated pest management practices, to allow organic cotton producers to choose organic pest management practices that will allow them to maintain their organic certification and to adhere to the management goals of individual cotton producers consistent with the goal of complete eradication of the pink bollworm;

(2) provide a complete accounting of the funds collected through the special assessment to all participating cotton producers in the pink bollworm control district;

(3) send notice of the establishment of a pink bollworm control district and its defined boundaries to the organic commodity commission [New Mexico department of agriculture] within fourteen days of its establishment; and

(4) select an organic cotton producer operating within the district to serve on the pink bollworm control committee if the pink bollworm control district includes certified organic cotton acreage.

**History:** Laws 2001, ch. 13, § 8.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2011, ch. 29, § 6 provided that all references to the organic commodity commission be deemed references to the New Mexico department of agriculture.

**Effective dates.** — Laws 2001, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

### 76-6B-9. Organic cotton regulations.

A. Each organic cotton producer within an established pink bollworm control district shall notify the pink bollworm control committee in writing at least thirty days prior to planting of the number of acres on which organic cotton will be planted.

B. Organic cotton producers shall pay the assessment established for the pink bollworm control district in the same manner as producers of conventionally grown cotton in the district.

C. After crop planting, the pink bollworm control committee shall notify an organic cotton producer of the status of pink bollworm on his acreage and the status of pink bollworm on surrounding acres, as documented by the committee's normal pink bollworm trapping program.

D. The pink bollworm control committee shall confer with an organic cotton producer to determine measures that might be taken to attempt to keep all or a portion of the organic cotton producer's cotton acreage below trigger levels for required treatment. If the organic cotton producer chooses to use a nonconventional method, the committee shall pay the costs of the nonconventional method used by the organic cotton producer, provided the costs do not exceed the equivalent costs of conventional control methods.

If pink bollworm trigger levels are reached on the organic cotton producer's acres and pink bollworm migration from outside these acres has been eliminated as a cause of these levels, the organic cotton producer shall be allowed to harvest these acres but shall not be allowed to grow cotton on the acreage for one year.

**History:** Laws 2001, ch. 13, § 9.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

#### **76-6B-10. Agricultural land assessment; enforced collection.**

A cotton producer shall pay a special assessment levied by a local pink bollworm control committee, payable upon the cotton producer's receipt of an assessment statement. The committee's statement shall indicate:

- A. the total number of acres treated within the pink bollworm control district;
- B. the total treated acres under the control of the land user;
- C. the total amount of money expended or estimated to be spent in the pink bollworm control district for the control program;
- D. the total acres or yield per acre of lands under the control of the land user assessed; and
- E. the amount assessed against the land user.

**History:** Laws 2001, ch. 13, § 10.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

#### **76-6B-11. Petition for abolishment of a pink bollworm control district.**

A. Any five or more persons producing cotton within a pink bollworm control district may file a petition with the department asking for a referendum to be held to abolish the pink bollworm control district. The petition shall set forth:

- (1) the name and description of the pink bollworm control district to be abolished;
- (2) a concise statement of the reasons for the abolishment of the pink bollworm control district;
- (3) a request that a referendum be held among the producers of the crop on the question of the abolishment of the pink bollworm control district; and
- (4) the name and address of the individual who is authorized to represent the petitioners.

B. The director shall prepare and deliver to the petitioners an original budget estimate of the cost of the proposed hearings and referendum. The petitioners, within thirty days after receipt of the cost estimate, shall remit to the director the amount of the cost estimate.

C. If a referendum is held and is adopted to abolish a pink bollworm control district, the district:

- (1) may be abolished when the committee and the director determine that all financial and legal obligations have been satisfied; and
- (2) shall cease expenditures of pink bollworm control district funds and make an accounting of funds spent and refund the remaining funds.

**History:** Laws 2001, ch. 13, § 11.

### **ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

### **76-6B-12. Disposition of assessment proceeds.**

Money collected by a local pink bollworm control committee is not state funds and is not required to be deposited in the state treasury. A local committee shall deposit all money collected in a state chartered bank or other insured depository. Funds collected by local committees shall be held separate from each other. Money remaining after the abolishment of a pink bollworm control district shall be distributed to cotton producers in proportion to the percentage they contributed during the life of the pink bollworm control district.

**History:** Laws 2001, ch. 13, § 12.

## ANNOTATIONS

**Effective dates.** — Laws 2001, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

## ARTICLE 7 Noxious Weed Control

### 76-7-1. Short title.

This act [76-7-1 through 76-7-22 NMSA 1978] may be cited as the "Noxious Weed Control Act."

**History:** 1953 Comp., § 45-10-2, enacted by Laws 1959, ch. 243, § 1.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 51.

Liability of private landowner for vegetation obscuring view at highway or street intersection, 69 A.L.R.4th 1092.

3 C.J.S. Agriculture § 70.

### 76-7-2. Definitions.

As used in the Noxious Weed Control Act [76-7-1 through 76-7-22 NMSA 1978]:

A. "noxious weed" means any weed or plant which the board of county commissioners acting as the governing body of the district, and with the advice of the county agent, declares to be harmful or to possess noxious characteristics;

B. "landowner" means any natural person who holds title to lands lying within a weed control district organized under the Noxious Weed Control Act who has attained the age of twenty-one years and is a resident of a county situated entirely or in part within a weed control district;

C. "land occupier" means any person, firm or corporation holding title to or being in possession of any lands lying within a district organized under the provisions of the Noxious Weed Control Act, whether as owner, lessee, renter, tenant or otherwise;

D. "resident taxpaying voter" means a qualified voter residing and owning taxable property within a noxious weed control district and who had duly rendered all taxes assessed against his property to the assessor for the district; and

E. "district" means a noxious weed control district organized under the provisions of the Noxious Weed Control Act.

**History:** 1953 Comp., § 45-10-3, enacted by Laws 1959, ch. 243, § 2.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Warranty on sale of seed against presence of weed seeds, 62 A.L.R. 453, 117 A.L.R. 470, 168 A.L.R. 581.

Constitutionality of statutes requiring destruction of noxious weeds, 70 A.L.R.2d 852.

### **76-7-3. Noxious weed control districts; territorial limitations.**

A. Noxious weed control districts may be organized under the provisions of the Noxious Weed Control Act [76-7-1 through 76-7-22 NMSA 1978] to include the area of any county or counties, or any portion thereof; except that no district shall contain less than one thousand, two hundred and eighty acres nor consist of territory in more than three counties. A district may include any political subdivision of the state or a defined district, or any parts thereof, but no land shall be included in more than one noxious weed control district.

B. The land composing any noxious weed control district need not be in one contiguous body but may consist of separate bodies of land separated by land not embraced in the district. No district provided for in the Noxious Weed Control Act shall embrace territory situated in more than one county except by a majority vote of the resident taxpaying voters residing within the territory in each county sought to be included in the district.

**History:** 1953 Comp., § 45-10-4, enacted by Laws 1959, ch. 243, § 3.

### **76-7-4. Petition for organization of noxious weed control district.**

Petitions for the organization of a noxious weed control district shall designate the name of the district and the proposed area and boundaries to be included in the district. If the proposed district lies wholly within one county, the petition shall be presented to the board of county commissioners of the county; if the proposed district lies in more than one county, the petition shall be presented to the board of county commissioners of the county in which the largest area of the proposed district lies.

**History:** 1953 Comp., § 45-10-5, enacted by Laws 1959, ch. 243, § 4.

### **76-7-5. Notice of public hearing.**

Upon receipt of a petition for the organization of a noxious weed control district the board of county commissioners wherein the petition is filed shall make an order setting

the date for the hearing of the petition. The petition may be considered at a regular or special session of the board of county commissioners of the county wherein the petition is filed. The board shall issue a notice of public hearing to be published in a newspaper or newspapers of general circulation in each county in which the proposed district lies at least once a week for two consecutive weeks, with the last insertion of the notice not less than thirty days prior to the public hearing.

**History:** 1953 Comp., § 45-10-6, enacted by Laws 1959, ch. 243, § 5.

### **76-7-6. Public hearing upon petition; consideration by county commissioners.**

A. Any person whose land is included in or would be affected by the creation of a noxious weed control district, may upon the day set for the public hearing appear and contest the creation of the proposed district and may offer testimony to show whether or not the district is necessary or would be of benefit to the land included therein.

B. The board of county commissioners shall approve the petition if, after a public hearing, it finds that the creation of the district would be a public benefit and that a substantial portion of the lands within the proposed district would be benefited by its creation. If the board of county commissioners finds that any lands included within the proposed district would not be benefited by its creation it shall exclude the lands and redefine the boundaries of the district accordingly. If the board of county commissioners should find that the proposed district would not be a public benefit, or of benefit to a substantial portion of the land sought to be included therein, it shall refuse the petition.

**History:** 1953 Comp., § 45-10-7, enacted by Laws 1959, ch. 243, § 6.

### **76-7-7. Order and notice of district election.**

A. Upon determination by the board of county commissioners that the proposed noxious weed control district is necessary for the reclamation or safeguarding of the lands specified in the original or modified petition, they shall order an election for the purpose of submitting to the resident taxpaying voters the issue of whether or not the district shall be created.

B. Notice of the election for the creation of the noxious weed control district shall be published in a newspaper or newspapers of general circulation in the county or counties in which the proposed district lies at least once a week for two consecutive weeks, the last insertion to be not less than thirty days prior to the proposed referendum election.

**History:** 1953 Comp., § 45-10-8, enacted by Laws 1959, ch. 243, § 7.

### **76-7-8. Qualified voters in district elections.**



A. At any election for the consideration of a proposed noxious weed control district, only the following persons shall be eligible voters:

(1) all persons who are owners of agricultural land within the district or have evidence of title to the lands or who are purchasers under contract of lands within the district;

(2) all resident entrymen of federal public lands and lessees of state agricultural lands within the district;

(3) any authorized officer or agent of a corporation owning land within the proposed district. He may cast the ballot of the corporation in all weed control district elections;

(4) all minors who are the owners of agricultural land within the district and who are entitled to vote under the provisions of the Noxious Weed Control Act [76-7-1 through 76-7-22 NMSA 1978]. Their vote shall be cast by their father, mother or duly appointed guardian in the order named, and if they have no father, mother or duly appointed guardian, the minor may cast his own ballot; and

(5) any owner of agricultural lands in the district voting by proxy. A landowner may have his vote cast at any election by another person entitled to vote in the election, and whom he may appoint as his proxy. Designation of a proxy for the purposes of district voting shall be in writing and signed by the person authorizing the proxy. Every proxy shall be attached to and deposited with the ballot cast by the designated voter, and the ballot shall be signed in the name of the person authorizing the proxy and the proxy himself. Each proxy shall contain an official acknowledgment duly signed by a person authorized to take acknowledgments in this state.

B. The general election laws of the state, insofar as applicable, except for the requirements for registration under Section 3-2-49 NMSA 1953 [repealed] and residence in state, county and precinct under Section 3-2-51 NMSA 1953 [repealed] and except as otherwise provided in the Noxious Weed Control Act, shall govern all elections under the Noxious Weed Control Act.

**History:** 1953 Comp., § 45-10-9, enacted by Laws 1959, ch. 243, § 8.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Sections 3-2-49 and 3-2-51 NMSA 1953, were repealed by Laws 1969, ch. 240, § 451. For present provisions, see 1-1-4, 1-4-1 and 1-4-2 NMSA 1978.

**76-7-9. County commissioners to furnish ballots; voting by mail permitted.**

A. The board of county commissioners shall furnish sufficient printed ballots for all voters at each election in the district. The ballots for the election shall contain a place for the elector to vote for or against the formation of the proposed district. Each voter shall sign his name on a line at the bottom of the ballot before voting or casting the ballot.

B. Any qualified voter desiring to vote by mail may do so by preparing his ballot in the manner prescribed in this section, and affixing his signature thereon and mailing or delivering the ballot in a sealed envelope to the judge of the election of the voting district; provided, however, every ballot delivered or mailed to the election judges must reach the election judges not later than 6:00 p.m. on the day of the election.

**History:** 1953 Comp., § 45-10-10, enacted by Laws 1959, ch. 243, § 9.

**76-7-10. Form of ballots.**

The ballots for the creation of a weed control district shall be printed in the following form:

BALLOT

On the Question of Formation of \_\_\_\_\_ Noxious Weed Control District.  
(Place "X" in one of the boxes below)  
For Noxious Weed Control District      [ ]  
Against Noxious Weed Control District    [ ]  
Signature of voter \_\_\_\_\_.

**History:** 1953 Comp., § 45-10-11, enacted by Laws 1959, ch. 243, § 10.

**76-7-11. Conduct of election; declaration of results.**

A. The board of county commissioners having jurisdiction over the election shall create and define, by order, the voting precincts in the proposed district, and shall name the polling places within each district. The board of county commissioners shall also select and appoint the judges and other necessary officers for the conduct of the election.

B. Immediately after the election, the officers holding the election shall make returns of the results to the board of county commissioners having jurisdiction. The board of county commissioners shall canvass the vote and returns and enter an order declaring the results of the election. If it is found that a majority of the votes cast are in favor of the creation of the district, the board of county commissioners shall enter an order declaring the establishment of the district. If the proposed district embraces more than one

county, the board of county commissioners having jurisdiction shall enter an order declaring the establishment of the district only in the territory included in each county in which the majority of the votes cast were in favor of its creation. A copy of the order shall be transmitted to the county clerk of each county in which a portion of the district lies and shall be filed by him as a public record.

**History:** 1953 Comp., § 45-10-12, enacted by Laws 1959, ch. 243, § 11.

### **76-7-12. District governing body.**

The governing body of the noxious weed control districts shall be governed by [sic] the board of county commissioners of the county wherein the largest area of the proposed district is situated.

**History:** 1953 Comp., § 45-0-13, enacted by Laws 1959, ch. 243, § 12.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **76-7-13. Powers of district governing body.**

The district governing body shall have the following powers:

- A. to determine, with the advice of the county agent, which noxious weeds shall be subject to control;
- B. to determine the method of control, either by spraying, cutting, burning, tillage or any other appropriate method;
- C. to prescribe the specific areas within the district on which the control measures are to be carried out;
- D. to prescribe the period within which control measures are to be carried out; and
- E. to take necessary action to effect the purposes of the Noxious Weed Control Act [76-7-1 through 76-7-22 NMSA 1978].

**History:** 1953 Comp., § 45-10-14, enacted by Laws 1959, ch. 243, § 13.

### **76-7-14. Rules and regulations of district; penalty.**

A. The district governing body is specifically authorized to promulgate rules and regulations requiring the cleaning of farm implements and machinery which are brought into the district or which are moved from one location to another within the district and to

prescribe the method of disposition of materials taken from farm implements and machinery.

B. Before the rules and regulations of the district shall become effective, a copy of all the rules and regulations shall be filed with the state law librarian and published, at least once a week for four consecutive weeks, in a newspaper or newspapers of general circulation in the county or counties in which the district lies.

C. Any person who violates any provision of the rules and regulations of the district after the rules have been duly filed and published shall be, upon conviction, punished by a fine of not more than two hundred and fifty dollars (\$250).

**History:** 1953 Comp., § 45-10-15, enacted by Laws 1959, ch. 243, § 14.

### **ANNOTATIONS**

**Cross references.** — For the State Rules Act, see Chapter 14, Article 4 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 51.

3 C.J.S. Agriculture § 72.

### **76-7-15. Notice to land occupiers of control measures; inspection of property; failure to comply with order.**

A. The chairman of the board of county commissioners governing the noxious weed control district shall give written notice to each land occupier within the district informing him of the control measures that are in effect on his land and all other necessary information to enable the land occupier to carry out the measures.

B. It is the duty of each land occupier to comply with the control measures prescribed by the governing body and the responsibility of the appropriate county officials to comply with the control measures determined by the governing body in order to effectuate noxious weed control measures on rights of way of all public roads and other public lands within the district.

C. The governing body of the district, if it deems advisable, may appoint an inspector to serve as an officer of the governing body. The inspector shall have the right to enter upon any land within the district to determine whether control measures are necessary and to determine whether control measures prescribed by the governing body are being carried out.

D. If it is found that a land owner or occupier is not complying with the governing body's directions, the governing body shall give him written notice ordering him to comply within a stated time. If he fails to comply with the order, the governing body may file a suit for a mandatory injunction in the district court of the county in which the land is

situated to compel him to comply with the order. Any land owner or occupier against whom an injunction is issued shall, upon a finding of the court that the land owner or occupier unreasonably refused to comply with the governing body's order and that the control measures are appropriate, be liable for all costs of the suit and for a reasonable attorney fee to be fixed by the court. The court shall upon a proper determination issue an injunction ordering compliance with the governing body's directions.

E. Any adjoining land owner to a county or state road situated within the noxious weed control district may petition the governing body of the district to spray or take weed control measures of noxious weed growing upon adjoining rights of way. Upon determination by the governing body that the control measures requested are necessary, the governing body shall order appropriate action to be taken to control noxious weeds. If the lands or rights of way are under the control of the department of transportation, the governing body shall first make formal application to the state transportation commission requesting the department of transportation to perform the necessary control measures. If the department of transportation fails or refuses to take appropriate action, the governing body of the district shall perform the necessary work with district facilities. In the event sufficient funds are not available to finance the control measures by the district, upon the rights of way, the adjoining land owner or occupier shall be authorized by the governing body to take appropriate action, and he shall be reimbursed from funds of the district as soon as sufficient funds become available. The governing body shall petition the department of transportation for reimbursement of necessary and actual expenses of the noxious weed control measures taken upon the state highway rights of way or lands.

**History:** 1953 Comp., § 45-10-16, enacted by Laws 1959, ch. 243, § 15; 2003, ch. 142, § 96.

### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, substituted "governing body" for "board" throughout the section; and substituted "state transportation commission" for "state highway commission" in Subsection E.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 44, 45, 50.

3 C.J.S. Agriculture § 70.

### **76-7-16. Levy of uniform assessments; assessor; collector; annual financial report.**

A. The governing body of the district may levy an annual uniform assessment against the land within the district not to exceed five cents (\$.05) an acre for the purpose of paying the expenses of the district. The county treasurer of each county wherein a weed control district is located shall assess and collect the levy at the same time he collects the ad valorem taxes within the county.

B. The moneys collected for the district shall be deposited in the district depository selected by the board.

C. The chairman of the governing body of the district shall file an annual report with the county clerk of each county in which any part of the district lies, before July 1 of each year, showing the total amount received, and an itemized statement of the amounts expended during the preceding year, together with the balance remaining on hand.

**History:** 1953 Comp., § 45-10-17, enacted by Laws 1959, ch. 243, § 16.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 9.

### **76-7-17. Enforcement of assessments.**

Assessments by local district assessors shall be subject to the same delinquency period, discounts, penalties and interest as are applied to the collection of ad valorem taxes. The district governing body shall refer a delinquent assessment to a district attorney in the county of the land occupier's residence. It shall be the duty of the district attorney to sue and obtain judgment and to enforce and satisfy the judgment so obtained. All levies assessed under the provisions of the Noxious Weed Control Act [76-7-1 through 76-7-22 NMSA 1978] shall be deemed special levies on specific property and shall not be subject to the limitations of Section 72-4-11 New Mexico Statutes Annotated, 1953 Compilation [repealed] or other statutory limitations.

**History:** 1953 Comp., § 45-10-18, enacted by Laws 1959, ch. 243, § 17.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Section 72-41-11, 1953 Comp., was repealed by Laws 1974, ch. 92, § 34 (amending Laws 1973, ch. 258, § 156), effective January 1, 1975.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 9.

### **76-7-18. District expenses; employees.**

The governing body of the district may incur all necessary expenses, within the limitations of the district assessment collections, which are in keeping with the purposes of the Noxious Weed Control Act [76-7-1 through 76-7-22 NMSA 1978]. The board may employ one or more inspectors, if it deems necessary, for the purpose of inspecting the lands within the district to determine in what areas control measures are being carried

out. The board may also employ clerical help as may be necessary in the discretion of the board.

**History:** 1953 Comp., § 45-10-19, enacted by Laws 1959, ch. 243, § 18.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 46, 49 to 51.

#### **76-7-19. Addition or exclusion of lands of district.**

A. Upon petition to the district governing body, by one or more landowners residing outside the district, asking for inclusion into the district of specified lands, the governing body of the district shall examine the petition, and after appropriate public hearings make a determination upon whether the petition shall be granted. The district governing body shall have the authority to declare the extension of the boundaries of the district to include the area designated in the petition or to accept any portion of the area included in the petition, for inclusion in the district. All lands added to any existing district shall at the next assessment date automatically be subject to any special levy on taxable property approved for the district for the purposes of the Noxious Weed Control Act [76-7-1 through 76-7-22 NMSA 1978].

B. Upon petition to the district governing body by ten or more landowners residing within the district and asking for the detaching of a specified area from inclusion in the district, the governing body of the district shall examine the petition, and after appropriate public hearing make a determination upon whether the petition shall be granted. The governing body of the district may order the lands included in the petition to be excluded from the area of the district, provided all current assessments have been paid, and the detaching of the lands will not result in the total area of the district containing less than the prescribed minimum acreage of one thousand, two hundred and eighty acres.

**History:** 1953 Comp., § 45-10-20, enacted by Laws 1959, ch. 243, § 19.

#### **76-7-20. Petition to dissolve district; notice of election; conduct of election.**

A. Upon petition, presented to the governing body of the noxious weed control district, signed by one-quarter of the landowners or land occupier's [occupiers] residing within the district and asking for an election upon a proposal to dissolve the district, the board of directors shall order an election thereon to be held not more than ninety days from the date the petition is received.

B. Notice by publication of the election shall be given by the chairman of the governing body of the district at least twice, with at least seven days between the two

publications, in a newspaper or newspapers of general circulation published in each county in which the district lies. Notice of publication shall contain a statement of the purpose of the election and the time and place of holding the election.

C. The board shall designate the polling place or places within the district, taking into consideration the convenience of the voters, and shall also select and appoint the judges and other necessary officers of the election. None but resident taxpaying voters of the district shall be entitled to vote at the election.

**History:** 1953 Comp., § 45-10-21, enacted by Laws 1959, ch. 243, § 20.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **76-7-21. Results of election to dissolve noxious weed control district.**

Returns of the election shall be made to the board of county commissioners acting as governing body of the district, which shall canvass the returns and enter an order declaring the results of the election. If a majority of the votes cast at the election are against dissolution of the district, no further election on the proposition shall be held for a period of two years thereafter. If a majority of the votes cast are in favor of the dissolution of the district, the board shall enter an order declaring the district to be dissolved, and thereafter the board shall not exercise any further powers except to terminate the affairs of the district.

**History:** 1953 Comp., § 45-10-22, enacted by Laws 1959, ch. 243, § 21.

### **76-7-22. Termination of the affairs of the district.**

If the results of the election require the dissolution of the district and there is not on hand sufficient money to pay off all claims against the district and if the annual assessments already levied will not provide sufficient funds for the payment of claims, the board shall have the authority to levy and cause to be collected further annual assessments but only in an amount as may be necessary to settle the claims against the district. Any money remaining on hand after all claims have been settled shall be paid over rateably to the county treasurer of each county in which the district lies in the proportion which the territory in each county bears to the total area of the district, and shall be placed by the treasurer in the general fund of the county.

**History:** 1953 Comp., § 45-10-23, enacted by Laws 1959, ch. 243, § 22.

### **76-7-23. Short title.**



This act [76-7-23 through 76-7-30 NMSA 1978] may be cited as the "Noxious Weed Act of 1963."

**History:** 1953 Comp., § 45-10-24, enacted by Laws 1963, ch. 203, § 1.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 70.

### **76-7-24. Definitions.**

As used in the Noxious Weed Act of 1963 [76-7-23 through 76-7-30 NMSA 1978]:

A. "board" means the board of regents of New Mexico state university;

B. "noxious weed" means any species of plant which is liable to be detrimental or destructive, and difficult to control or eradicate;

C. "seed" means any part of a noxious weed that will propagate; and

D. "agent" means any person employed by the board to carry out the provisions of the Noxious Weed Act of 1963.

**History:** 1953 Comp., § 45-10-25, enacted by Laws 1963, ch. 203, § 2.

### **76-7-25. Administration and enforcement.**

The Noxious Weed Act of 1963 [76-7-23 through 76-7-30 NMSA 1978] shall be administered and enforced by the board through the state department of agriculture.

**History:** 1953 Comp., § 45-10-26, enacted by Laws 1963, ch. 203, § 3.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 21, 22.

3 C.J.S. Agriculture §§ 19, 20.

### **76-7-26. Inspections.**

The board or its agent may inspect any facility or ground where noxious weed seeds are sold, stored, transported or planted.

**History:** 1953 Comp., § 45-10-27, enacted by Laws 1963, ch. 203, § 4.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 44, 45, 50.

3 C.J.S. Agriculture § 5.

### **76-7-27. Declaration of certain weed seeds as noxious.**

Whenever the board receives a petition signed by twenty-five New Mexico landowners requesting that certain weeds be declared noxious, it shall hold a public hearing. At least ten days prior to the hearing, notice shall be published in at least one newspaper of general circulation in the state listing all the weeds alleged to be noxious which will be considered at the hearing. If the board, as a result of the hearing, determines a weed to be noxious, it shall declare that finding by rule or regulation.

**History:** 1953 Comp., § 45-10-28, enacted by Laws 1963, ch. 203, § 5.

### **76-7-28. Unlawful actions.**

After any weed is declared to be noxious by the board, it shall be unlawful to sell, give away or plant any noxious weed seed in this state or in that part of the state designated by the rules and regulations of the board. This section shall not apply to materials not sold as seed, in which noxious weed seed may incidentally be found.

**History:** 1953 Comp., § 45-10-29, enacted by Laws 1963, ch. 203, § 6.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 42, 50, 51.

3 C.J.S. Agriculture § 71.

### **76-7-29. Rules and regulations.**

The board may prescribe and enforce rules and regulations, pertaining to the sale, transportation or distribution of noxious weed seeds, necessary to carry out the provisions of the Noxious Weed Act of 1963 [76-7-23 through 76-7-30 NMSA 1978].

**History:** 1953 Comp., § 45-10-30, enacted by Laws 1963, ch. 203, § 7.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 21, 22.

3 C.J.S. Agriculture §§ 19, 20.

### **76-7-30. Penalty.**

Any person, firm or corporation violating the Noxious Weed Act of 1963 [76-7-23 through 76-7-30 NMSA 1978] is guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars (\$25.00), nor more than three hundred dollars (\$300).

**History:** 1953 Comp., § 45-10-31, enacted by Laws 1963, ch. 203, § 8.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 42, 50, 51.

3 C.J.S. Agriculture § 72.

## **ARTICLE 7A**

### **Harmful Plants**

#### **76-7A-1. [Short title.]**

This act [76-7A-1 through 76-7A-11 NMSA 1978] may be cited as the "Harmful Plant Act."

**History:** 1978 Comp., § 76-7A-1, enacted by Laws 1978, ch. 125, § 1.

#### **76-7A-2. Definitions.**

As used in the Harmful Plant Act:

A. "article" means soil, seeds, unprocessed feeds, packaging materials, nursery stock, machinery or anything capable of transporting or harboring a harmful plant;

B. "board" means the board of regents of New Mexico state university;

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

D. "move" means to ship, offer for shipment, receive for transportation, carry or otherwise transport or allow to be transported;

E. "harmful plant" means any plant, seeds or other parts of a plant the board declares by regulation to be a harmful plant;

F. "permit" means a document issued by the department to provide for the movement of a harmful plant in accordance with regulations adopted by the board;

G. "person" means any individual, firm, association or corporation; and

H. "plant" means any living stage of a plant, including but not limited to seeds and reproductive parts of a plant.

**History:** 1978 Comp., § 76-7A-2, enacted by Laws 1978, ch. 125, § 2.

### **76-7A-3. General powers and duties of the board.**

A. The board, through the department, shall administer and enforce the provisions of the Harmful Plant Act.

B. The board may:

(1) adopt such regulations as it deems necessary to administer and enforce the provisions of the Harmful Plant Act;

(2) accept grants of money from any state or federal agency, producer [,] organization or private individual for the purposes of administering and enforcing the provisions of the Harmful Plant Act; and

(3) cooperate with the authorities of another state or the federal government in carrying out the purposes of the Harmful Plant Act.

**History:** 1978 Comp., § 76-7A-3, enacted by Laws 1978, ch. 125, § 3.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **76-7A-4. Quarantine powers of the board.**

The board may quarantine the state or any portion thereof whenever the department determines that a harmful plant exists therein and that such action is necessary to prevent the introduction of a harmful plant into the state or to retard the spread or dissemination of a harmful plant that has become established in the state. Before establishing a quarantine, the board shall hold a public hearing. Notice of the hearing shall be given to all interested parties and shall be published at least once in a newspaper of general circulation in the state. At the hearing all interested parties may appear and be heard.

**History:** 1978 Comp., § 76-7A-4, enacted by Laws 1978, ch. 125, § 4.

### **76-7A-5. Temporary quarantine powers of the department.**

If it has reasonable cause to believe that a harmful plant exists and there is an immediate need to prevent its introduction, spread or dissemination in New Mexico, the

department may impose a temporary quarantine on the state or any portion of the state to prevent the introduction, spread or dissemination of the harmful plant. The period for such temporary quarantine shall not exceed ninety days during which time a public hearing shall be held by the board as provided in Section 4 [76-7A-4 NMSA 1978] of the Harmful Plant Act. If the board finds after such hearing that it appears the quarantine should be extended for more than the temporary ninety-day period, it may enter an order for such extension as provided in Section 4 of the Harmful Plant Act.

**History:** 1978 Comp., § 76-7A-5, enacted by Laws 1978, ch. 125, § 5.

### **76-7A-6. Temporary quarantine powers of the department with respect to livestock.**

The department may quarantine any domestic livestock, captive wildlife or captive estray animals suspected [of exposure] or knowingly [known to be] exposed to a harmful plant. The quarantine shall not exceed a period of ninety-six hours or for such lesser period when the animal's digestive system can reasonably be expected to be purged of carrying any reproductive part of the harmful plant. The department's inspector shall examine each exposed animal's hide or wool for the presence of a harmful plant. At the end of the ninety-six hour period or at the end of such lesser period as provided in this section, the quarantined animals shall be released under conditions established by the department.

**History:** 1978 Comp., § 76-7A-6, enacted by Laws 1978, ch. 125, § 6.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **76-7A-7. Effect of a quarantine.**

When a quarantine is in effect, no person shall move any harmful plant described in the order from the quarantined area in this state into or through other parts of this state or from the quarantined area in other states into or through this state contrary to the provisions of the Harmful Plant Act or the regulations made pursuant thereto.

**History:** 1978 Comp., § 76-7A-7, enacted by Laws 1978, ch. 125, § 7.

### **76-7A-8. Harmful plants; designation.**

A. After a hearing the board may, by regulation, designate a plant to be a harmful plant when it finds that the plant is not known to occur in or is new to or not widely distributed in the state and may:

- (1) directly or indirectly injure crops or other useful plants;
  - (2) be poisonous or detrimental to domestic or wild animals, birds or fish;
  - (3) cause adverse effects to other interests of agriculture, such as irrigation;
- or
- (4) cause adverse effects to streams, ponds, lakes or aquatic fauna.

B. Notice of the hearing shall be published at least once in a newspaper of general circulation in the state and shall be given to interested parties. The notice shall state the plants alleged to be harmful which will be considered at the hearing. At the hearing, all interested parties may appear and be heard.

C. The department may designate a plant to be a harmful plant if it finds that the plant is not known to occur in, is new to or not widely distributed in the state, without a public hearing, for a period not to exceed ninety days, if it appears that such emergency action is necessary to prevent or control the introduction, spread or dissemination of the harmful plant. Within that ninety-day period the board shall hold a public hearing, after reasonable notice, to determine whether the designated plant is a harmful plant as provided in the Harmful Plant Act.

**History:** 1978 Comp., § 76-7A-8, enacted by Laws 1978, ch. 125, § 8.

### **76-7A-9. Prohibited acts; permits.**

No person shall knowingly move a harmful plant or article that is capable of harboring a harmful plant into or within New Mexico unless such person is granted a permit for such purpose by the department in accordance with regulations of the board. The department may refuse to issue a permit for the movement of harmful plants when in the opinion of the department such movement would involve a danger of dissemination of the harmful plant within the state. No person, unless granted a permit for such purpose by the department, shall sell, purchase, barter, exchange, give or receive a plant that has been declared to be a harmful plant by the board.

**History:** 1978 Comp., § 76-7A-9, enacted by Laws 1978, ch. 125, § 9.

### **76-7A-10. Inspections authorized.**

In order to prevent the introduction, spread or dissemination of a harmful plant, the department, after written notice to the owner or his agent, may detect, take possession [of], stop movement [of], eradicate, suppress, control, treat, prevent or retard the spread of or destroy any harmful plant, or stop movement [of] or treat any article that is capable of harboring or moving a harmful plant. The department may, with the consent of the owner or by order of the district court, inspect any premises in this state for the presence of a harmful plant.

**History:** 1978 Comp., § 76-7A-10, enacted by Laws 1978, ch. 125, § 10.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **76-7A-11. Penalties.**

A. Any person who knowingly violates any provision of the Harmful Plant Act or any regulation adopted by the board pursuant thereto is guilty of a petty misdemeanor and, upon conviction, shall be punished by a fine of one hundred dollar (\$100). Each day of violation shall constitute a separate and punishable offense.

B. The department shall not be required to give bond or security in any legal proceeding brought under the provisions of the Harmful Plant Act in which the department is a party.

**History:** 1978 Comp., § 76-7A-11, enacted by Laws 1978, ch. 125, § 11.

### **ANNOTATIONS**

**Severability.** — Laws 1978, ch. 125, § 12, provided for the severability of the act if any part or application thereof was held invalid.

## **ARTICLE 7B**

### **Rangeland Protection**

#### **76-7B-1. Short title.**

This act [76-7B-1 through 76-7B-7 NMSA 1978] may be cited as the "Rangeland Protection Act".

**History:** Laws 1985, ch. 53, § 1.

#### **76-7B-2. Purpose of act.**

The legislature finds and declares that:

A. vast rangeland areas are producing less than their potential for the grazing of livestock, wildlife habitat, forage and water and soil conservation benefits; and

B. it is essential to the general welfare of this state to apply methods to enhance the multiple-use management, development and conservation of rangeland in New Mexico

so as to restore rangeland capacity to carry livestock and wildlife, conserve valuable soil and water resources and restore environmental quality.

**History:** Laws 1985, ch. 53, § 2.

### **76-7B-3. Definitions.**

As used in the Rangeland Protection Act:

A. "committee" means the rangeland protection advisory committee;

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

C. "protection" means the control or management of undesirable brush or other weed species and any associated management program or activity necessary to enhance successful restoration of the treated rangeland intended to restore production of forage, change vegetative composition, conserve the soil by stabilizing soil and water conditions or provide habitat for livestock and wildlife. The term shall be so interpreted as to emphasize an integrated management approach to rangeland protection; and

D. "rangeland" means land that is not cultivated and is used primarily for grazing of domestic livestock and wildlife in addition to being a source of wood products and water.

**History:** Laws 1985, ch. 53, § 3.

### **76-7B-4. Department; powers and duties.**

The department shall coordinate rangeland protection projects developed under the Rangeland Protection Act. In the performance of its function, the department shall:

A. establish contact with ranchers, Indian tribes and pueblos, local soil and water conservation district boards and appropriate state and federal agencies to determine desire for participation in brush and weed management programs;

B. coordinate field inspections on participating ranches with ranchers, local soil and water conservation district boards, appropriate state and federal agencies and other persons with needed expertise to evaluate the extent of the problem;

C. obtain a written recommendation from persons participating in the field inspections relative to need for and feasibility of control;

D. closely coordinate project activities with local soil and water conservation district boards;

E. under guidelines established by the committee, prepare and implement a plan for each project to receive brush and weed control. Each plan shall include such



information as extent of the problem, number of acres by species and land status, recommended method and season of control, estimated cost of control for each participating individual or agency and necessary follow-up management practices required to enhance successful restoration and conservation of the treated area;

F. conduct the contract process to obtain services for control;

G. supervise and administer the actual contracted control or management projects in the field to assure compliance with the contract;

H. maintain an information repository on current technology for brush and weed control; and

I. cooperate and coordinate with any individual or county, state or federal governmental agency or its subdivisions to carry out its duties under this section.

**History:** Laws 1985, ch. 53, § 4.

### **76-7B-5. Committee created.**

A. There is created the "rangeland protection advisory committee". The following persons or their designees shall be members: the director of the New Mexico department of agriculture, the chairman of the range improvement task force, college of agriculture of New Mexico state university, the commissioner of public lands, the director of the department of game and fish, the secretary of natural resources, the dean of the college of agriculture at New Mexico state university and the director of the environmental improvement division of the health and environment department [department of environment]. The committee shall coordinate its activities and insofar as possible involve the state director of the United States bureau of land management, the regional forester of the United States forest service, the bureau of Indian affairs and the state conservationist of the United States soil conservation service. The chairman will appoint one additional member for a one-year term to be selected from the ranching industry. The director of the New Mexico department of agriculture shall serve as chairman.

B. The chairman shall call meetings of the committee and prescribe the time and place of each meeting.

C. To facilitate cooperation and coordination, the committee shall:

(1) meet upon the call of the chairman to develop mutually acceptable general guidelines to be followed for all rangeland protection projects conducted by the department under the Rangeland Protection Act; and

(2) be convened at least once annually to discuss rangeland protection projects conducted during the preceding year and to provide updated recommendations

and guidance for future projects as necessitated by, but not limited to, changes in available funding, laws or technology.

D. The department shall provide the administrative staff and facilities needed by the rangeland protection advisory committee.

**History:** Laws 1985, ch. 53, § 5.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1991, ch. 25, § 4 provided that all references to the environmental improvement division of the health and environment department shall be construed to mean the department of environment.

### **76-7B-6. Funding of projects.**

Rangeland protection projects covering federal, state, Indian-owned and privately owned rangeland shall be funded as follows:

A. the appropriate federal department, bureau, agency or committee with authority for allocating funds, in cases where they participate, shall provide funding for projects embracing federal and Indian land;

B. owners and operators of deeded lands, in cases where they participate, shall provide funding for projects embracing privately owned land;

C. the state, in cases where it participates, shall provide funding for projects embracing state trust rangeland; and

D. project funding by each type of rangeland ownership shall be upon a proportional acreage participation basis.

**History:** Laws 1985, ch. 53, § 6.

### **76-7B-7. Rangeland information collection and dissemination.**

The department shall insure the implementation of programs to collect and disseminate information relating to the purposes of the Rangeland Protection Act. Such programs shall include but not be limited to:

A. collecting results from all possible sources on research about rangeland protection methods;

B. assembling and correlating information on rangeland protection research and other applicable data so as to make it easily accessible to all;

C. cataloging those methods, techniques and tools for rangeland protection projects which may have application for New Mexico; and

D. preparing and publishing in a timely fashion a complete report of each rangeland protection project carried out under the Rangeland Protection Act to include the amount and ownership of lands treated, target plant species, methods used and an assessment of the results and furnishing a copy of the complete report to the first session of the thirty-eighth legislature prior to that session.

**History:** Laws 1985, ch. 53, § 7.

## **ARTICLE 7C**

### **Range Management Plans**

#### **76-7C-1. Grazing permits; management plans.**

A. In all areas of New Mexico where the production of livestock is managed upon intermingled private, state and federal land, landowners, lessees and permittees may provide for the development and implementation of a management plan. If a landowner, permittee or lessee elects to develop a management plan for any given area, he shall do so in consultation, cooperation and coordination with other lessees, permittees and landowners involved. In addition, the permittee, lessee or landowner shall consult with the range improvement task force located at New Mexico state university and the New Mexico department of agriculture.

B. Management plans shall be tailored to the specific range condition of the area to be covered by these plans and shall be reviewed on a periodic basis to determine whether they have been effective in improving the range condition of the lands involved. The management plans may be revised or terminated or new plans developed from time to time after such review and careful and considered consultation, cooperation and coordination with all permittees, lessees and landowners involved and, if appropriate, with the New Mexico department of agriculture and the range improvement task force staff of New Mexico state university.

**History:** Laws 1991, ch. 42, § 1.

## **ARTICLE 7D**

### **Noxious Weed Management**

#### **76-7D-1. Short title.**

This act [76-7D-1 through 76-7D-6 NMSA 1978] may be cited as the "Noxious Weed Management Act".

**History:** Laws 1998, ch. 78, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 1998, ch. 78 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

### **76-7D-2. Findings and purpose.**

A. The legislature finds that noxious weeds have caused extensive economic damage in New Mexico. Specifically, the presence and spread of noxious weeds:

(1) decreases land values and productivity, forces out nutritious forage for livestock and often causes the death of livestock and crops;

(2) harms the environment by crowding out native vegetation and endangered species, increasing fire danger and increasing water usage; and

(3) increases government and industrial costs by increasing highway cleanup costs, decreasing the lease value of state and federal public lands and curtailing the hunting, fishing and recreational use of the land.

B. It is the purpose of the Noxious Weed Management Act to improve the state economy and environment by managing noxious weeds in New Mexico.

**History:** Laws 1998, ch. 78, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 1998, ch. 78 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

### **76-7D-3. Definitions.**

As used in the Noxious Weed Management Act:

A. "director" means the director of the New Mexico department of agriculture;

B. "landowner" means a person who holds title to real property, is the holder of a right-of-way easement or is a designated land manager;

C. "noxious weed" means a plant species that is not indigenous to New Mexico and that has been targeted pursuant to the Noxious Weed Management Act for management or control because of its negative impact on the economy or the environment; and

D. "public land" means land controlled or supervised by an agency of government.

**History:** Laws 1998, ch. 78, § 3.

### **ANNOTATIONS**

**Effective dates.** — Laws 1998, ch. 78 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

### **76-7D-4. Duties of director; noxious weed management program.**

A. The director shall coordinate integrated noxious weed management programs. To carry out such programs, the director shall:

- (1) select the species of weeds to be targeted as noxious weeds for control or eradication pursuant to the Noxious Weed Management Act;
- (2) identify the methods to be used to control noxious weeds; and
- (3) develop publications to educate the public on the problem and prevention of noxious weeds.

B. The director may use and cooperate with any existing noxious weed control program that is available and appropriate for the purposes of the Noxious Weed Management Act.

**History:** Laws 1998, ch. 78, § 4.

### **ANNOTATIONS**

**Effective dates.** — Laws 1998, ch. 78 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

### **76-7D-5. Administration of program.**

The director shall administer the provisions of the Noxious Weed Management Act subject to the directives, policies and regulations of the board of regents of New Mexico state university.

**History:** Laws 1998, ch. 78, § 5.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1998, ch. 78 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

#### **76-7D-6. Landowners; rights; agreements.**

A. If the director or his designee becomes aware of the presence of noxious weeds on nonpublic land, the director shall notify the landowner of the noxious weeds and the methods for controlling them. However, nothing in the Noxious Weed Management Act shall be construed to permit the director or his designee to enter nonpublic land except at the invitation of the landowner.

B. Upon the request of a landowner, the director shall develop a noxious weed control program in cooperation with the landowner.

C. Whenever the director becomes aware of the presence of noxious weeds on public land, he shall inform the governmental entity of the species found on land under the entity's jurisdiction. When possible and practicable, the director shall consult with the governmental entity in developing a management plan for the control of the noxious weeds.

D. The director may develop and implement cooperative agreements with appropriate federal and state agencies, the commissioner of public lands and Indian nations, tribes and pueblos to carry out the provisions of the Noxious Weed Management Act.

**History:** Laws 1998, ch. 78, § 6.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1998, ch. 78 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

**Severability.** — Laws 1998, ch. 78, § 7 provided for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 8**

### **Protection of Native New Mexico Plants**

#### **76-8-1. [Enumeration of protected plants.]**

The following plants shall constitute the protected group in New Mexico and the botanical names shall govern in all cases:

A. fern family (Polypodiaceae):

gymnogramme (*Gymnopteris hispida*)

common maidenhair fern (*Adiantum capillus-veneris*)

chain fern (*Woodwardia plummerae*)

spleenwort (*Asplenium septentrionalis*)

spleenwort (*Asplenium resiliens*)

spleenwort (*Asplenium trichomanes*)

B. lily family (Liliaceae):

two-flowered milla (*Milla byflora*)

purplish-brown fritillary (*Fritillaria atropurpurea*)

uvularia, twisted stalk (*Uvularia amplexifolia*)

white mountain lily (*Leucocrinum montanum*)

wood lily (*Lilium montanum*)

mariposa lily (*Calochortus* - all species)

C. iris family (Iridaceae):

wild iris (*Oreolirion arizonicum*). This is not the common blue iris of our mountains, but is yellow in color.

D. amaryllis family (Amaryllidaceae):

century plant (*Agave schottii*)

lechuguilla (*Agave lechuguilla*)

century plant (*Agave palmeri*)

century plant (*Agave parryi*)

century plant (*Agave neomexicana*)

atamosco lily (*Atamosco longifolia*)

E. crowfoot family (*Ranunculaceae*):

red, yellow, and blue columbine (*Aquilegia* - all species)

monkshood (*Aconitum* - all species)

pasque flower (*Pulsatilla hirsutissima*)

leather flower (*Viorna* - all species)

virgin's bower (*Clematis pseudoalpina*)

F. lobelia family (*Lobeliaceae*):

cardinal flower or red lobelia (*Lobelia splendens*)

blue lobelia (*Lobelia gruinata*)

G. primrose family (*Primulaceae*):

shooting star (*Dodecatheon* - all species)

primrose (*Primula* - all species)

H. heath family (*Ericaceae*):

bearberry, kinnickinick [kinnikinick] (*Artostaphylos uva-urise*)

I. gentian family (*Gentianaceae*):

fringed gentian (*Gentiana elegans*)

fringed gentian (*Gentiana barbellata*)

closed gentian (*Gentiana affinis*)

J. violet family (*Violaceae*):

blue violet (*Viola adunca*)

blue violet (*Viola nephrophylla*)



blue violet (*Viola pedatifida*)

yellow violet (*Viola pinetorum*)

blue violet (*Viola missouriensis*)

K. purslane family (*Protulacaceae*):

spring beauty (*Claytonia lanceolata*)

L. apple family (*Malaceae*):

mountain ash (*Sorbus scopulina*)

M. phlox family (*Polemoniaceae*):

jilly flower (*Gilia aggregata*)

N. orchid family (*Orchidaceae*):

orchids - all species

O. orpine family (*Crassulaceae*):

sedum - all species (commonly known as stonecrop)

P. saxifrage family (*Saxifragaceae*):

all species

Q. evening primrose family (*Epilobiaceae*):

firewood (*Chamaenerion anugstifolium*)

R. dogwood family (*Cornaceae*):

cornel (*Cornus instolonea*)

S. ivy family (*Hederaceae*):

aralia (*Aralia bicrenata*)

T. butterfly weed (*Asclepias tuberosa*)

U. figwort family (*Scrophulariaceae*):

Indian paint brush, painted cup (*Castilleja integra*)

V. cactus family (Cactaceae):

night blooming cereus (*Peniocereus greggii*)

porcupine cactus (*Echinocereus* - all species)

barrel, niggerhead, bisnaga or visnaga cactus (*Ferocactus* - all species)

hedgehog cactus (*Echinocactus* - all species)

hedgehog cactus (*Scherocactus* - all species)

pincushion cactus (*Coryphantha* or *Mammillaria* - all species)

fishhook cactus (*Phellosperma* or *Mammillaria* - all species)

fishhook cactus (*Neomammillaria* or *Mammillaria* - all species)

stanly's cholla (*Opuntia stanlyi*)

W. all plants growing within four hundred yards of any highway, except noxious weeds.

**History:** Laws 1933, ch. 116, § 1; 1941 Comp., § 48-1001; 1953 Comp., § 45-11-1.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For defacing protected plant within 400 yards of highway as petty misdemeanor, see 30-15-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 68.

### **76-8-2. [Removal of plants from state or private lands without permission prohibited.]**

No person shall destroy, mutilate or remove any living plant, except seeds, of the protected group from any state or private [privately] owned lands without a written permit from the owner, provided that nothing in this act [76-8-1 through 76-8-4 NMSA 1978] shall be construed to prevent the cleaning, clearing or removal of plants from any canal, lateral, ditch, survey line, public road or railroad right-of-way or highway, when necessary to the full and proper use thereof, and provided further that the provisions of

this act shall not apply when plants enumerated herein are more than four hundred yards from any public highway.

**History:** Laws 1933, ch. 116, § 2; 1941 Comp., § 48-1002; 1953 Comp., § 45-11-2.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **76-8-3. [Exception.]**

Nothing herein shall prevent the use of down or dead cacti for business or other purposes.

**History:** Laws 1933, ch. 116, § 3; 1941 Comp., § 48-1003; 1953 Comp., § 45-11-3.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **76-8-4. [Penalty for violation.]**

Any person violating the provisions of this act [76-8-1 through 76-8-4 NMSA 1978] shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty [(\$50.00)] nor more than three hundred dollars [(\$300)], and each violation shall constitute a separate offense.

**History:** Laws 1933, ch. 116, § 4; 1941 Comp., § 48-1004; 1953 Comp., § 45-11-4.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## **ARTICLE 9**

### **Bees**

#### **76-9-1. Short title.**

This act [76-9-1 through 76-9-13 NMSA 1978] may be cited as the "Bee Act."

**History:** 1953 Comp., § 47-24-1, enacted by Laws 1975, ch. 122, § 1.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Law of bees, 39 A.L.R. 352.

Liability for injury or damage caused by bees, 86 A.L.R.3d 829.

Keeping bees as nuisance, 88 A.L.R.3d 992.

### **76-9-2. Definitions.**

As used in the Bee Act:

A. "abandoned colony" means a colony that is abandoned or neglected by a beekeeper according to criteria adopted by the board;

B. "apiary" means a location where one or more colonies or nuclei of bees are managed by a beekeeper;

C. "bee" means all races of the honeybee, *Apis mellifera* L., and other species of the genus *Apis*, that are capable of being managed for the production of honey, wax or pollen, or that are capable of being managed to pollinate plants;

D. "beekeeper" means a person who owns, leases or manages bees;

E. "board" means the board of regents of New Mexico state university;

F. "colony" means a family unit of bees composed of a queen and workers;

G. "commercial apiary" means a location where a beekeeper is required to maintain the minimum number of colonies designated by the board;

H. "contagious disease" means any disease, parasite or anything adversely affecting adult bees or their brood that may be spread from one bee to another bee or from one colony to another colony;

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

J. "equipment" means equipment used in managing bees, including but not limited to, brood chambers, surplus honey chambers, bottom boards, tops, frames, drawn comb, queen excluders and feeders;

K. "hive" means a container made or prepared that is used as a home by a colony of bees; and

L. "inspector" means a qualified person designated by the department to enforce the Bee Act and regulations adopted by the board.

**History:** 1953 Comp., § 47-24-2, enacted by Laws 1975, ch. 122, § 2.

### **76-9-3. Powers of board and department.**

A. The board shall adopt regulations necessary for the administration and enforcement of the Bee Act and through the department shall administer and enforce the Bee Act and regulations adopted by the board.

B. The department has full power to deal with any contagious disease of bees which, in the opinion of the department, may be prevented, controlled or eradicated and shall perform such acts as, in the judgment of the department, may be necessary to control, eradicate or prevent the introduction, spread or dissemination of contagious diseases of bees.

C. The department has authority to prohibit the shipment or bringing into the state [of] colonies or equipment capable of transmitting contagious disease from any state, territory or foreign country.

**History:** 1953 Comp., § 47-24-3, enacted by Laws 1975, ch. 122, § 3.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture §§ 19, 20.

### **76-9-4. Contagious disease; duty to prevent.**

Any beekeeper who has been notified in writing by the department that his bees or equipment are infected with a contagious disease and who willfully and knowingly permits the bees or equipment to remain in such condition shall be in violation of the Bee Act.

**History:** 1953 Comp., § 47-24-4, enacted by Laws 1975, ch. 122, § 4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 54 et seq.

3A C.J.S. Animals § 94.

### **76-9-5. Inspection; access; interference.**

A. The department shall notify each beekeeper prior to the initial annual inspection of his apiary and, if requested by the beekeeper, an inspector shall make the apiary inspection in the presence of the beekeeper or his representative and at a time that conforms to the efficient management of bees. Subsequent inspections may be made by an inspector, as needed, to locate and control contagious disease and regulate the location of any apiary. The inspector shall have access to all apiaries. Any person who shall hinder, resist or impede in any way an inspector in the discharge of his duties shall be in violation of the Bee Act.

B. In order to permit the inspector to readily examine a colony for contagious disease, beekeepers shall manage bees only in those types of hives approved by the board.

**History:** 1953 Comp., § 47-24-5, enacted by Laws 1975, ch. 122, § 5.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 42 et seq.

3A C.J.S. Animals § 91.

### **76-9-6. Inspection certificates.**

Each beekeeper that manages bees shall apply to the department for an annual inspection certificate. The inspection certificate shall be issued by the department upon completion of the apiary inspection and shall state the colonies and apiaries that are apparently free of contagious disease and the colonies and apiaries that are infected with contagious disease. No honey shall be offered for sale unless the beekeeper has a current inspection certificate.

**History:** 1953 Comp., § 47-24-6, enacted by Laws 1975, ch. 122, § 6.

### **76-9-7. Diseased colonies.**

If an inspector finds a contagious disease in a colony, he shall direct the beekeeper to destroy the diseased colony and equipment, or to treat the colony according to a schedule approved by the department; providing the inspector shall upon request by the beekeeper obtain a sample of brood that is representative of the apiary as determined by the inspector for submission to an approved state or federal laboratory for verification of the disease. All diseased colonies that are treated by a beekeeper shall be reinspected by an inspector within the period designated by the board. The board may require the beekeeper to pay an amount set by the board not to exceed fifty dollars (\$50.00) for each inspection, excluding the initial annual inspection, required to certify that the colonies are apparently free of contagious disease. Colonies that do not respond to treatment within a period specified by the board following the initial inspection shall be destroyed by the beekeeper or an inspector in a manner approved

by the department and the contaminated equipment shall be disinfected or burned by the beekeeper or an inspector.

**History:** 1953 Comp., § 47-24-7, enacted by Laws 1975, ch. 122, § 7.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 53.

3A C.J.S. Animals § 76.

#### **76-9-8. Abandoned colonies.**

Abandoned colonies and contaminated equipment shall be destroyed under the supervision of the inspector when the colony is found to be infected with a contagious disease. Abandoned live colonies or abandoned equipment that is apparently free of contagious disease may be sold in a manner designated by the board or destroyed as specified by the board.

**History:** 1953 Comp., § 47-24-8, enacted by Laws 1975, ch. 122, § 8.

#### **76-9-9. Location of apiaries.**

A. In order to control contagious disease, no apiary shall be moved or established closer than one and one-half miles straight airline distance from an existing registered commercial apiary, unless the apiary owner is also the owner of the apiary location.

B. Any beekeeper found in violation of Subsection A of this section shall remove the apiary within ten days. After the ten days, each day the beekeeper remains in violation shall constitute a separate violation of the Bee Act.

C. If a beekeeper uses his colonies for the pollination of an agricultural crop and desires to locate the colonies within the distance specified by the board of an existing commercial apiary, he shall apply for a special pollination permit from the department. The department shall grant a pollination permit only if the colonies are apparently free of contagious disease. The department shall issue the pollination permit only for the period of time the bees are effectively pollinating the designated crop.

**History:** 1953 Comp., § 47-24-9, enacted by Laws 1975, ch. 122, § 9.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 95.

#### **76-9-10. Registration of commercial apiaries.**

Each commercial beekeeper shall register the location of each commercial apiary under his control with the department and shall give an accurate description of the location of each commercial apiary. The registration fee shall be set by the board at not more than five dollars (\$5.00) for each commercial apiary, provided that no beekeeper shall be required to pay registration fees totaling more than two hundred dollars (\$200) in any one year. The regulations of the board shall determine the time and method of registration.

**History:** 1953 Comp., § 47-24-10, enacted by Laws 1975, ch. 122, § 10.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 23 et seq.

#### **76-9-11. Importation of bees.**

A. No colonies or equipment shall be moved into the state, unless accompanied by a certificate of inspection signed by an authorized apiary inspector of the state from which the bees originated. The certificate of inspection shall state that the colonies are apparently free of contagious disease, and shall meet other requirements as designated by the board. The person in this state receiving colonies or equipment shall file with the department a statement of the proposed location in the state where the colonies will be managed and a notice that the bees have arrived. The statement and notice shall be filed by the beekeeper in accordance with the regulations of the board. The department shall, as soon as practicable after arrival, inspect the colonies for contagious disease. The beekeeper shall pay the actual cost of the initial inspection and all subsequent inspections required because of the presence of any contagious disease.

B. This section shall not apply to the movement into the state of packaged bees or queen bees if moved into the state in mailing cages free of honey.

C. In order to prevent the dissemination of any bees that would adversely affect the beekeeping industry in the state, the department may prohibit their entrance into the state and may seize, stop movement, destroy or otherwise dispose of the bees, as the department deems appropriate.

**History:** 1953 Comp., § 47-24-11, enacted by Laws 1975, ch. 122, § 11.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 52.

#### **76-9-12. Disposition of funds.**

All money collected under the provisions of the Bee Act shall be expended to administer and enforce the Bee Act.



**History:** 1953 Comp., § 47-24-12, enacted by Laws 1975, ch. 122, § 12.

### **76-9-13. Penalties; bond.**

A. Any person who violates any provision of the Bee Act or any regulation adopted by the board pursuant thereto is guilty of a misdemeanor. Each day a person remains in violation shall constitute a separate offense.

B. The department shall not be required to give bond or security in any legal proceeding brought under the Bee Act which the department may institute or defend in any court of the state.

**History:** 1953 Comp., § 47-24-13, enacted by Laws 1975, ch. 122, § 13.

### **ANNOTATIONS**

**Severability.** — Laws 1975, ch. 122, § 15, provided for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals §§ 93, 94, 97.

## **ARTICLE 10**

### **Seeds**

#### **76-10-1. [Purpose of pure seed strain provisions.]**

The legislature hereby declares that the purposes of this act [76-10-1 through 76-10-10 NMSA 1978] are to promote, encourage, aid and protect the planting and growing of pure strains of sugar beet seed, vegetable seed, melon seed and seed for other crops, through providing statutory regulations to protect such pure strains of seeds from either natural, accidental or willful cross-fertilization, mixing or other contamination which would result in rendering otherwise pure strains impure, and thereby render the product valueless for seed purposes and result in economic loss to the grower.

In order that crops designed and intended for the production of pure strains of seed may be grown under proper conditions for the protection of the purity of such seeds, the legislature further declares that it is the purpose of this act to make legal provision for the protection of such pure strains by insuring that they may be planted at such distances from other varieties, plots or smaller plantings of other varieties or strains of the same or nearly related species as to prevent cross-pollination, or mixing, or crossing, or otherwise rendering the seed impure by any other natural or accidental means; that it believes this purpose best can be accomplished by restricting within certain areas to be defined and delimited by the regents of the agricultural college of New Mexico [New Mexico state university], the planting and growing of but one variety or strain of a given species or nearly related species of plants or crops; that by this

means alone is it possible to bring the industry of sugar beet seed production in this state to its highest possible development and to insure the growing of pure strains of seed of superior and economically profitable varieties of other species of plants; that such protection to the growers of pure strains of seed is essential to the economical development and advancement of the agriculture of this state; that to permit the natural, accidental or willful interference with the production of pure strains of seed would result in economic loss to the state and to the prospective grower and that the state and the prospective grower should be properly protected by legislative enactment; that the purpose of this act shall be construed to be for the proper development of the agriculture of this state through promoting and providing for the protection of the grower of pure strains of seed.

**History:** Laws 1933, ch. 174, § 1; 1941 Comp., § 48-1101; 1953 Comp., § 45-12-1.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The name of the New Mexico college of agriculture and mechanic arts was changed to the New Mexico state university by N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960.

**Cross references.** — For enforcement of statutes relating to agriculture and horticulture by regents of New Mexico state university, see 21-8-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 55.

Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection, 70 A.L.R.2d 852.

3 C.J.S. Agriculture § 3.

### 76-10-2. [Construction of act.]

This act [76-10-1 through 76-10-10 NMSA 1978] shall be so interpreted and construed as not to be considered the taking of private property or the control of private property without due process of law; nor disturbing the owner in control or use of his land for lawful purposes; nor restricting his right to dispose thereof; but as a declaration by the legislature that its use for the purpose herein forbidden by rules and regulations promulgated hereunder, is prejudicial to the public interest and an economic loss to the state and an irreparable loss or injury to the producers of pure strains of seeds.

**History:** Laws 1933, ch. 174, § 2; 1941 Comp., § 48-1102; 1953 Comp., § 45-12-2.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **76-10-3. [One-variety zones.]**

The regents of the agricultural college of New Mexico [New Mexico state university] are hereby authorized and empowered upon application and hearing as hereinafter provided to designate, outline and specifically delimit areas or zones of agricultural lands within which only one variety or strain of any designated plant or crop, species or nearly related species of plant or crop for the purpose of seed production may be planted, grown or allowed to grow to maturity, or within which any specimen or specimens, beds, plots or fields of another variety or varieties of plants of the same or nearly related species may be allowed to grow to the stage in which buds are developed.

**History:** Laws 1933, ch. 174, § 3; 1941 Comp., § 48-1103; 1953 Comp., § 45-12-3.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The name of the New Mexico college of agriculture and mechanic arts was changed to the New Mexico state university by N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 83 Am. Jur. 2d Zoning and Planning §§ 389 to 406.

Zoning: construction and application of terms "agricultural," "farm," "farming" or the like, 38 A.L.R.5th 357.

Construction and application of terms "agricultural," "farm," "farming," or the like, in zoning regulations, 38 A.L.R.5th 357.

101 C.J.S. Zoning § 1.

### **76-10-4. [Neutral zones.]**

The regents of the agricultural college of New Mexico [New Mexico state university] are further authorized and empowered after proper application and hearing to define such zone or zones and to further define neutral zones between such above-mentioned zones, and to provide that within the neutral zones no plant or plants, fields or plots of plants of a given strain, species or variety, may be grown to maturity or to the state in which buds of the said plants are produced. The purpose of such said neutral zone being to avoid the possibility of cross-pollination or mixing and thereby rendering

valueless what would otherwise be pure strains of seed, provided that the said regents may at their discretion permit that within such neutral zones varieties, strains or species not related to crops permitted to be grown within prescribed zones may be planted for the purpose of seed production; provided that such varieties or species are of the kind which will not cross-pollinate or otherwise render impure, pure strains grown in adjoining zones as defined by the said regents.

**History:** Laws 1933, ch. 174, § 4; 1941 Comp., § 48-1104; 1953 Comp., § 45-12-4.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The name of the New Mexico college of agriculture and mechanic arts was changed to the New Mexico state university by N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 83 Am. Jur. 2d Zoning and Planning §§ 389 to 406.

101 C.J.S. Zoning § 1.

### 76-10-5. [Pure strain zones and neutral zones.]

The regents of the agricultural college of New Mexico [New Mexico state university] shall upon petition of farmers or growers or those who intend to plant or grow crops for the purpose of producing pure strains of seeds and after public hearing of said petition designate, outline and delimit zones within which only one strain, variety or species of such crop may be grown, and to [sic] give public notice thereof. The said regents are also hereby authorized and empowered to designate and delimit neutral zones on either side of said plant production zones within which neutral zones no plant or plants, plots or fields of the same or nearly related strains, varieties or species of the said crop shall be permitted to be grown to the stage in which buds are produced.

**History:** Laws 1933, ch. 174, § 5; 1941 Comp., § 48-1105; 1953 Comp., § 45-12-5.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The name of the New Mexico college of agriculture and mechanic arts was changed to the New Mexico state university by N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 83 Am. Jur. 2d Zoning and Planning §§ 389 to 406.

101 C.J.S. Zoning § 1.

### **76-10-6. [Production of plants other than one strain or variety designated.]**

It shall be unlawful for any person or persons, firm, corporation or agency to plant within any zone designated and delimited by the said regents or in any neutral zone designated and delimited by the said regents, any strain, variety or species of plants forbidden to be grown in the said neutral zone and allow the same to grow to the stage in which buds are produced; provided that the regents shall prescribe the one strain or variety which may be grown within a designated zone or neutral zone and which may be allowed to grow to maturity for the purpose of the production of pure strains of seed.

**History:** Laws 1933, ch. 174, § 6; 1941 Comp., § 48-1106; 1953 Comp., § 45-12-6.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **76-10-7. [Production of plants other than pure strain designated.]**

It shall be unlawful for any person, individual, copartnership, association, firm or corporation or agent or employee thereof to permit to grow within a neutral zone or within a prescribed zone any variety or strain or species of plant forbidden by the regulations of the said regents to that stage of maturity in which buds are produced, whether the said plants are planted or have been allowed to grow as volunteer plants or plants escaped from cultivation. It shall be the duty of such persons, individuals, copartnerships, association, firm or corporation or agent or employee thereof to destroy any plants whether planted or volunteer the growing of which is forbidden within any zone or neutral zone before the said plants have grown to that stage of maturity at which buds may be produced.

**History:** Laws 1933, ch. 174, § 7; 1941 Comp., § 48-1107; 1953 Comp., § 45-12-7.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **76-10-8. [Petitions; orders; effect.]**

The regents of the agricultural college of New Mexico [New Mexico state university] are hereby authorized, empowered and directed when petitioned by one or more growers or prospective growers of any crop intended for the production of pure strains of seed and which crop is subject to contamination by cross-pollination or otherwise mixing so as to cause the seed produced by the crop to be impure, to designate, define and delimit a zone or area within which only the one strain, variety or species may be grown, and if deemed advisable and necessary to protect the grower or growers of such pure strains of seed, the said regents are further authorized, empowered and directed to establish such neutral zones on both sides of the aforesaid designated zone as in the judgment of the said regents may be necessary for the protection of the growers of pure strains of seed; the said regents shall have authority to promulgate orders which shall have the effect of law preventing the growing of any strain, variety or species of seed within the designated zone or within neutral zones which in the judgment of the said regents may be necessary for the protection of said growers of pure seeds and for the protection of said pure strains of seed, and such rules and regulation [regulations] when enacted by the said regents and promulgated or given publicity shall have the full force and effect of the provisions of this act [76-10-1 through 76-10-10 NMSA 1978]; provided that the petition of growers or prospective growers when presented to the regents shall request protection for the growing of a specific strain or variety and that the zone or neutral zones established under authority of this act by the said regents shall in no way interfere with the growing of any crop, or crops, or plants which do not in any way endanger the growing of the pure strains of seeds which petitioners propose to grow and for the growing of which petitioners seek protection.

**History:** Laws 1933, ch. 174, § 8; 1941 Comp., § 48-1108; 1953 Comp., § 45-12-8.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The name of the New Mexico college of agriculture and mechanic arts was changed to the New Mexico state university by N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960.

#### **76-10-9. [Penalty for violating act or regulations.]**

Any person, individual, copartnership, association, firm, corporation, agent or employee who or which shall violate any of the provisions of this act [76-10-1 through 76-10-10 NMSA 1978] or any of the regulations or restrictions promulgated by the regents of the agricultural college of New Mexico [New Mexico state university] under authority of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$50.00 nor more than \$500.00 and in addition thereto shall be liable in a civil action for all damage that may be occasioned or caused by a violation of this act or of any of the provisions or regulations or restrictions

promulgated by the regents of the agricultural college of New Mexico [New Mexico state university] under authority of this act.

**History:** Laws 1933, ch. 174, § 9; 1941 Comp., § 48-1109; 1953 Comp., § 45-12-9.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The name of the New Mexico college of agriculture and mechanic arts was changed to the New Mexico state university by N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960.

### **76-10-10. [Exemptions.]**

That this act [76-10-1 through 76-10-10 NMSA 1978] shall not apply to the planting or growing of crops or plants in the experimental stations or farms conducted by the United States government or the state of New Mexico.

**History:** Laws 1933, ch. 174, § 11; 1941 Comp., § 48-1110; 1953 Comp., § 45-12-10.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Severability.** — Laws 1933, ch. 174, § 10, provided for the severability of the act if any part or application thereof is held invalid.

### **76-10-11. Short title.**

This act [76-10-11 through 76-10-22 NMSA 1978] may be cited as the "New Mexico Seed Law."

**History:** 1953 Comp., § 45-12-20, enacted by Laws 1967, ch. 68, § 1.

### **76-10-12. Definitions.**

As used in the New Mexico Seed Law [76-10-11 through 76-10-22 NMSA 1978]:

A. "person" includes any individual, partnership, corporation, company, society or association;

B. "agricultural seed" includes the seeds of grass, forage, cereal and fiber crops. It shall include any other kinds of seeds commonly recognized within this state as

agricultural seeds, lawn seeds and mixtures of such seeds, and may include noxious weed seeds when the board of regents of New Mexico state university determines that such seed is being used as agricultural seed;

C. "vegetable seeds" includes the seeds of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable seeds in this state;

D. "weed seeds" includes the seeds, bulblets and sporocarps of all plants generally recognized as weeds within this state;

E. "noxious weed seeds" includes prohibited noxious weed seeds and restricted noxious weed seeds;

F. "prohibited noxious weed seeds" are seeds of weeds which, when established, are highly destructive and are not controlled in this state by the cultural practices commonly used. Such weeds are to be specified by rules and regulations as provided for in this act [76-10-11 through 76-10-22 NMSA 1978];

G. "restricted noxious weed seeds" are the seeds of weeds which are very objectionable in fields, lawns and gardens in this state and are difficult to control by cultural practices commonly used. Such seeds are to be specified by rules and regulations as provided in this act;

H. "labeling" includes all labels, and other written, printed or graphic representations, in any form whatsoever, accompanying or pertaining to any seed whether in bulk or in containers, and includes representations on invoices;

I. "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this act;

J. "record" includes all information relating to the shipment or shipments involved and includes a file sample of each lot of seed;

K. "stop sale" means an administrative order provided by law, restraining the sale, use, disposition and movement of a definite amount of seed;

L. "seizure" means a legal process carried out by court order against a definite amount of seed;

M. "kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, oats, alfalfa and timothy;



N. "variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed or other characteristics, by which it can be differentiated from other plants of the same kind;

O. "lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling;

P. "hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:

(1) two or more inbred lines;

(2) one inbred or a single cross with an open-pollinated variety; or

(3) two varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation and subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names;

Q. "pure seed," "germination" and other seed labeling and testing terms in common usage shall be defined as in the rules for seed testing published by the association of official seed analysts, effective July 1, 1955, and as subsequently amended;

R. "type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions;

S. "treated" means that the seed has received an application of a substance, or that the seed has been subjected to a process for which a claim is made;

T. a "private hearing" may consist of a discussion of facts between the person charged and the enforcement officer; and

U. "board" means the board of regents of New Mexico state university.

**History:** 1953 Comp., § 45-12-21, enacted by Laws 1967, ch. 68, § 2.

### **76-10-13. Label requirements.**

Each container of agricultural and vegetable seed which is sold, offered for sale, or exposed for sale, or transported within this state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information, which statement shall not be modified or denied in the labeling or on another label attached to the container.

A. For all seeds named and treated as defined in this act [76-10-11 through 76-10-22 NMSA 1978], for which a separate label may be used:

- (1) a word or statement indicating that the seed has been treated;
- (2) the commonly accepted coined, chemical or abbreviated chemical name of the applied substance or description of the process used;
- (3) if the substance in the amount present with the seed is harmful to human or other vertebrate animals a caution statement such as "Do not use for food or feed or oil purposes." The caution for mercurials and similarly toxic substances shall be a poison statement or symbol;
- (4) if the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective, the date of expiration.

B. For agricultural seeds, except for grass seed mixtures as provided in Subsection C:

- (1) commonly accepted name of the kind and the variety, or kind and the phrase "variety not stated" for each agricultural seed component in excess of 5 [five] percent of the whole and the percentage by weight of each in order of its predominance. When more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label;
- (2) lot number or other lot identification;
- (3) origin, state or foreign country, if known, of alfalfa, red clover, range grass seed and field corn, except hybrid corn. If the origin is unknown, the fact shall be stated;
- (4) percentage by weight of all weed seeds;
- (5) the name and rate of occurrence per pound of each kind of restricted noxious weed seed present;
- (6) percentage by weight of agricultural seeds, which may be designated as "crop seeds," other than those required to be named on the label;
- (7) percentage by weight of inert matter; and
- (8) for each named agricultural seed:
  - (a) percentage of germination, exclusive of hard seed;
  - (b) percentage of hard seeds, if present; and
  - (c) the calendar month and year the test was completed to determine such percentages.

Following Subparagraphs (a) and (b) the "total germination" and "hard seed" may be stated as such, if desired; and

(9) name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state.

C. For seed mixtures for lawn and turf purposes in containers of fifty pounds or less:

(1) the word "Mixed" or "Mixture";

(2) the headings "Fine-Textured Grasses" and "Coarse Kinds" and thereunder in tabular form in type no larger than the heading:

(a) commonly accepted name, in order of its predominance, of the kind, or kind and variety of each agricultural seed present in excess of five percent of the whole and determined to be a "fine-textured grass" or a "coarse kind" in accordance with the rules and regulations under this act;

(b) percentage by weight of pure seed of each agricultural seed named;

(c) for each agricultural seed named under Subparagraph (a) above, (1) percentage of germination, exclusive of hard seed, (2) percentage of hard seed, if present, (3) calendar month and year the test was completed to determine such percentage;

(3) the heading "Other Ingredients" and thereunder in type no larger than the heading:

(a) percentage by weight of all weed seeds;

(b) percentage by weight of all agricultural seeds other than those stated under Paragraph (2) (a);

(c) percentage by weight of inert matter;

(4) lot number or other lot identification;

(5) name and rate of occurrence per pound of each kind of restricted noxious weed seed present;

(6) name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state; and

(7) net weight.

D. For vegetable seeds in containers of one pound or less:

- (1) name of kind and variety of seed;
- (2) for seeds which germinate less than the standard last established by the board under this act:
  - (a) percentage of germination, exclusive of hard seed;
  - (b) percentage of hard seed, if present;
  - (c) the calendar month and year the test was completed to determine such percentages; and
  - (d) the words "Below Standard" in not less than 8-point type; and
- (3) name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state.

E. For vegetable seeds in containers of more than one pound:

- (1) the name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance;
- (2) lot number or other lot identification;
- (3) for each named vegetable seed:
  - (a) the percentage of germination, exclusive of hard seed;
  - (b) the percentage of hard seed, if present;
  - (c) the calendar month and year the test was completed to determine such percentages.

Following Subparagraphs (a) and (b) the "total germination and hard seed" may be stated as such, if desired;

- (4) name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state; and
- (5) the labeling requirements for vegetable seeds in containers of more than one pound shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

**History:** 1953 Comp., § 45-12-22, enacted by Laws 1967, ch. 68, § 3.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 55.

3 C.J.S. Agriculture §§ 65, 66.

## **76-10-14. Prohibitions.**

A. It is unlawful for any person to sell, offer for sale, expose for sale or to transport for sale any agricultural or vegetable seed within this state:

(1) unless the test to determine the percentage of germination required by Section 2 [76-10-12 NMSA 1978] shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale or offering for sale or transportation; provided, the board may set a different period if after hearing it is found advisable to do so;

(2) not labeled in accordance with the provisions of this act [76-10-11 through 76-10-22 NMSA 1978], or having a false or misleading labeling;

(3) pertaining to which there has been a false or misleading advertisement;

(4) consisting of or containing prohibited noxious weed seeds, subject to recognized tolerances;

(5) consisting of or containing restricted noxious weed seeds per pound in excess of the number prescribed by rules and regulations promulgated under this act, or in excess of the number declared on the label attached to the container of the seed or associated with the seed;

(6) containing more than two and one-half percent by weight of all weed seeds; and

(7) if any labeling, advertising or other representations subject to this act represents the seed to be certified or registered seed unless:

(a) it has been determined by a seed certifying agency that such seed was produced, processed and packaged, and conforms to standards of purity as to kind or variety, in compliance with rules and regulations of such agency pertaining to such seed; and

(b) the seed bears an official label issued for such seed by a seed certifying agency stating that the seed is certified or registered.

B. It is unlawful for any person within this state:

(1) to detach, alter, deface or destroy any label provided for in this act or the rules and regulations made and promulgated thereunder, or to alter or substitute seed in a manner that may defeat the purpose of this act;

(2) to disseminate any false or misleading advertisements concerning agricultural or vegetable seeds in any manner or by any means;

(3) to hinder or obstruct in any way, any authorized person in the performance of his duties under this act;

(4) to fail to comply with a "stop sale" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale" order, except with express permission of the enforcing officer, and for the purpose specified thereby;

(5) to use the word "trace" as substitute for any statement which is required; and

(6) to use the word "type" in any labeling in connection with the name of any agricultural seed variety.

**History:** 1953 Comp., § 45-12-23, enacted by Laws 1967, ch. 68, § 4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 55.

3 C.J.S. Agriculture §§ 65, 66.

#### **76-10-15. Records.**

Each person whose name appears on the label as handling agricultural or vegetable seed subject to this act [76-10-11 through 76-10-22 NMSA 1978] shall keep for a period of two years complete records of each lot of agricultural or vegetable seed handled and keep for one year a file sample of each lot of seed after final disposition of said lot. All such records and samples pertaining to the shipment or shipments involved shall be accessible for inspection by the board or its agents during customary business hours.

**History:** 1953 Comp., § 45-12-24, enacted by Laws 1967, ch. 68, § 5.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 55.

3 C.J.S. Agriculture §§ 65 to 67.

#### **76-10-16. Exemptions.**

A. The provisions of Sections 3 and 4 [76-10-13, 76-10-14 NMSA 1978] do not apply:

(1) to seed or grain not intended for sowing purposes;

(2) to seed in storage in, or being transported or consigned to, a cleaning or processing establishment for cleaning or processing; provided, that the invoice or labeling accompanying any shipment of said seed bears the statement "seed for processing" and provided that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this act [76-10-11 through 76-10-22 NMSA 1978]; and

(3) to any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier; provided, that such carrier is not engaged in producing, processing or marketing agricultural or vegetable seeds subject to the provisions of this act; and

(4) to seed or grain sold by the grower on his farm as uncleaned, untested and unprocessed.

B. No person shall be subject to the penalties of this act for having sold or offered or exposed for sale agricultural or vegetable seed, which were incorrectly labeled or represented as to kind, variety, type or origin which seeds cannot be identified by examination thereof, unless he has failed to obtain an invoice, genuine grower's declaration or other labeling information and to take such other precautions as may be reasonable to insure the identity to be that stated.

**History:** 1953 Comp., § 45-12-25, enacted by Laws 1967, ch. 68, § 6.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 55.

3 C.J.S. Agriculture § 65.

### **76-10-17. Seed certification.**

A. The certification agency for New Mexico shall be named by a committee consisting of the director or associate director of the agricultural extension service, the director or associate director of the agricultural experiment station, the extension agronomist, the experiment station agronomist and the director of the New Mexico department of agriculture of the New Mexico state university; provided that the committee shall have the authority to designate any other competent or qualified individual or individuals to serve as members of the committee. The certifying agency so named shall have the authority to establish standards and rules and regulations for certification; such standards, rules and regulations to be subject to the approval of the

above committee. The certifying agency so named shall also have the authority to fix and charge fees for certification services, and may retain fees collected as payment for its services.

B. Any labeling, advertisement or other representation, either orally or in writing, subject to this act [76-10-11 through 76-10-22 NMSA 1978] which represents any seed, tubers or plants to be used for seeding purposes as certified, registered or foundation shall be deemed to be false unless such seeds, tubers or plants:

(1) if produced in New Mexico, have been produced, processed and packaged and conform to the standards of purity as to kind or variety, in compliance with the rules and regulations set forth by the New Mexico certifying agency and bear the official label of this agency, stating that the seed, tubers or plants are certified, registered or foundation; or

(2) if produced in another state or country, bear the official label of the certifying agency of that state or country stating that the seed, tubers or plants are certified, registered or foundation.

C. All requirements of this act shall be understood to apply to certified seed in the same force as they apply to other agricultural or vegetable seeds. In addition, compliance with the standards of the certification agency may be considered in determining whether seed bearing a certified, registered or foundation label is falsely labeled.

**History:** 1953 Comp., § 45-12-26, enacted by Laws 1967, ch. 68, § 7.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 65.

### **76-10-18. Duties and authority of board or its agents.**

A. The duty of enforcing this act [76-10-11 through 76-10-22 NMSA 1978] and carrying out its provision and requirements is vested in the board of regents of New Mexico state university. It is the duty of the board or its authorized agents:

(1) to sample, inspect, make analysis of and test agricultural and vegetable seeds transported, sold or offered or exposed for sale within the state for sowing purposes, at such time and place and to such extent as may be deemed necessary to determine whether said agricultural or vegetable seeds are in compliance with provisions of this act, and to notify promptly the person who transported, sold, offered or exposed the seed for sale, of any violation;

(2) to prescribe and adopt rules and regulations governing the method of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed,



and the tolerances to be followed in the administration of this act, which shall be in general accord with officially prescribed practice in interstate commerce, and such other rules and regulations as may be necessary to secure the efficient enforcement of this act;

(3) to prescribe and, after public hearing following due public notice, establish, add to or subtract therefrom by regulations a prohibited or restricted noxious weed list; and

(4) to prescribe and, after public hearing following due public notice, to adopt rules and regulations establishing reasonable standards of germination for vegetable seeds.

B. Further, for the purpose of carrying out the provisions of this act, the board or its authorized agent is authorized:

(1) to enter upon any public or private premises during regular business hours in order to have access to seeds and the records connected therewith subject to the act and the rules and regulations thereunder, and any truck or other conveyer by land, water or air at any time when the conveyer is accessible, for the same purpose;

(2) to issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural or vegetable seed which the board or its agents finds is in violation of any of the provisions of this act or rules and regulations promulgated thereunder, which order shall prohibit further sale, processing and movement of such seed, except on approval of [the] enforcing officer, until such officer has evidence that the law has been complied with, and he has issued a release from the "stop sale" order of such seed, provided that in respect to seed which has been denied sale, processing and movement as provided in this paragraph, the owner or custodian of such seed shall have the right to appeal from said order to a court of competent jurisdiction in the locality in which the seeds are found, praying for a judgment as to the justification of such order and for the discharge of such seed from the order prohibiting the sale, processing and movement in accordance with the findings of the court; and provided further, that the provisions of this paragraph shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this act;

(3) to establish and maintain or make provisions for seed testing facilities, to employ qualified persons and to incur such expense as may be necessary to comply with these provisions;

(4) to make or provide for making purity and germination tests of seed for farmers and dealers on request; to prescribe rules and regulations governing such testing; and to fix and collect charges for the test made. Fees collected will be deposited in the comptroller's office at New Mexico state university, to be expended in enforcing this act, at the discretion of the board; and

(5) to cooperate with the United States department of agriculture and other agencies in seed law enforcement.

**History:** 1953 Comp., § 45-12-27, enacted by Laws 1967, ch. 68, § 8.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 5, 10, 11.

14A C.J.S. Colleges and Universities § 17.

### 76-10-19. Seizure.

Any lot of agricultural or vegetable seed not in compliance with the provisions of this act [76-10-11 through 76-10-22 NMSA 1978] shall be subject to seizure on complaint of the board or its agents to a court of competent jurisdiction in the locality in which the seed is located. In the event the court finds the seed to be in violation of this act and orders the condemnation of said seed, it shall be denatured, processed, destroyed, relabeled or otherwise disposed of in compliance with the laws of this state; provided, that in no instance shall the court order such disposition of said seed without first having given the claimant an opportunity to apply to the court for the release of said seed or permission to process or relabel it to bring it into compliance with this act.

**History:** 1953 Comp., § 45-12-28, enacted by Laws 1967, ch. 68, § 9.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 55.

3 C.J.S. Agriculture § 66.

### 76-10-20. Injunction.

When in the performance of his [its] duties the board or its agent applies to any court for a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act [76-10-11 through 76-10-22 NMSA 1978] or any rules and regulations under this act, said injunction is to be issued without bond.

**History:** 1953 Comp., § 45-12-29, enacted by Laws 1967, ch. 68, § 10.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For injunctions, see Rule 1-066 NMRA.

### **76-10-21. Violations and prosecutions.**

Every violation of the provisions of this act [76-10-11 through 76-10-22 NMSA 1978], and every violation of any rules and regulations promulgated under this act, after a notice to cease and desist, shall be deemed a misdemeanor punishable by a fine not exceeding one hundred dollars (\$100) for the first offense and not exceeding two hundred fifty dollars (\$250) for each subsequent similar offense.

When the board or its agent shall find that any person has violated any of the provisions of this act, they or their duly authorized agent or agents may institute proceedings in a court of competent jurisdiction in the county in which the violation occurred, to have such person convicted therefor. The board or its agents may file with the district attorney in each district, with a view of [toward] prosecution, such evidence as may be deemed necessary; provided, however, that no prosecution under this act shall be instituted without the defendant first having been given an opportunity to appear before the board or its agents to introduce evidence either in person or by agent or attorney at a private hearing. If, after hearing, or without such hearing in case the defendant or his agent or attorney fails or refuses to appear, the board or its agents is of the opinion that the evidence warrants prosecution, he shall proceed as herein provided.

It is the duty of the district attorney in each district to institute proceedings at once against any person charged with a violation of this act, if, in the judgment of such officer the information submitted warrants such action.

After judgment by the court in any case arising under this act, the board or its agent shall publish any information pertinent to the issuance of the judgment by the court in such media as he [it] may designate from time to time.

**History:** 1953 Comp., § 45-12-30, enacted by Laws 1967, ch. 68, § 11.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 66.

## **76-10-22. Appropriation.**

The legislature shall appropriate to the New Mexico state university annually the amount necessary, out of the moneys of the state, except moneys reserved for the payment of the public debt, for the purpose of complying with this act [76-10-11 through 76-10-22 NMSA 1978] and to fulfill and carry out its purposes.

**History:** 1953 Comp., § 45-12-31, enacted by Laws 1967, ch. 68, § 12.

# **ARTICLE 11**

## **Fertilizers**

### **76-11-1. Short title.**

Chapter 76, Article 11 NMSA 1978 may be cited as the "New Mexico Fertilizer Act".

**History:** 1953 Comp., § 45-13-11, enacted by Laws 1963, ch. 184, § 1; 1975, ch. 181, § 1; 2013, ch. 112, § 1.

### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, added the NMSA chapter and article for the New Mexico Fertilizer Act; and deleted "Article 13 of Chapter 45, NMSA 1978" and added "Chapter 76, Article 11 NMSA 1978".

### **76-11-2. Administration of act.**

The New Mexico Fertilizer Act shall be administered by the board of regents of the New Mexico state university through the New Mexico department of agriculture.

**History:** 1953 Comp., § 45-13-12, enacted by Laws 1963, ch. 184, § 2; 1975, ch. 181, § 2.

### **ANNOTATIONS**

**Cross references.** — For department of agriculture under control of board of regents, see 76-1-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 5, 10, 11.

14A C.J.S. Colleges and Universities § 17.

### **76-11-3. Definitions.**

As used in the New Mexico Fertilizer Act:

A. "board" means the board of regents of New Mexico state university;

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

C. "fertilizer" means any substance that contains one or more recognized plant nutrients and that is used for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl limes, limestone, wood ashes, gypsum and other products exempt by rule of the board;

D. "fertilizer material" means a fertilizer that either:

(1) contains important quantities of no more than one of the primary plant nutrients: nitrogen (N), phosphate (P<sub>2</sub>O<sub>5</sub>) and potash (K<sub>2</sub>O);

(2) has eighty-five percent of its plant nutrient content present in the form of a single chemical compound; or

(3) is derived from a plant or animal residue or byproduct or a natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration;

E. "specialty fertilizer" means a fertilizer distributed primarily for nonfarm use such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries and may include fertilizers used for research or experimental purposes;

F. "bulk fertilizers" means fertilizers distributed in a nonpackaged form;

G. "brand" means a term, design or trademark under which one or more fertilizers or soil conditioners are distributed in New Mexico;

H. "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the order and form as prescribed by the board;

I. "grade" means the percentages of total nitrogen, available phosphorus or phosphate and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis; provided, however, that fertilizer materials, bone meal, manures and similar raw materials may be guaranteed in fractional units;

J. "official sample" means any sample of fertilizer or soil conditioner taken by the department unless designated otherwise;

K. "ton" means a net weight of two thousand pounds avoirdupois;

L. "percent" or "percentage" means the percentage by weight;

M. "person" includes individual, partnership, association, firm and corporation;

N. "distributor" means a person that imports, consigns, manufactures, produces, compounds, mixes or blends fertilizer or soil conditioner or that offers for sale, sells, barter or otherwise supplies fertilizer or soil conditioner in the state;

O. "registrant" means the person that registers a fertilizer or soil conditioner under the provisions of the New Mexico Fertilizer Act;

P. "label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a fertilizer or soil conditioner;

Q. "labeling" means all written, printed or graphic matter upon or accompanying a fertilizer or soil conditioner;

R. "soil conditioner" means a substance or mixture of substances intended for sale, offered for sale or sold for manurial, soil enriching or soil corrective purposes or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops or producing a chemical or physical change in the soil, except fertilizer as defined in this section, unmanipulated animal and vegetable manures and other products exempted by rules of the board;

S. "blender" means a person or system engaged in the business of blending fertilizer, including both mobile and fixed equipment used in blending;

T. "blending" means the physical mixing or combining of fertilizer materials and filler materials as provided in Paragraphs (1) through (3) of this subsection, including mixing through the simultaneous or sequential application of any of the combinations provided in this subsection, to produce a uniform mixture:

(1) one or more fertilizer materials and one or more filler materials;

(2) two or more fertilizer materials; or

(3) two or more fertilizer materials and filler materials;

U. "custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or to meet the specific consumer's request prior to blending;

V. "deficiency" means the amount of nutrient found by analysis to be less than the guaranteed amount, which may result from a lack of nutrient ingredients or from lack of uniformity;

W. "investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample of fertilizer; and

X. "primary nutrient" means total nitrogen, available phosphate and soluble potash.

History: 1953 Comp., § 45-13-13, enacted by Laws 1963, ch. 184, § 3; 1975, ch. 181, § 3; 2013, ch. 112, § 2.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, clarified terms and added new terms relating to blending and the nutrient content of fertilizer; in Subsections C through E, G, J and N through R, deleted "commercial" before "fertilizer"; in Subsections C and R, deleted "regulation" and added "rule"; in Subsection D, in Paragraph (1), after "nitrogen", added "(N)", after "nitrogen (N)", deleted "phosphoric acid", added "phosphate (P2O5)", and after "potash", deleted "or" and added "(K2O)", in Paragraph (2), after "has", deleted "approximately", and in Paragraph (3), after "its content of", deleted "primary"; in Subsection I, after "phosphorus or", deleted "phosphoric acid" and added "phosphate"; and added Subsections S though X.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 74.

### 76-11-4. Registration.

A. Each brand and grade of fertilizer and each soil conditioner product shall be registered before being distributed in the state. The application for registration shall be submitted to the department on a form furnished by the department and shall be accompanied by a fee of five dollars (\$5.00) per brand or grade, except that those brands or grades sold in packages of five pounds or less shall be registered at a fee of fifteen dollars (\$15.00) each. Upon approval by the department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year.

B. A distributor shall not be required to register a brand of fertilizer or soil conditioner that is already registered under the New Mexico Fertilizer Act by another person.

C. A distributor shall not be required to register a fertilizer formulated according to specifications that are furnished by a consumer prior to mixing but shall be required to label the fertilizer as provided in Subsection C of Section 76-11-5 NMSA 1978.

History: 1953 Comp., § 45-13-14, enacted by Laws 1963, ch. 184, § 4; 1975, ch. 181, § 4; 2013, ch. 112, § 3.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, expanded the scope of the registration requirement to apply to all fertilizers; and in Subsections A, B and C, deleted "commercial" before "fertilizer."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 57.

Constitutionality, construction, and application of statutes relating to testing or sampling of agricultural fertilizers, 147 A.L.R. 765.

3 C.J.S. Agriculture § 77.

### **76-11-5. Labeling.**

A. A fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

- (1) the net weight or other measure prescribed as satisfactory to the board;
- (2) brand and grade;
- (3) guaranteed analysis;
- (4) name and address of the registrant; and
- (5) directions for use for fertilizer distributed to a consumer.

B. If a fertilizer is distributed in bulk, a written or printed statement of the information required by Subsection A of this section shall accompany delivery and be supplied to the purchaser at time of delivery.

C. A fertilizer formulated according to specifications that are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis and the name and address of the distributor.

D. Each brand of soil conditioner distributed in the state shall be accompanied by a legible label bearing the following information:

- (1) net weight or other measure prescribed as satisfactory by the board;
- (2) the brand name under which the soil conditioner is distributed;



- (3) an accurate statement of composition and purpose; and
- (4) the name and address of the registrant.

History: 1953 Comp., § 45-13-15, enacted by Laws 1963, ch. 184, § 5; 1975, ch. 181, § 5; 2013, ch. 112, § 4.

### ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, expanded the scope of the labeling requirements to apply to all fertilizers; required that labels include directions for use of the fertilizer; in Subsections A, B and C, deleted "commercial" before "fertilizer"; and added Paragraph (5) of Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture § 78.

### **76-11-6. Inspection fees.**

A. There shall be paid to the department for all fertilizer and soil conditioner distributed in the state an inspection fee set by the board at a rate not to exceed thirty-five cents (\$.35) a ton; provided that sales to manufacturers or exchanges between them are exempted. Fees so collected shall be used for the payment of the costs of inspection, sampling and analysis and other expenses necessary for the administration of the New Mexico Fertilizer Act.

B. On individual packages of fertilizer or soil conditioner containing five pounds or less, there shall be paid in lieu of the annual registration fee of five dollars (\$5.00) per brand and grade of fertilizer and each soil conditioner product and the required inspection fee an annual registration fee and inspection fee of fifteen dollars (\$15.00). Where a person sells fertilizer or soil conditioner in packages of five pounds or less and in packages over five pounds, the annual registration and inspection fee of fifteen dollars (\$15.00) applies only to that portion sold in packages of five pounds or less, and that portion sold in packages over five pounds is subject to the inspection fee.

C. A person who distributes a fertilizer or soil conditioner in the state shall file with the department on forms furnished by the department a quarterly statement for the periods ending March 31, June 30, September 30 and December 31 setting forth the number of net tons of each fertilizer or soil conditioner distributed in the state during the quarter. The report is due on or before the last day of the month following the close of each quarter. The inspection fee shall be paid at the time of filing of the statement. If the tonnage report is not filed and the payment of inspection fee is not made within thirty days after the end of the quarter, a collection fee amounting to ten percent, but not less than ten dollars (\$10.00), of the amount shall be assessed against the registrant, and

the amount of fees due constitutes a debt and becomes the basis of a judgment against the registrant.

D. When more than one person is involved in the distribution of fertilizer or soil conditioner, the first person who has the fertilizer or soil conditioner registered and who distributes to a nonregistrant dealer or consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been previously made by a prior distributor.

History: 1953 Comp., § 45-13-16, enacted by Laws 1963, ch. 184, § 6; 1975, ch. 181, § 6; 2013, ch. 112, § 5.

### ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, required that fees be paid for all fertilizers; and in Subsections A, B, C and D, deleted "commercial" before "fertilizer".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture § 76.

### **76-11-7. Inspection; sampling; analysis.**

A. The department shall sample, inspect, make analyses of and test fertilizers and soil conditioners distributed within the state at a time and place and to the extent necessary to determine whether the fertilizer or soil conditioner is in compliance with the New Mexico Fertilizer Act. The department may enter upon public or private premises or carriers during the regular business hours in order to have access to fertilizer or soil conditioners and may examine records relating to the distribution of fertilizer and soil conditioners subject to the provisions of the New Mexico Fertilizer Act and the rules adopted pursuant to that act.

B. The methods of analysis and sampling shall be those adopted by the department from sources such as the association of official agricultural chemists. In cases not covered by such methods, or in cases where methods in which improved applicability has been demonstrated are available, the department may adopt such appropriate methods from other sources.

C. The department, in determining for administrative purposes whether a fertilizer is deficient in plant food, shall be guided solely by the official sample, as defined by Section 76-11-3 NMSA 1978, obtained and analyzed as provided for in Subsection B of this section.

D. Upon request, the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action. Official samples establishing a

penalty for nutrient deficiency shall be retained for a minimum of ninety days from issuance of a deficiency report.

History: 1953 Comp., § 45-13-17, enacted by Laws 1963, ch. 184, § 7; 1975, ch. 181, § 7; 2013, ch. 112, § 6.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, expanded the scope of the inspection and sampling requirements to apply to all fertilizers; authorized the examination of records relating to distribution of fertilizers and soil conditioners; required the retention of samples; established a penalty for nutrient deficiency; in Subsections A and C, deleted "commercial" before "fertilizer"; in Subsection A, in the first sentence, after "to the extent", deleted "as it may be deemed", and in the second sentence, after "soil conditioners", added "and may examine records relating to the distribution of fertilizer and soil conditioners" and after "Fertilizer Act and the", deleted "regulations pertaining thereto" and added "rules adopted pursuant to the Act"; in Subsection B, added the second sentence; in Subsection C, deleted "of the New Mexico Fertilizer Act"; and in Subsection D, added the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 57.

Constitutionality of statute making certificate of result of chemical analysis evidence, 29 A.L.R. 290.

Constitutionality, construction and application of statutes relating to testing or sampling of agricultural fertilizers, 105 A.L.R. 348, 147 A.L.R. 765.

3 C.J.S. Agriculture § 76.

### **76-11-8. Plant food deficiency.**

A. If the analysis shows that a fertilizer falls short of the guaranteed analysis in any one ingredient, penalty shall be assessed in accordance with the following:

(1) total nitrogen: a penalty of three times the value of the deficiency, if the deficiency is in excess of 0.20 of one percent on goods that are guaranteed two percent; 0.25 of one percent on goods that are guaranteed three percent; 0.35 of one percent on goods that are guaranteed four percent; 0.40 of one percent on goods that are guaranteed five percent up to and including eight percent; 0.50 of one percent on goods guaranteed above eight percent up to and including thirty percent; and 0.75 of one percent on goods guaranteed over thirty percent;

(2) available phosphoric acid or available phosphorus: a penalty of three times the value of the deficiency, if the deficiency exceeds 0.40 of one percent of available phosphate on goods that are guaranteed up to and including ten percent; 0.50

of one percent of available phosphate on goods that are guaranteed above ten percent up to and including twenty-five percent; and 0.75 of one percent of available phosphate on goods guaranteed over twenty-five percent. If guarantees are for available phosphorus, the deficiencies shall be calculated for the appropriate percentage of elemental phosphorus;

(3) soluble potash or soluble potassium: a penalty of three times the value of the deficiency, if the deficiency is in excess of 0.20 of one percent of soluble potash on goods that are guaranteed two percent; 0.30 of one percent of soluble potash on goods that are guaranteed three percent; 0.40 of one percent of soluble potash on goods guaranteed four percent; 0.50 of one percent of soluble potash on goods guaranteed above four percent up to and including eight percent; 0.60 of one percent of soluble potash on goods guaranteed above eight percent up to and including twenty percent; and 1.00 of one percent of soluble potash on goods guaranteed over twenty percent. If guarantees are for soluble potassium, the deficiencies shall be calculated for the appropriate percentage of elemental potassium; and

(4) deficiencies in any other constituent shall be evaluated by the department and penalties therefor prescribed by the board.

B. Nothing contained in this section shall prevent a person from appealing to a court of competent jurisdiction praying for judgment as to the justification of the penalties.

C. All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months after the date of notice from the department to the registrant. Receipts taken for penalty payments shall be promptly forwarded to the department. If the consumer cannot be found, the amount of the penalty shall be paid to the current school fund. If upon satisfactory evidence a person is shown to have altered the content of a fertilizer shipped to the person by a registrant or to have mixed or commingled fertilizer from two or more suppliers so that the result of either alteration changes the analysis of the fertilizer as originally guaranteed, that person shall be responsible for obtaining a registration and shall be held liable for all penalty payments and be subject to other provisions of the New Mexico Fertilizer Act, including seizure, condemnation and stop sale; provided that this provision does not apply to a consumer who mixes or otherwise alters fertilizer for use on property owned or leased by the consumer.

History: 1953 Comp., § 45-13-18, enacted by Laws 1963, ch. 184, § 8; 1975, ch. 181, § 8; 2013, ch. 112, § 7.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, required that a person who alters the content of fertilizer shipped from a registrant or mixes fertilizers from more than one supplier register and imposes penalties on that person; in Subsections A and C, deleted "commercial" before "fertilizer"; in Paragraph (2) of Subsection A, in the first sentence,

in three places, deleted "phosphoric acid (P2O5)" and added "phosphate"; in Paragraph (3) of Subsection A, in the first sentence, in six places, after "potash", deleted "(K2O)"; and in Subsection C, in the second sentence, after "Receipts taken", deleted "therefor and found, and" and added "for penalty payments shall be", in the third sentence, after "shall be paid to the", deleted "common" and added "current", and added the fourth sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 81.

### **76-11-9. Commercial value.**

For the purpose of determining the commercial values to be applied under the provisions of Section 76-11-8 NMSA 1978, the department shall determine and publish annually the values per pound of nitrogen, available phosphate and soluble potash in fertilizers in the state. If guarantees are provided, the values shall be per pound of nitrogen, phosphorus and potassium. The values determined and published shall be used in determining and assessing penalties.

**History:** 1953 Comp., § 45-13-19, enacted by Laws 1963, ch. 184, § 9; 1975, ch. 181, § 9; 2013, ch. 112, § 8.

### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, required the department to publish the values of phosphate and potash in all fertilizers; and in the first sentence, after "nitrogen, available", deleted "phosphoric acid" and added "phosphate", and after "soluble potash in", deleted "commercial".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 81.

### **76-11-10. Misbranding.**

A person shall not distribute misbranded fertilizer or soil conditioner. A fertilizer or soil conditioner is misbranded if:

- A. its labeling is false or misleading in any particular;
- B. it is distributed under the name of another fertilizer or soil conditioner product;
- C. it is not labeled as required in Section 76-11-5 NMSA 1978 and in accordance with rules prescribed under the New Mexico Fertilizer Act; or

D. it purports to be or is represented as a fertilizer or soil conditioner or is represented as containing a plant nutrient, fertilizer or soil conditioner unless such plant nutrient, fertilizer or soil conditioner conforms to the definition of identity, if any, prescribed by rule of the board; in adopting such rules, the board shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials.

**History:** 1953 Comp., § 45-13-20, enacted by Laws 1975, ch. 181, § 10; 2013, ch. 112, § 9.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1975, ch. 181, § 10, repealed 45-13-20, 1953 Comp., relating to false or misleading statements, and enacted a new section.

**The 2013 amendment,** effective June 14, 2013, prohibited the distribution of misbranded fertilizer and soil conditioner; in the introductory sentence and in Subsection D, deleted "commercial" before "fertilizer"; and in Subsections C and D, deleted "regulations" and added "rules".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture § 78.

### **76-11-10.1. Adulteration.**

No person shall distribute an adulterated fertilizer product. A fertilizer shall be deemed to be adulterated if:

A. it contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water when applied in accordance with directions for use on the label or if adequate warning statements or directions for use that may be necessary to protect beneficial plant life, animals, humans, aquatic life, soil or water are not shown on the label;

B. its composition falls below or differs from that which it is purported to possess by its labeling; or

C. it contains unwanted crop seed or weed seed.

History: Laws 2013, ch. 112, § 19.

## ANNOTATIONS

**Effective dates.** — Laws 2013, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

### **76-11-11. Tonnage reports.**

The person transacting, distributing or selling fertilizer or soil conditioner to a nonregistrant shall mail the department a report showing the county of the consignee, the amounts in tons of each grade of fertilizer and each soil conditioner product and the form in which the fertilizer or soil conditioner was distributed such as bags, liquid, bulk or other forms. This information shall be reported by one of the following methods:

A. submitting a summary report approved by the department on or before the fifteenth day of each month covering shipments made during the preceding month; or

B. submitting a copy of the invoice within five business days after shipment. Information furnished to the department under this section shall not be disclosed in such a way as to divulge the operation of any person.

**History:** 1953 Comp., § 45-13-21, enacted by Laws 1963, ch. 184, § 11; 1971, ch. 203, § 1; 1975, ch. 181, § 11; 2013, ch. 112, § 10.

#### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, required tonnage reports for all fertilizers; and in the introductory paragraph, in two places, deleted "commercial" before "fertilizer".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 79.

### **76-11-12. Publications.**

The board shall publish at least annually and in a form it deems proper:

A. information concerning the distribution of fertilizers and soil conditioners; and

B. results of analysis based on official samples of fertilizers and soil conditioners distributed within the state as compared with the analysis guaranteed in the registration and the label.

**History:** 1953 Comp., § 45-13-22, enacted by Laws 1963, ch. 184, § 12; 1975, ch. 181, § 12; 2013, ch. 112, § 11.

#### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, required the board to publish information and results of analysis for all fertilizers; and in Subsections A and B, deleted "commercial" before "fertilizer".

### **76-11-13. Rules.**

For the enforcement of the New Mexico Fertilizer Act, the board may prescribe and, after public hearing following due public notice, adopt the rules relating to the distribution of fertilizers and soil conditioners that it may find necessary to carry into effect the full intent and meaning of the New Mexico Fertilizer Act. Under this section, the board may promulgate rules for the storing, hauling and handling of anhydrous ammonia and other gaseous or liquid fertilizers, and they shall have the same effect as law.

**History:** 1953 Comp., § 45-13-23, enacted by Laws 1963, ch. 184, § 13; 1967, ch. 69, § 1; 1975, ch. 181, § 13; 2013, ch. 112, § 12.

#### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, authorized the board to adopt rules relating to the distribution of all fertilizers; in the title of the section, deleted "regulations" and added "rules"; in the first and the second sentences, deleted "regulations" and added "rules"; and in the first sentence, deleted "commercial" before "fertilizer".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture § 76.

### **76-11-14. Short weight.**

If a fertilizer or soil conditioner in the possession of the consumer is found by the department to be short in weight or other measure prescribed by the board, the registrant of the fertilizer or soil conditioner shall, within thirty days after official notice from the department, pay to the consumer a penalty equal to four times the value of the actual shortage.

**History:** 1953 Comp., § 45-13-24, enacted by Laws 1963, ch. 184, § 14; 1975, ch. 181, § 14; 2013, ch. 112, § 13.

#### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, imposed the short weight penalty for all fertilizers; and in two places, deleted "commercial" before "fertilizer".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 80.



## **76-11-15. Cancellation of registrations.**

The department may cancel the registration of any brand of fertilizer or soil conditioner or refuse to register any brand of fertilizer or soil conditioner upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of the New Mexico Fertilizer Act or any rules promulgated under that act; provided that no registration shall be revoked or refused until the registrant is given an opportunity to appear for a hearing by the department.

**History:** 1953 Comp., § 45-13-25, enacted by Laws 1963, ch. 184, § 15; 1975, ch. 181, § 15; 2013, ch. 112, § 14.

### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, authorized the board to cancel the registration for all brands of fertilizers; in two places, deleted "commercial" before the "fertilizer"; and deleted "regulations" and added "rules".

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture §§ 75 to 76.

## **76-11-16. Stop sale orders.**

The department may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of fertilizer or soil conditioner and to be held at a designated place when the department finds the fertilizer or soil conditioner is being offered or exposed for sale in violation of any of the provisions of the New Mexico Fertilizer Act until the law has been complied with and the fertilizer or soil conditioner is released in writing by the department or the violation has been otherwise legally disposed of by written authority. The department shall release the fertilizer or soil conditioner so withdrawn when the requirements of the provisions of the New Mexico Fertilizer Act have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

**History:** 1953 Comp., § 45-13-26, enacted by Laws 1963, ch. 184, § 16; 1975, ch. 181, § 16; 2013, ch. 112, § 15.

### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, authorized the department to issue stop sale orders for all fertilizers; and in four places, deleted "commercial" before "fertilizer".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 80.

### **76-11-17. Seizure; condemnation; sale.**

A. Any lot of fertilizer or soil conditioner not in compliance with the provisions of the New Mexico Fertilizer Act is subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the fertilizer or soil conditioner is located.

B. In the event the court finds the fertilizer or soil conditioner to be in violation of the New Mexico Fertilizer Act and orders the condemnation of the fertilizer or soil conditioner, it shall be disposed of in any manner consistent with the quality of the fertilizer or soil conditioner and the laws of the state.

C. In no instance shall the disposition of the fertilizer or soil conditioner be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the fertilizer or soil conditioner or for permission to process or relabel the fertilizer or soil conditioner to bring it into compliance with the New Mexico Fertilizer Act.

**History:** 1953 Comp., § 45-13-27, enacted by Laws 1963, ch. 184, § 17; 1975, ch. 181, § 17; 2013, ch. 112, § 16.

### **ANNOTATIONS**

**The 2013 amendment**, effective June 14, 2013, made all fertilizers subject to seizure and condemnation; in Subsections A, B, and C, deleted "commercial" before "fertilizer".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 80.

### **76-11-18. Violations.**

A. If it appears from the examination of a fertilizer or soil conditioner that any of the provisions of the New Mexico Fertilizer Act or the rules issued pursuant to that act have been violated, the department shall cause notice of the violations to be given to the registrant, distributor or possessor from whom the sample was taken; a person notified shall be given opportunity to be heard under the rules prescribed by the board. If it appears after the hearing, either in the presence or the absence of the person notified, that any of the provisions of the New Mexico Fertilizer Act or rules issued pursuant to

that act have been violated, the department may certify the facts to the proper district attorney.

B. A person convicted of violating any provision of the New Mexico Fertilizer Act or the rules issued pursuant to that act is guilty of a misdemeanor.

C. Nothing in the New Mexico Fertilizer Act shall require the department or its representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the New Mexico Fertilizer Act when it believes that the public interests will be best served by a suitable notice of warning in writing.

D. The department may apply for and the court may grant a temporary or permanent injunction restraining a person from violating or continuing to violate any of the provisions of the New Mexico Fertilizer Act or any rule promulgated pursuant to that act, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

**History:** 1953 Comp., § 45-13-28, enacted by Laws 1963, ch. 184, § 18; 1975, ch. 181, § 18; 2013, ch. 112, § 17.

## ANNOTATIONS

**Cross references.** — For injunctions, see Rule 1-066 NMRA.

**The 2013 amendment,** effective June 14, 2013, expanded the application of the act to all fertilizers; in Subsection A, in the first sentence, deleted "commercial" before "fertilizer"; and in Subsections A, B and D, deleted "regulations" and added "rules".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 80.

### **76-11-19. Exchanges between manufacturers.**

Nothing in the New Mexico Fertilizer Act shall be construed to restrict or avoid sales or exchanges of fertilizers or soil conditioners to each other by importers, manufacturers or manipulators that mix those materials for sale or as preventing the free and unrestricted shipments of fertilizer or soil conditioners to manufacturers or manipulators that have registered their brands as required by the provisions of the New Mexico Fertilizer Act.

**History:** 1953 Comp., § 45-13-29, enacted by Laws 1963, ch. 184, § 19; 1975, ch. 181, § 19; 2013, ch. 112, § 18.

## ANNOTATIONS

**The 2013 amendment,** effective June 14, 2013, permitted the exchange of all fertilizers; and, in two places, deleted "commercial" before "fertilizer".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 74.

## **76-11-20. Cooperation with other agencies.**

The department may cooperate with and enter into agreements with other state agencies, other states and agencies of the federal government to carry out the provisions of the New Mexico Fertilizer Act.

History: Laws 2013, ch. 112, § 20.

### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

## **ARTICLE 12 Cooperative Marketing Associations**

### **76-12-1. Short title.**

This act [76-12-1 through 76-12-23 NMSA 1978] may be cited as the "Cooperative Marketing Association Act".

**History:** Laws 1937, ch. 152, § 1; 1941 Comp., § 48-1301; 1953 Comp., § 45-14-1.

### **ANNOTATIONS**

**Cross references.** — For cooperative associations, see 53-4-1 NMSA 1978 et seq.

For exemption of certain warehousemen from law regulating warehousing of agricultural products, see 56-6-11 NMSA 1978.

**Compiler's notes.** — This act is deemed to supersede Laws 1925, ch. 99, and Laws 1915, ch. 64, relating to the incorporation of agricultural marketing associations. See *also*, Laws 1923, ch. 36, § 1.

While this act contains much of the substance of the Model Agricultural Cooperative Association Act, it is not considered as an adoption thereof.

**Modification of monopoly legislation.** — Cooperative Marketing Act (Laws 1915, ch. 64, superseded by Laws 1937, ch. 152), being later than the general antimonopoly statutes, was to be considered as modifying such general statutes, and legalizing organization, management and cooperation of agricultural, nonprofit cooperative associations, in light of trend of recent legislation and judicial construction in other

states, and enactment of 57-1-4 NMSA 1978. *See also*, 76-12-18 NMSA 1978. *Elephant Butte Alfalfa Ass'n v. Rouault*, 1926-NMSC-009, 33 N.M. 136, 262 P. 185.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 1 et seq.

Cooperative marketing of farm or dairy products by producer associations, 25 A.L.R. 1113, 33 A.L.R. 247, 47 A.L.R. 936, 77 A.L.R. 405, 98 A.L.R. 1406, 12 A.L.R.2d 130.

3 C.J.S. Agriculture §§ 138 to 158.

## **76-12-2. Declaration of policy.**

In order to promote, foster and encourage the intelligent handling, processing and orderly marketing of agricultural products and the organization and incorporation of cooperative marketing associations of agricultural producers, this act [76-12-1 through 76-12-23 NMSA 1978] is passed. It is the declared policy of this state that this act be liberally construed.

**History:** Laws 1937, ch. 152, § 2; 1941 Comp., § 48-1302; 1953 Comp., § 45-14-2.

## **76-12-3. Definitions.**

As used in this act [76-12-1 through 76-12-23 NMSA 1978], unless the context or subject matter requires otherwise:

A. the term, "agricultural products" shall include horticultural, viticultural, nut, dairy, livestock, poultry, bee and any other farm products;

B. the term "member" means in addition to those admitted to membership in an association without capital stock, holders of common stock in associations organized with capital stock;

C. the term "association" means any corporation organized under this act or any similar corporation organized under any general or special act of this or any other state as a cooperative association, for the mutual benefit of its members, as agricultural producers, in which the return on the stock or membership capital is limited to an amount not to exceed eight per centum (8%) per annum, and which during any fiscal year does not deal with nonmembers' products to an amount greater in value than members' products;

D. the term "person" shall include: individuals, partnerships, firms, corporations and associations;

E. associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profit for themselves as such, nor for their members, as such, but only for their members as producers or users of products purchased.

**History:** Laws 1937, ch. 152, § 3; 1941 Comp., § 48-1303; 1953 Comp., § 45-14-3.

### ANNOTATIONS

**Compiler's notes.** — For similar provisions in earlier acts, see Laws 1925, ch. 99, §§ 1 and 10, and Laws 1923, ch. 36, § 1.

**Agency relationship.** — Agreement between nonprofit agricultural cooperative marketing association and members thereof, making association sole marketing agency for members' onions and requiring association to gather, harvest and haul same at individual members' expense, created relationship of principal and agent; association was bargaining agent, not independent enterprise, and was not liable for losses due to delay in making sales, absent unreasonable exercise of discretion. *Santo Tomas Produce Ass'n v. Smith*, 1961-NMSC-080, 68 N.M. 436, 362 P.2d 977.

#### 76-12-4. Who may organize.

Five or more natural persons of full age, engaged in the production of agricultural products either as tenants or landlords, who are residents of this state or any other, or two or more cooperative associations, organized under the laws of this state or any other, may form a nonprofit cooperative association with or without capital stock, under the provisions of this act [76-12-1 through 76-12-23 NMSA 1978].

**History:** Laws 1937, ch. 152, § 4; 1941 Comp., § 48-1304; 1953 Comp., § 45-14-4.

### ANNOTATIONS

**Cross references.** — For age of majority, see 28-6-1 NMSA 1978.

**Compiler's notes.** — For similar provisions in earlier acts, see Laws 1925, ch. 99, § 2, Laws 1923, ch. 36, § 1 and Laws 1915, ch. 64, § 1.

#### 76-12-5. Purposes.

An association may be organized under this act [76-12-1 through 76-12-23 NMSA 1978] to engage in any activity in connection with the marketing or selling of agricultural products, or with the harvesting, preserving, drying, processing, blending, canning, packing, grading, storing, warehousing, handling, shipping or utilizing such products; or in connection with the manufacturing, marketing, selling or supplying of the byproducts thereof or the manufacturing, selling or supplying of machinery, equipment, feed, fertilizer, seeds, oil, gasoline or other supplies; or in the financing of any of the above-enumerated activities or in performing or furnishing business or educational services on

a cooperative basis for those engaged in agriculture as bona fide producers of agricultural products or in any one or more of the activities specified herein.

**History:** Laws 1937, ch. 152, § 5; 1941 Comp., § 48-1305; 1953 Comp., § 45-14-5.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 4.

3 C.J.S. Agriculture § 138.

### **76-12-6. Powers.**

Each association incorporated under this act [76-12-1 through 76-12-23 NMSA 1978] shall have the following powers:

A. to act as an agency for or subsidiary of or to assist cooperative associations formed under this act or similar acts in any one or more of the above-mentioned activities; to act as a holding corporation of the properties of such associations;

B. to make all necessary and proper contracts and agreements with any other association formed in this or any other state, or in connection with any other association in this or any other state to unite in employing and using, or separately to employ and use the same methods, means and agencies which may be used by another association for carrying on and conducting the respective businesses of such associations;

C. to act as the agent or representative of any member or members in any lawful activity;

D. to make loans or advances to members or producer patrons or to the members of an association which is itself a member; to accept any kind, form or type of obligation or security, therefore to purchase, endorse, discount or sell any note, draft, bill of exchange, debenture, bill of sale, mortgage or other obligations acquired by it, the proceeds of which have been advanced or used in the first instance for any of the purposes provided for herein; to discount for or purchase from any association, organized under the laws of any state with or without its endorsement, any note, draft, bill of exchange, debenture, bill of sale, mortgage or other obligation the proceeds of which are advanced or used in the first instance for carrying on any cooperative activity authorized under this act and to dispose of same with or without endorsement. An association organized under this act and exercising any of the powers provided in this paragraph shall not engage in the business of banking;

E. to establish and accumulate reserves including a permanent surplus fund as an addition to capital; to invest the reserves either directly or by means of subsidiary or

affiliated associations or other corporations in real estate or other property for carrying out the purpose of the association; or the reserves may be deposited or invested in such securities as the bylaws may provide;

F. to purchase or otherwise acquire, hold, own and exercise all rights of ownership in, and to sell, transfer, pledge or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of capital stock, bonds or other obligations of any corporation or association, engaged in any directly or indirectly related activity, or in the production, warehousing, handling or marketing of any of the products handled by the association;

G. to buy, hold and exercise all privileges of ownership over such real or personal property, as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto;

H. to borrow money from any source without limitation as to amount of corporate indebtedness or liability, with authority to give any form of obligation or security therefor;

I. to establish and secure, own and develop patents, trademarks and copyrights;

J. to deal in products, handle machinery, equipment or supplies or perform services for or on behalf of nonmembers to an amount not greater in value during any fiscal year than such as are dealt in, handled or performed by it for, or on behalf of its members during the same period;

K. to do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes, or the attainment of any one or more of the subjects herein enumerated, or conducive to or expedient for the interest or benefit of the association, and to contract accordingly; and in addition, to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized, or the activities in which it is engaged; and in addition [to exercise] any other rights, powers and privileges granted by the laws of this state to ordinary business corporations, except such as are inconsistent with the express provisions of this act; and to do any such thing anywhere.

**History:** Laws 1937, ch. 152, § 6; 1941 Comp., § 48-1306; 1953 Comp., § 45-14-6.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For provision authorizing creation of capital stock by mutual associations, see 53-2-5 NMSA 1978.

For Business Corporation Act, see 53-11-1 NMSA 1978.



**Compiler's notes.** — For similar provisions in earlier acts, see Laws 1925, ch. 99, §§ 6 and 15, Laws 1923, ch. 36, § 1 and Laws 1915, ch. 64, § 5.

**Agency relationship.** — Agreement between members and nonprofit agricultural cooperative marketing association making association sole marketing agency for members' onions and requiring association to gather, harvest and haul same at expense of individual members created relationship of principal and agent; association was bargaining agent, not independent enterprise, and was not liable for losses due to delay in making sales in absence of unreasonable exercise of discretion. *Santo Tomas Produce Ass'n v. Smith*, 1961-NMSC-080, 68 N.M. 436, 362 P.2d 977.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 30.

3 C.J.S. Agriculture § 145.

## **76-12-7. Articles of incorporation.**

The incorporators of an association to be formed under the Cooperative Marketing Association Act must prepare and file articles of incorporation setting forth:

- A. the name of the association, which may or may not include the word "cooperative";
- B. its purposes;
- C. its duration;
- D. its principal place of business in the state;
- E. the name and post office address of each of the incorporators;
- F. the names and addresses of those who are to serve as incorporating directors for the first term or until the election and qualifications of their successors;
- G. if organized without capital stock, whether the property rights and interests of each member are to be equal or unequal; if unequal, the general rule applicable to all members by which the property rights and interests respectively of each member shall be determined; and provision for the admission of new members who shall share in the property of the association in accordance with the general rule;
- H. if organized with capital stock, the amount of such stock and the number of shares into which the capital stock is to be divided, whether all or part of the capital stock shall have par value and, if so, the par value thereof; and if there is to be more than one class of stock created, a description of the different classes, the number of shares in each class, the relative rights, interests and preferences each class shall

represent and the dividends, which may be cumulative not exceeding eight percent per year, to which each share shall be entitled; and

I. in addition to the foregoing, the articles of incorporation may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock, or any provision relative to the way or manner in which it shall operate with respect to its members, officers or directors and any other provisions relating to its affairs.

The articles of incorporation must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of the state to take and certify acknowledgments of deeds and conveyances and shall be filed with the secretary of state. When filed, the articles of incorporation or certified copies thereof shall be received in all courts of the state as prima facie evidence of the facts contained therein and of the due incorporation of the association.

**History:** Laws 1937, ch. 152, § 7; 1941 Comp., § 48-1307; 1953 Comp., § 45-14-7; 2013, ch. 75, § 49.

## ANNOTATIONS

**The 2013 amendment**, effective July 1, 2013, required that the articles of incorporation of a marketing association be filed with the secretary of state; and in Subsection I, in the second unlettered paragraph, in the first sentence, after "filed with the", deleted "state corporation commission of this" and added "secretary of".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 14.

3 C.J.S. Agriculture §§ 140, 144.

### **76-12-8. Filing and recording articles of incorporation.**

The articles of incorporation shall be filed with the secretary of state, and a copy thereof, duly certified by the secretary of state shall be recorded in the office of the county clerk of the county where the principal office of the association is to be located in this state. For filing the articles of incorporation, an association shall pay to the secretary of state fifty dollars (\$50.00), together with the proportionate part of the annual license fee that may be due for the succeeding fraction of the fiscal year, and for filing an amendment to the articles, twenty-five dollars (\$25.00).

**History:** Laws 1937, ch. 152, § 8; 1941 Comp., § 48-1308; 1953 Comp., § 45-14-8; 1993, ch. 311, § 12; 1996, ch. 19, § 1; 2013, ch. 75, § 50.

## ANNOTATIONS

**Cross references.** — For annual license fee, see 76-12-20 NMSA 1978.

**The 2013 amendment**, effective July 1, 2013, required that the articles of incorporation of a cooperative marketing association be filed with the secretary of state; in the first sentence, after "filed with the", deleted "state corporation commission" and added "secretary of state" and after "certified by the", deleted "commission" and added "secretary of state"; and in the second sentence, after "shall pay to the", deleted "state corporation commission" and added "secretary of state".

**The 1996 amendment** substituted "that" for "which" in the second sentence and deleted the last sentence which read "For filing the certified copy of the articles of association with the county clerk, the association shall pay a fee of one dollar (\$1.00)". Laws 1996, ch. 19 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**The 1993 amendment**, effective July 1, 1993, substituted "fifty dollars (\$50.00)" for "one dollar (\$1.00)" and "twenty-five dollars (\$25.00)" for "one dollar (\$1.00)" in the second sentence, and made several minor stylistic changes.

**Recording fees.** — This section, setting filing fees but silent upon fees for recording articles of incorporation by county clerk, is not in conflict with 14-8-12 NMSA 1978, specifying recording fees. 1966 Op. Att'y Gen. No. 66-132 (rendered under prior law now repealed).

### **76-12-9. Amendments to articles of incorporation.**

The articles of incorporation may be altered or amended at any regular meeting or any special meeting called for that purpose. An amendment must first be approved by two-thirds of [the] directors, and then adopted by a vote representing two-thirds of all members present at such meeting. Amendments to the articles of incorporation when adopted shall be filed in the same manner as provided for the filing of the original articles.

**History:** Laws 1937, ch. 152, § 9; 1941 Comp., § 48-1309; 1953 Comp., § 45-14-9.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For filing of original articles, see 76-12-8 NMSA 1978.

For similar provision in earlier act, see Laws 1925, ch. 99, § 4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 13.

Benefits: validity and enforceability of bylaws amendment reducing benefits available to members, 61 A.L.R.3d 976.

3 C.J.S. Agriculture § 140.

## **76-12-10. Bylaws.**

Each association incorporated under this act [76-12-1 through 76-12-23 NMSA 1978] shall adopt bylaws consistent with this act, within thirty days after its incorporation. A majority of the members voting thereon is necessary to adopt such bylaws, or if the association permits its members to vote on the basis of patronage, a majority in numbers which is also a majority of the patronage. The bylaws shall provide for their amendment by the members and the method by which amendments may be adopted. The following matters among others may be covered in the bylaws:

- A. the time, place and manner of calling and conducting its meetings, which meetings, and the meetings of its directors, may be held either within or without the state;
- B. the number of members constituting a quorum;
- C. the right of members to vote except by proxy, at general or special meetings and by mail; and the conditions, manner, form and effects of such votes;
- D. the number of directors constituting a quorum;
- E. the number, qualifications, compensation, duties and term of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;
- F. penalties for violations of bylaws;
- G. the amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used;
- H. the amount which each member shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members which every member may be required to sign;
- I. the number, qualification and voting rights of members of the association and the conditions precedent to membership; the method, time and manner of permitting members to withdraw or to transfer their stock; the manner of assignment and transfer

of the interest of members; the mode, manner and effect of the expulsion of a member; the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or upon the expulsion of a member or forfeiture of his membership.

**History:** Laws 1937, ch. 152, § 10; 1941 Comp., § 48-1310; 1953 Comp., § 45-14-10.

## ANNOTATIONS

**Compiler's notes.** — For similar provisions in earlier acts, see Laws 1925, ch. 99, §§ 6 and 11 and Laws 1915, ch. 64, § 4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 14.

Liability of member or former member of marketing or purchasing cooperative for its debts or losses, 96 A.L.R.3d 1243.

3 C.J.S. Agriculture § 140.

### **76-12-11. Members.**

A. Under the terms and conditions prescribed in the bylaws adopted by it, an association may admit as members, or issue common stock to only cooperative associations and/or persons engaged in the production of agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent all or part of the crop raised on the leased premises. An association organized hereunder may become a member or stockholder of any other cooperative association organized in this or any other state.

B. A member shall lose his membership and voting rights if he ceases to belong to the class of persons eligible for membership under this section, but he shall remain subject to any liability already incurred by him as a member of the association and shall be entitled to receive from the association within three years after his ceasing to be a member the value of his membership interest in the association subject to the conclusive appraisal by the board of directors. If the association shall approve the member's designation of a transferee of his membership interest the association shall be under no obligation to pay the transferrer [transferor] the value of this interest.

C. Except for debts lawfully contracted between him and the association no member shall be liable for the debts of the association to any amount exceeding the sum remaining unpaid on his subscription to membership.

D. Under the provisions of its bylaws an association may provide that no members shall have more than one vote, or it may provide that members may vote according to

actual patronage. However, in no case shall a member be allowed to have more than five (5) votes, and a member shall not be allowed more than one vote because of the amount of stock or membership capital he may own.

**History:** Laws 1937, ch. 152, § 11; 1941 Comp., § 48-1311; 1953 Comp., § 45-14-11.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — For similar provisions in earlier acts, see Laws 1925, ch. 99, § 8 (as amended by Laws 1931, ch. 27, § 1) and § 9, Laws 1923, ch. 36, § 1 and Laws 1915, ch. 64, § 2.

**Intent of legislature in establishing required reserve** in Section 76-12-12C NMSA 1978 was to assure protection of the association's creditors by establishing an adequate reserve fund and to establish a means for maintaining capital in the association. 1963-64 Op. Att'y Gen. No. 63-149.

**Only common stock to be included in reserve fund requirement.** — Because, in a stock association, the holders of common stock are the members of the association, but the preferred stockholders are not members and do not have a voice in the control of the corporation, the intention of the legislature was to include only common stock in the reserve fund requirement of Section 76-12-12C NMSA 1978 for stock associations. 1963-64 Op. Att'y Gen. No. 63-149.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations §§ 14, 21.

Legality of combination among farmers, 25 A.L.R. 1113, 33 A.L.R. 247, 47 A.L.R. 936, 77 A.L.R. 405, 98 A.L.R. 1406, 12 A.L.R.2d 130.

Benefits: validity and enforceability of by-law amendment reducing benefits available to members, 61 A.L.R.3d 976.

Membership: competency of juror as affected by his membership in cooperative association interested in the case, 69 A.L.R.3d 1296.

Liability of member or former member of marketing or purchasing cooperative for its debts or losses, 96 A.L.R.3d 1243.

3 C.J.S. Agriculture §§ 141, 142.

**76-12-12. Issuance of membership certificates and stock.**

A. When a member of an association has paid his membership fee or stock subscription in full he shall receive, as the case may be, a certificate of membership or a stock certificate.

B. No association shall issue membership certificates or stock until they have been fully paid for, but an association in its bylaws may admit a member and allow him to vote and hold office as soon as twenty per centum (20%) of his membership fee or his stock certificate has been paid.

C. An association shall limit the interest it pays on membership capital or stock to an amount not greater than eight percent (8%) per annum. Such apportionment shall not be made until not less than ten (10%) percent of any undistributed balance accruing since the last apportionment, has been set aside in a surplus or reserve fund unless such surplus or reserve fund equal [equals] at least one hundred (100%) percent of the paid up membership fees or capital stock.

D. Undistributed balances from any source, in excess of additions to reserves and surplus, shall be distributed on the basis of patronage, that is according to the amount or value, as the association may decide, of the products sold to or through, and/or purchased from or through, the association by its patrons. The distribution of such balances may be restricted to members or be made at the same or a different rate for members and nonmembers. The bylaws may provide that any distribution to a nonmember, eligible for membership may be credited to such nonmember until the amount thereof equals the value of a membership certificate or a share of the association's common stock. Such a distribution credited to the account of a nonmember shall revert to the reserve fund to be used for educational purposes if, after two years, the amount is less than the value of a membership certificate or a share of common stock, or in case said person does not accept and exercise his membership privileges.

E. Ownership of common stock and/or membership certificates may be transferred by a member only to other associations or to persons engaged in the production of agricultural products, and who are eligible to hold same. Such transfer must be approved by the board of directors before it is binding on the association.

F. An association may issue and sell preferred stock to members or nonmembers. Preferred stock may be redeemable or retireable by the association on such terms and conditions as may be provided by the bylaws and printed on the stock certificate. Preferred stockholders shall not be entitled to vote. Whenever an association organized hereunder with preferred stock shall purchase the stock or any interest in any property of any person it may discharge the obligation so incurred wholly or in part by exchanging for the acquired interest shares of its preferred stock to an amount which would equal the fair market value of the stock or interest so purchased as determined by the board of directors.

**History:** Laws 1937, ch. 152, § 12; 1941 Comp., § 48-1312; 1953 Comp., § 45-14-12.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Intent of legislature in establishing required reserve** in Subsection C was to assure protection of the association's creditors by establishing an adequate reserve fund and to establish a means for maintaining capital in the association. 1963-64 Op. Att'y Gen. No. 63-149.

**Only common stock to be included in reserve fund requirement.** — Because, in a stock association, the holders of common stock are the members of the association, but the preferred stockholders are not members and do not have a voice in the control of the corporation, the intention of the legislature was to include only common stock in the reserve fund requirement of Subsection C for stock associations. 1963-64 Op. Att'y Gen. No. 63-149.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 22.

3 C.J.S. Agriculture § 142.

### **76-12-13. General and special meeting; how called.**

One or more regular meetings shall be held annually in such places, as the bylaws may stipulate. The board of directors shall have the right to call a special meeting at any time; and ten (10%) percent of the members may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting, or if provided by the bylaws, all notices may be given by publication in a house organ of general circulation among the members.

**History:** Laws 1937, ch. 152, § 13; 1941 Comp., § 48-1313; 1953 Comp., § 45-14-13.

## ANNOTATIONS

**Compiler's notes.** — For similar provision in earlier act, see Laws 1925, ch. 99, § 12.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 142.

### **76-12-14. Directors; election.**

The affairs of the association shall be managed by a board of not less than five or [nor] more than twenty-one directors to be elected by the members with such qualifications as may be provided for in the articles of incorporation or bylaws. All of the



directors shall be members of the association or officers, directors or members of member associations.

When a vacancy on the board of directors occurs other than by expiration of term or removal, the remaining members of the board, shall fill the vacancy either by a majority vote of the board, or by calling a special election of the members in the district affected.

There shall be no personal liability to a director or member of an association in his official action or omission except for wilful negligence or malfeasance in office.

**History:** Laws 1937, ch. 152, § 14; 1941 Comp., § 48-1314; 1953 Comp., § 45-14-14.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — For similar provision in earlier act, see Laws 1925, ch. 99, § 7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 18.

3 C.J.S. Agriculture § 144.

### 76-12-15. Officers.

The officers of every such association shall be a president, one or more vice presidents, a secretary and a treasurer and such other officers as may be authorized in the bylaws. The president and at least one of the vice presidents must be members and directors of the association. The office of secretary and treasurer may be combined. The treasurer may be other than a member of the association and as such shall not be considered as an officer, but as a function [functionary] of the board of directors. Officers shall be elected by the directors in the manner and for such terms as the bylaws provide.

**History:** Laws 1937, ch. 152, § 15; 1941 Comp., § 48-1315; 1953 Comp., § 45-14-15.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 18.

3 C.J.S. Agriculture § 143.

## **76-12-16. Contracts between associations and members.**

A. Members may be required to execute contracts as a condition of admission to the association, whereby the members agree to patronize the facilities created by the associations, to sell all or a specified part of their products to or through, or to buy all or a specified part of their supplies from or through, the association or any facilities created by it. If the members in the association contract a sale to or through the association the fact that for certain purposes the relation between the association and its members may be one of agency shall not prevent the passage from the member to the association of absolute and exclusive title to the products which are the subject matter of the contract. Such title shall pass to the association upon delivery of the product or at any other specified time which may be expressly and distinctly agreed upon in the contract subject to previously existing liens. In the case of contracts with members who are natural persons, if the period of the contract exceeds three years, the contracts executed thereunder shall specify a reasonable period in each year during which the member by giving to the association such reasonable notice as may be prescribed in the contract may withdraw and be released from his obligations, subject to liability already incurred by him as a member of the association. In the absence of a provision for notice of withdrawal in the contract a member who is a natural person may withdraw at any time after three years subject to liabilities already incurred.

B. The contract may fix, as liquidated damages, which shall not be regarded as penalties, specific sums to be paid by the member to the association upon the breach of any provision of the contract regarding the use of any facilities of the association or the sale or delivery or withholding of products and may further provide that the member who breaks his contract shall pay all costs, premiums for bonds, expenses and fees, in case any action is brought upon the contract by the association.

C. In the event of any breach or threatened breach of such a contract by a member, the association shall be entitled to an injunction to prevent the breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

D. The association may cause the original of a contract or an authenticated copy thereof to be filed in the office of the county clerk of the county in which the products described in the contract, or any part thereof, are or will at some future time be situated. Such contracts shall describe the property or services affected, the manner in which they are affected and the time for which they are affected and shall state the names and residences of the parties to the contract.

The filing of a contract in conformity to the provisions of this section shall operate as notice thereof to all subsequent purchasers and incumbrancers of so much of said property as is at the time mentioned in the contract located in the county or counties wherein such contract or authenticated copy thereof is filed; provided that when

property subject to such a contract is moved into this state, or from one county to another, any previous filing of the contract shall not operate as notice as against subsequent creditors, purchasers, mortgagees or encumbrancers for a longer period than one hundred twenty days after such removal, but such contract must be refiled in the county to which the chattel is removed and in which it is permanently located. The fees for filing such contracts shall be twenty-five cents (25¢) for each contract.

E. Whenever such contract shall have terminated, the association shall on demand give to the member a certificate to that effect, which may be filed with the county clerk. The county clerk shall be entitled to the same filing fees under this subsection as in the case of chattel mortgages.

**History:** Laws 1937, ch. 152, § 16; 1941 Comp., § 48-1316; 1953 Comp., § 45-14-16.

## ANNOTATIONS

**Cross references.** — For injunctions, see Rule 1-066 NMRA.

**Compiler's notes.** — For similar provisions in earlier act, see Laws 1925, ch. 99, §§ 13, 20 and 21.

**Contract enforceable.** — Cooperative marketing association without capital stock and operated for mutually beneficial purpose could enforce performance of grower's contract to sell alfalfa to it exclusively, in suit for specific performance or for injunction against contract breach; rule that contract for delivery of ordinary article of commerce would not be compelled by specific performance was not applicable, as action for damages would not afford adequate remedy. *Elephant Butte Alfalfa Ass'n v. Rouault*, 1926-NMSC-009, 33 N.M. 136, 262 P. 185.

Right of cooperative marketing association to compel specific performance of member's contract to sell alfalfa to it exclusively would not be denied on grounds that it would require constant court supervision for long period of time and possibly involve pursuit of member from place to place; such rule was one of decision, and not limitation on jurisdiction of court of equity. *Elephant Butte Alfalfa Ass'n v. Rouault*, 1926-NMSC-009, 33 N.M. 136, 262 P. 185.

**Association not liable for losses.** — Agreement between members and nonprofit agricultural cooperative marketing association, making association sole marketing agency for members' onions and requiring association to gather, harvest and haul same at expense of individual members, created relationship of principal and agent; association was bargaining agent, not independent enterprise, did not take title to onion crop and was not liable for losses due to delay in making sales absent unreasonable exercise of discretion. *Santo Tomas Produce Ass'n v. Smith*, 1961-NMSC-080, 68 N.M. 436, 362 P.2d 977.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 14.

Validity and construction of provision for liquidated damages in contract with cooperative marketing association, 12 A.L.R.2d 130.

3 C.J.S. Agriculture § 145.

### **76-12-17. Associations heretofore organized may adopt the provisions of this act.**

Any association organized under previously existing statutes may elect, by vote of its members as provided in its articles of incorporation and bylaws of [for] the amendment of its articles of incorporation and bylaws to be brought under the provisions of this act [76-12-1 through 76-12-23 NMSA 1978] by complying with the restrictions provided herein. A statement signed and sworn to by its directors to the effect that the corporation or association has decided to adopt the benefits and be bound by the provisions of this act and has duly authorized all changes accordingly shall be filed as required for the filing of an amendment to the articles of incorporation. The same fee shall be paid for such filing as for the filing of an amendment to the articles of incorporation.

**History:** Laws 1937, ch. 152, § 17; 1941 Comp., § 48-1317; 1953 Comp., § 45-14-17.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For amendment of articles of incorporation, see 76-12-9 NMSA 1978.

For similar provision in earlier act, see Laws 1925, ch. 99, § 19.

### **76-12-18. Associations are not in restraint of trade.**

A. Any association organized hereunder and complying with the terms hereof shall be deemed not to be a conspiracy nor a combination in restraint of trade nor an illegal monopoly; nor an attempt to lessen competition or to fix prices arbitrarily or to create a combination or pool in violation of any law of this state; and the contracts and agreements between the association and its members and any agreements authorized in this act [76-12-1 through 76-12-23 NMSA 1978] shall be considered not to be illegal nor in restraint of trade nor a part of conspiracy or combination to accomplish an improper or illegal purpose nor contrary to the provisions of any statute enacted against pooling or combinations.

B. An association organized hereunder may acquire, exchange, interpret and disseminate to its members, to other cooperative associations and otherwise, past, present and prospective, crop, market, statistical, economic and other similar information either directly or through an agent created or selected by it or by other associations acting in conjunction with it.

C. An association organized hereunder may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities with due account of the prospective volume of consumption, selling prices and existing or potential surpluses to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure supplies without undue enhancement of prices or the accumulation of undue surpluses.

**History:** Laws 1937, ch. 152, § 18; 1941 Comp., § 48-1318; 1953 Comp., § 45-14-18.

### ANNOTATIONS

**Cross references.** — For provision exempting nonprofit mutual help agricultural or horticultural organizations without capital stock from laws against monopolies or combinations in restraint of trade, see 57-1-4 NMSA 1978.

**Compiler's notes.** — For similar provision in earlier act, see Laws 1923, ch. 36, § 1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 11.

Legality of combination among farmers, 25 A.L.R. 1113, 33 A.L.R. 247, 47 A.L.R. 936, 77 A.L.R. 405, 98 A.L.R. 1406, 12 A.L.R.2d 130.

### 76-12-19. Quo warranto to test validity of incorporation.

The right of an association claiming to be organized and incorporated and carrying on its business under this act [76-12-1 through 76-12-23 NMSA 1978] to do and to continue its business, may be inquired into by quo warranto.

**History:** Laws 1937, ch. 152, § 19; 1941 Comp., § 48-1319; 1953 Comp., § 45-14-19.

### ANNOTATIONS

**Cross references.** — For quo warranto, see 44-3-1 NMSA 1978.

**Compiler's notes.** — For similar provision in earlier act, see Laws 1915, ch. 64, § 6.

### 76-12-20. Taxation.

It is the duty of every association organized pursuant to provisions of the Cooperative Marketing Association Act and foreign associations admitted to do business in this state under that act to procure annually from the secretary of state a license authorizing the transaction of business in the state. Each domestic or foreign corporation shall pay annually a license fee of twenty-five dollars (\$25.00) to the secretary of state before receiving such license.

**History:** Laws 1937, ch. 152, § 20; 1941 Comp., § 48-1320; 1953 Comp., § 45-14-20; 1993, ch. 311, § 13; 2013, ch. 75, § 51.

### **ANNOTATIONS**

**The 2013 amendment**, effective July 1, 2013, required that associations acquire an annual permit from the secretary of state; after "procure annually from the", deleted "state corporation commission" and added "secretary of state" and after "twenty-five dollars (\$25.00) to the", deleted "state corporation commission" and added "secretary of state".

**The 1993 amendment**, effective July 1, 1993, substituted "the Cooperative Marketing Association" for "this" in the first sentence and "twenty-five dollars (\$25.00)" for "ten dollars (\$10.00)" in the second sentence, made several stylistic changes, and deleted the following language which formerly followed "license" at the end of the section: "except that when the gross sales of the association on business done within the state shall be less than twenty thousand dollars (\$20,000.000) per year, the license to be paid shall be five dollars (\$5.00)".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 12; 51 Am. Jur. 2d Licenses and Permits § 42.

### **76-12-21. Application of general corporation laws.**

The provisions of the general business corporation laws of this state and all powers and rights thereunder shall apply to the associations organized hereunder, except where such provisions are inconsistent with the express provisions of this act [76-12-1 through 76-12-23 NMSA 1978].

**History:** Laws 1937, ch. 152, § 21; 1941 Comp., § 48-1321; 1953 Comp., § 45-14-21.

### **ANNOTATIONS**

**Cross references.** — For Business Corporation Act, see Chapter 53, Articles 11 to 18 NMSA 1978 NMSA 1978.

**Compiler's notes.** — For similar provision in earlier act, see Laws 1925, ch. 99, § 17.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Cooperative Associations § 12.

### **76-12-22. Repeal; saving's [saving] clause.**

Chapter 66, Session Laws of 1927, (being Sections 31-201 to 31-214, inclusive, New Mexico Statutes Annotated, 1929 Compilation), is repealed. Provided, however, that this act [76-12-1 through 76-12-23 NMSA 1978], and such repeal, shall not in any way affect or limit any marketing association heretofore organized under the provisions of said laws, and that such association may elect to adopt the provisions of this act as provided in Section 17 [76-12-17 NMSA 1978] hereof.

**History:** Laws 1937, ch. 152, § 22; 1941 Comp., § 48-1322; 1953 Comp., § 45-14-22.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1927, ch. 66, referred to in this section, relates to marketing agreement crop liens involving cooperative marketing agricultural and horticultural associations created under Laws 1925, ch. 99, or similar associations.

### **76-12-23. Interpretation.**

Each and all the rights and remedies hereby given shall be construed as in addition to those already existing.

**History:** Laws 1937, ch. 152, § 24; 1941 Comp., § 48-1323; 1953 Comp., § 45-14-23.

#### **ANNOTATIONS**

**Severability.** — Laws 1937, ch. 152, § 23, provided for the severability of the act if any part thereof is held to be unconstitutional.

## **ARTICLE 13**

### **Processors of Agricultural Products**

(Repealed by Laws 2001, ch. 76, § 1.)

### **76-13-1 to 76-13-9. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 76, § 1 repealed 76-13-1 to 76-13-9 NMSA 1978, as enacted by Laws 1927, ch. 101, §§ 1 to 9, relating to processors of agricultural products, effective July 1, 2001. For provisions of former sections, see the 2000 NMSA 1978 on *NMONESOURCE.COM*.

## **ARTICLE 14**

### **Cotton Ginning and Handling**

(Repealed by Laws 2001, ch. 76, § 1.)

**76-14-1 to 76-14-15. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 76, § 1, repealed 76-14-1 to 76-14-15 NMSA 1978, enacted by Laws 1927, ch. 164, §§ 1 to 5, Laws 1957, ch. 136, §§ 1 to 7 and 9, and Laws 1977, ch. 116, §§ 1 and 2, relating to cotton ginning and handling, effective July 1, 2001. For provisions of former sections, see the 2000 NMSA 1978 on *NMONESOURCE.COM*.

## **ARTICLE 15**

### **Fruit and Vegetable Standards**

**76-15-1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 207, § 1 repealed 76-15-1 NMSA 1978, as enacted by Laws 1949, ch. 106, § 1, relating to the purpose of the act, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

**76-15-2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 207, § 1 repealed 76-15-2 NMSA 1978, as enacted by Laws 1949, ch. 106, § 2, relating to application of the act, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

**76-15-3. Repealed.**

#### **ANNOTATIONS**



**Repeals.** — Laws 2013, ch. 207, § 1 repealed 76-15-3 NMSA 1978, as enacted by Laws 1949, ch. 106, § 3, relating to definitions of terms, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

#### **76-15-4. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 207, § 1 repealed 76-15-4 NMSA 1978, as enacted by Laws 1949, ch. 106, § 4, relating to duties of the director, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

#### **76-15-5. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 207, § 1 repealed 76-15-5 NMSA 1978, as enacted by Laws 1949, ch. 106, § 5, relating to organization of districts, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

#### **76-15-6. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 207, § 1 repealed 76-15-6 NMSA 1978, as enacted by Laws 1949, ch. 106, § 6, relating to budgeting and collection of fees, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

#### **76-15-7. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 207, § 1 repealed 76-15-7 NMSA 1978, as enacted by Laws 1949, ch. 106, § 7, relating to compliance, violations and penalties, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

#### **76-15-8. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 207, § 1 repealed 76-15-8 NMSA 1978, as enacted by Laws 1949, ch. 106, § 8, relating to assessments and collections, effective June 14,

2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

## **76-15-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 207, § 1 repealed 76-15-9 NMSA 1978, as enacted by Laws 1949, ch. 106, § 9, relating to boards of control, boards of directors and limitation on responsibility, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

## **76-15-10. Exclusions and exemptions.**

The Produce Marketing Act [76-15-10 through 76-15-21 NMSA 1978] shall not apply to any New Mexico grower growing and selling produce of his own production.

**History:** 1953 Comp., § 45-17-33, enacted by Laws 1963, ch. 82, § 1.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 23.

36A C.J.S. Food § 10.

## **76-15-11. Short title.**

This act [76-15-10 through 76-15-21 NMSA 1978] may be cited as the "Produce Marketing Act".

**History:** 1953 Comp., § 45-17-34, enacted by Laws 1963, ch. 82, § 2.

## **76-15-12. Purpose of act.**

The purpose of the Produce Marketing Act [76-15-10 through 76-15-21 NMSA 1978] is to promote the development of the produce industry in New Mexico, to prevent fraud and deception in the receiving, packing, marketing, shipping, consignment, sale and accounting of sales of produce, to establish quality standards for produce and to provide for proper licensing and bonding of brokers, packers and wholesalers covered by the Produce Marketing Act.

**History:** 1953 Comp., § 45-17-35, enacted by Laws 1963, ch. 82, § 3.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of statutes relating to grading, packing or branding of farm products, 73 A.L.R. 1445.

36A C.J.S. Food § 3.

### **76-15-13. Definitions.**

As used in the Produce Marketing Act [76-15-10 through 76-15-21 NMSA 1978]:

A. "produce" means the food product from any vine, tree or plant which produces fruits, vegetables or nuts for human consumption;

B. "board" means the board of regents of the New Mexico state university;

C. "broker" means a commission merchant or any other person engaged in the business of receiving any produce for sale, on commission or for or on behalf of another;

D. "packer" means any person engaged in the business of grading, packing, cooling or storing of any produce other than his own production;

E. "grower" means any person engaged in the growing of any produce crop;

F. "person" means individuals, partnerships, corporations and grower cooperative associations or any other legal entities;

G. "dealer" means any person engaged in the business of buying any produce from the grower for processing or resale; and

H. "cash buyer" means any person who acquires possession or control of produce and pays in full at the time of the acquisition in lawful money of the United States or by certified or cashier's check or by post office money order.

**History:** 1953 Comp., § 45-17-36, enacted by Laws 1963, ch. 82, § 4; 1981, ch. 283, § 1; 1987, ch. 312, § 1.

### **76-15-14. Application; license; bonds.**

Except for a cash buyer, no person shall act as a dealer, broker or packer without first obtaining a license from the board. The board may grant licenses in proper cases upon written application accompanied by the appropriate fee and surety bond. The application shall be on a form prescribed and provided by the board, and shall require information concerning the identity of the owners and officers of the firm to be licensed, and any other information the board deems necessary. The surety bond shall be approved as to form by the attorney general and shall be conditioned on the conduct of the business of the person bonded in compliance with the Produce Marketing Act [76-

15-10 through 76-15-21 NMSA 1978], and honestly and without fraud. The bond shall run to the state of New Mexico for the payment of all inspection fees, and for the benefit of any person or persons injured by the dishonesty, fraud or noncompliance with the Produce Marketing Act or any regulation of the board.

**History:** 1953 Comp., § 45-17-37, enacted by Laws 1963, ch. 82, § 5; 1981, ch. 283, § 2.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Food § 12.

36A C.J.S. Food § 12.

### 76-15-15. License fees; bonds.

The fees and bonds required under the Produce Marketing Act [76-15-10 through 76-15-21 NMSA 1978] shall be established by the department of agriculture in an amount not to exceed:

	License Fee	Bond
Broker	\$100	\$100,000
Packer	\$50.00	\$50,000
Dealer	\$50.00	\$50,000

**History:** 1953 Comp., § 45-17-38, enacted by Laws 1963, ch. 82, § 6; 1981, ch. 283, § 3.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Food § 12.

36A C.J.S. Food § 12.

### 76-15-16. Records and accounts.

All persons licensed under the Produce Marketing Act [76-15-10 through 76-15-21 NMSA 1978] shall keep complete and accurate records showing all produce handled by them, the ownership of the produce, date and place of any shipments. Packers will give growers the weight or count by box or bag of any produce packed for the grower. Brokers are required to give growers a record of the shipments upon completion of shipping.

**History:** 1953 Comp., § 45-17-39, enacted by Laws 1963, ch. 82, § 7.

## **76-15-17. Board regulations.**

The board is authorized to:

- A. establish, after proper hearing, reasonable rules and regulations on containers, packaging and labeling;
- B. establish regulations on acquiring information about brokers, [and] packers, relative to the officers, or officials in the company; and
- C. establish any other rules or regulations the board may deem necessary.

**History:** 1953 Comp., § 45-17-40, enacted by Laws 1963, ch. 82, § 8.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Food § 5.

3 C.J.S. Agriculture § 6; 36A C.J.S. Food § 19.

## **76-15-18. Voluntary certification; fees.**

Any grower, or broker, desiring federal-state inspection certificates on loads or lots of fruits or vegetables may request inspection and certification and receive such inspection and certification upon payment of fees set by board regulation to cover the cost of inspection fees and issuance of the certificates.

**History:** 1953 Comp., § 45-17-41, enacted by Laws 1963, ch. 82, § 9.

## **76-15-19. Penalties.**

Any person violating any provision of the Produce Marketing Act [76-15-10 through 76-15-21 NMSA 1978] or any rule or regulation promulgated by the board is guilty of a misdemeanor and upon conviction shall be fined not more than three hundred dollars (\$300) or imprisoned for not more than ninety days, or both. Conviction of a misdemeanor under the Produce Marketing Act is grounds for revocation of license.

**History:** 1953 Comp., § 45-17-42, enacted by Laws 1963, ch. 82, § 10.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Food § 64.

36A C.J.S. Food §§ 30 to 38.

### **76-15-20. Injunction.**

In addition to any other remedy under law, the board may apply to the district court for an injunction, and in proper case the district court may issue a temporary or permanent injunction or both, restraining any person from violating or continuing to violate any of the provisions of the Produce Marketing Act [76-15-10 through 76-15-21 NMSA 1978] or any regulation promulgated by the board. In issuing an injunction on the application of the board, the court shall require no bond.

**History:** 1953 Comp., § 45-17-43, enacted by Laws 1963, ch. 82, § 11.

#### **ANNOTATIONS**

**Cross references.** — For injunctions, see Rule 1-066 NMRA.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 36A C.J.S. Food § 29.

### **76-15-21. Individual action on bond.**

In the absence of written agreement between the parties, setting a shorter time, no action by an owner or grower for payment from any broker or other person for any load or lot of produce shall be commenced prior to sixty days from the time of shipment. After sixty days from the date of shipment such action can be maintained against the broker and his bond unless the broker has ample justification to show why the payments have not been made.

**History:** 1953 Comp., § 45-17-44, enacted by Laws 1963, ch. 82, § 12.

### **76-15-22. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 207, § 1 repealed 76-15-22 NMSA 1978, as enacted by Laws 1963, ch. 82, § 13, relating to relationship to other laws, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

## **ARTICLE 16**

### **Pecans**

#### **76-16-1. [Definitions.]**

In this act [76-16-1 through 76-16-9 NMSA 1978], unless the context otherwise requires:

"container" means any sack, box, barrel, carton or other receptacle used for packing, shipping or selling unshelled pecans;

"subcontainer" means any container when being used within another container;

"pack" and "packed" means the regular placing or arrangement of all or parts of the unshelled pecans in any container or subcontainer;

"deceptive pack" means any container or subcontainer which has in the outer layer or any exposed surface, unshelled pecans which are in quality, size, condition or in any other respect so superior to those in the interior of the container or subcontainer, or the unexposed portion, as to materially misrepresent the contents; such pack is deceptive even though the pecans in the container are virtually uniform in size, when the outer or exposed surface is composed of pecans whose size is not an accurate representation of the variation of size of the pecans in the entire container;

"mislabel" means the placing or presence of any false or misleading statement, design or device, upon any container, or upon the label or lining of any such container or subcontainer containing unshelled pecans, or upon any placard used in connection therewith and having reference to such pecans; a statement, design or device is false or misleading, when the pecans, or container to which it apparently or actually refers, does not conform in every respect to such statement;

"bulk lot" or "bulk load" of any unshelled pecans, means any group of specimens of the same which are not in a container and which is set apart or is separate from any other group or groups;

"placard" means any sign, label or designation other than an oral designation used in connection with any unshelled pecans as a description or identification thereof;

"deceptive arrangement" or "deceptive display" of unshelled pecans means bulk load or lot, arrangement or display thereof which has in the exposed surface unshelled pecans which are so superior in quality, size [or] condition, or in any other respect so superior to those which are concealed, or the unexposed portion, as to materially misrepresent any part of the bulk load or lot;

"mature," except when otherwise specifically defined, means having reached that stage of ripeness which will insure the proper completion of the ripening process after the removal of the product from the tree on which it grew;

"well cured" means that the kernel separates freely from the shell and from the corky partitions inside the shell, and the kernel is not tough or leathery;

"free from rancidity" means that the kernel is not noticeably rancid to the taste;

"free from molds" means that there is no mold on or inside the kernel;

"free from worm injury" means that there are no worms, web or frass inside the shell;

"free from decay" means that the kernel is not putrid or decomposed;

"excessive shriveling" means any combination of shriveling and lack of development which leaves the meat of the nut decidedly shrunken and unpalatable;

"unshelled pecans" means the food product of the pecan tree when the kernel or edible portion has not been separated from the shell;

"germinated kernels" means that the kernels have commenced to grow or develop into a plant or have started to sprout from the shell.

**History:** Laws 1939, ch. 215, § 1; 1941 Comp., § 48-1901; 1953 Comp., § 45-18-1.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For enforcement of statutes relating to agriculture and horticulture by regents of New Mexico state university, see 21-8-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of statutes relating to grading, packing or branding of farm products, 73 A.L.R. 1445.

#### **76-16-2. Declaration.**

The purpose of this act [76-16-1 through 76-16-9 NMSA 1978] is to promote the development of the New Mexico pecan industry; to prevent deception in the packing, marking, shipping or sale of unshelled pecans which are packed, marketed, sold or shipped from this state to other states, or imported from other states into this state, or which are sold in this state in packages or bulk, and to set up and establish standards therefor, and protect from disease and injurious insects the pecan orchards of the state.

**History:** Laws 1939, ch. 215, § 2; 1941 Comp., § 48-1902; 1953 Comp., § 45-18-2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 36A C.J.S. Food § 9.



### **76-16-3. [Enforcement; rules and regulations; effect; agents and employees; payment.]**

The regents of the college of agriculture and mechanic arts of the state of New Mexico [New Mexico state university], are charged with the enforcement of this act [76-16-1 through 76-16-9 NMSA 1978], and such regents are authorized and empowered to promulgate, publish and enforce such reasonable rules and regulations not in conflict herewith, as they may deem necessary to carry out the provisions of this act, and such rules and regulations shall have the force and effect of law and [the regents] shall appoint such agents and employees and fix the salary thereof as may be necessary for the enforcement hereof, and such salaries and expenses of such agents and employees in connection with the enforcement of this act, shall be a proper charge against the appropriations for the college of agriculture and mechanic arts [New Mexico state university].

**History:** Laws 1939, ch. 215, § 3; 1941 Comp., § 48-1903; 1953 Comp., § 45-18-3.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The name of the New Mexico college of agriculture and mechanic arts was changed to New Mexico state university by N.M. Const., art. XII, § 11, repealed and reenacted November 8, 1960.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Food § 5.

36A C.J.S. Food § 4.

### **76-16-4. [Inspection and police powers.]**

Such regents, their agents and employees shall have power to enter and inspect every place or vehicle within the state where pecans are produced, received, packed, delivered, loaded, shipped, offered for sale or sold, whether for intrastate or interstate shipment, and to inspect such places and all unshelled pecans and containers of unshelled pecans therein. Each such agent and employee, shall have the same powers with respect to the performance of the duties imposed by this act [76-16-1 through 76-16-9 NMSA 1978] as are possessed by peace officers, and shall have the right, while exercising such police powers, to seize or hold as evidence such part of any pack, load, lot, consignment or shipment of unshelled pecans packed, delivered for shipment, loaded, shipped or being transported, offered for sale or sold, in violation of this act, as may in his judgment be necessary to secure the conviction of any person whom he knows, or has good reason to believe, is violating any of the provisions thereof.

**History:** Laws 1939, ch. 215, § 4; 1941 Comp., § 48-1904; 1953 Comp., § 45-18-4.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Food § 13.

36A C.J.S. Food § 12.

### **76-16-5. Standard for unshelled pecans.**

A. Unshelled pecans shall be free from blanks and from damage such as germinated kernels, and free from foreign materials. The kernels of unshelled pecans must be mature, well cured, free from rancidity, molds, worm injury and excessive shriveling, so that the meat is [not] leathery, tough, unpalatable or decidedly shrunken and must equal not less than forty-five percent of the total weight of kernel and shell. Not more than ten percent by count of the unshelled pecans in any one container or bulk lot may be below these requirements. Pecans showing the presence of insect pests shall not be tolerated.

B. All containers of unshelled pecans shall bear upon them in plain sight and in plain letters, not less than one and one-half inches in height on the outside thereof, the name of the state or of the foreign country where the pecans were produced.

**History:** Laws 1939, ch. 215, § 5; 1941 Comp., § 48-1905; 1953 Comp., § 45-18-5.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **76-16-6. Pecans not in conformity with act.**

A. It shall be unlawful to pack or cause to be packed, sell, offer for sale, deliver for shipment, load, ship or transport for shipment, whether packed, shipped or sold or offered for sale in domestic, interstate, intrastate or foreign commerce any unshelled pecans within the meaning of this act [76-16-1 through 76-16-9 NMSA 1978] which do not conform with the requirements of this act. It shall also be unlawful to prepare, deliver for shipment, load, ship, transport, offer for sale or sell a deceptive peck, bulk lot, bulk

load, arrangement or display of unshelled pecans within the meaning of this act, or to mislabel any container, subcontainer or display of such unshelled pecans.

B. Nothing in this act shall be construed to conflict with any other law of the state of New Mexico or of the United States of America or regulations regarding net weight or other markings on containers or subcontainers.

**History:** Laws 1939, ch. 215, § 6; 1941 Comp., § 48-1906; 1953 Comp., § 45-18-6.

### **76-16-7. Seizure.**

A. Any unshelled pecans packed, stored or delivered for shipment, loaded, shipped or being transported or sold in violation of any of the provisions of this act [76-16-1 through 76-16-9 NMSA 1978], and their containers, are public nuisances, and shall not be moved from the place where they may be, except under the specific direction of a proper enforcing officer. If, after notice of such violation is given to the packer or owner of such unshelled pecans, such packer or owner refuses, or fails within twenty-four hours, to recondition or re-mark the same so as to comply with all the requirements of this act, such pecans and their containers may be seized by such agent or employee and by the order of the district judge of the county within which the same may be, shall be condemned and destroyed, or released upon such conditions as the court, in its discretion, may impose to insure that they will not be packed, delivered for shipment, shipped, transported or sold in violation of this act.

B. No provision of this act shall be construed to prevent the shelling of any pecans within this state, or to prevent a grower of pecans in this state, from selling or delivering the same unpacked and unmarked, as a part of his crop in bulk, to a sheller or packer of pecans for shelling, grading, packing or storage within this state. Any such agent or employee may require from the owner or shipper of unshelled pecans such written or other proof as may be reasonably necessary that such pecans will be used only as permitted by this section and shall hold such pecans until satisfactory proof is given that the same will be so used.

**History:** Laws 1939, ch. 215, § 7; 1941 Comp., § 48-1907; 1953 Comp., § 45-18-7.

### **ANNOTATIONS**

**Cross references.** — For public nuisances in general, and abatement of same, see 30-8-1 and 30-8-8 NMSA 1978.

### **76-16-8. Prosecution.**

The district attorney of any judicial district in which a violation of this act [76-16-1 through 76-16-9 NMSA 1978] occurs shall, upon request of any enforcing officer or other interested person, prosecute such violation.

**History:** Laws 1939, ch. 215, § 8; 1941 Comp., § 48-1908; 1953 Comp., § 45-18-8.

### **76-16-9. Penalty for violation.**

Any person who violates any provision of this act [76-16-1 through 76-16-9 NMSA 1978] or lawful rule or regulation made pursuant hereto, shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars [(\$500)] or be imprisoned not more than one year, or both.

**History:** Laws 1939, ch. 215, § 9; 1941 Comp., § 48-1909; 1953 Comp., § 45-18-9.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Severability.** — Laws 1939, ch. 215, § 10, provided for the severability of the act if any provision thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Food § 64.

36A C.J.S. Food §§ 30 to 38.

## **ARTICLE 17**

### **Peanuts**

(Repealed by Laws 1997, ch. 97, § 1.)

### **76-17-1 to 76-17-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 97, § 1 repealed 76-17-1 to 76-17-9 NMSA 1978, as enacted by Laws 1963, ch. 167, § 1 to 8, relating to peanuts, effective June 20, 1997. For provisions of former sections, see the the 1996 NMSA on *NMONESOURCE.COM*.

## **ARTICLE 18**

### **Cotton Districts**

### **76-18-1. Short title.**

This act [76-18-1 through 76-18-9 NMSA 1978] may be cited as the "Cotton District Act".

**History:** 1953 Comp., § 45-24-1, enacted by Laws 1965, ch. 107, § 1.

## **ANNOTATIONS**

### **76-18-2. Purpose of act.**

The purpose of the Cotton District Act is to promote the cotton industry in the state by preventing fraud and deception in ginning and marketing, eliminating or reducing economic waste in marketing and developing markets.

**History:** 1953 Comp., § 45-24-2, enacted by Laws 1965, ch. 107, § 2.

### **76-18-3. Definitions.**

As used in the Cotton District Act:

- A. "cotton" means all varieties or strains of upland cotton, except American-Egyptian varieties when not mixed in harvesting or ginning;
- B. "grower" means any person engaged in raising cotton for market;
- C. "district" means a cotton district organized under the Cotton District Act for the growing and marketing of a single variety of cotton;
- D. "order" means any order regulating the marketing or growing of cotton issued under the Cotton District Act; and
- E. "director" means the director of the state department of agriculture.

**History:** 1953 Comp., § 45-24-3, enacted by Laws 1965, ch. 107, § 3.

### **76-18-4. Duties of director.**

Under supervision and control of the board of regents of New Mexico state university, the director shall:

- A. administer and enforce the Cotton District Act, and he may delegate all, or any portion, of his powers to any assistant directors;
- B. appoint, with the consent of each district board of directors, an assistant director for each district, who shall reside in the district and perform duties assigned by the director and the district board; and
- C. issue orders applicable to any district whenever the orders are recommended and approved by the district board of directors, and after notice and an opportunity for public hearing by all persons directly affected by the order. Notice of the hearing shall

be given by publication in a newspaper of general circulation within the district at least five days prior to the hearing. Any order becomes effective upon issuance.

**History:** 1953 Comp., § 45-24-4, enacted by Laws 1965, ch. 107, § 4.

### **ANNOTATIONS**

**Cross references.** — For publication of legal notice, see 14-11-1 NMSA 1978 et seq.

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 20.

### **76-18-5. Districts; organization.**

A. Whenever twenty-five or more growers within any given area petition the director to create a district within the area described in the petition, he shall call an election to be held within the area. The call for election shall be posted in five public places within the proposed district and published once in a newspaper of general circulation in each county lying within, or partly within, the proposed district not less than five days prior to the date of the election. At the election, each grower in the proposed district who has up to ten acres of cotton shall have one vote, and he shall have one additional vote for each additional ten acres or major fraction. If sixty percent of the votes cast in the election favor the creation, the district is created.

B. Within thirty days after creation, the director shall call a meeting of growers of the district to perfect the district organization and to select a district board of directors. The district board shall consist of at least five, but not more than nine, members, as determined by the growers at their first meeting.

C. Each district is a corporate body with power to sue and be sued and to pass bylaws for governing the organization.

D. Districts may be abolished after a period of two years in the same manner as provided for their creation.

**History:** 1953 Comp., § 45-24-5, enacted by Laws 1965, ch. 107, § 5.

### **ANNOTATIONS**

**Cross references.** — For publication of legal notice, see 14-11-1 NMSA 1978 et seq.

## **76-18-6. Expenses; fees; disbursements.**

A. In order to defray necessary expenses he incurs in the formulation, issuance, administration and enforcement of any orders in a district, and advertising and sales promotion costs for the district, the director shall prepare a budget for these expenses, but the total budget shall not exceed an amount equal to one dollar (\$1.00) for each bale of cotton grown in the district. He shall issue an order including provision for collection of necessary fees to cover the amount of the budget, together with conditions for payment. Each grower, ginner or shipper of cotton within the district shall pay fees to the director for the time and in the manner prescribed by the order.

B. Any money collected by the director shall be deposited in the "cotton district fund" in a federal depository and disbursed by the district board of directors concerned for actual salaries and expenses incurred under the Cotton District Act. Any money remaining in the fund may be refunded at the close of any marketing season upon a pro rata basis to all persons from whom it was collected, or it may be held over for the following year's expenses.

C. Any fee assessed under this section constitutes a personal debt of the person assessed and is subject to collection by the director in a civil action.

**History:** 1953 Comp., § 45-24-6, enacted by Laws 1965, ch. 107, § 6.

## **76-18-7. Limitation of liability.**

The director and members and employees of a district board of directors are not responsible for errors in judgment, mistakes or other acts of commission or omission except for their own individual acts of dishonesty or crime.

**History:** 1953 Comp., § 45-24-7, enacted by Laws 1965, ch. 107, § 7.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 24.

## **76-18-8. Penalty.**

Any person who violates any provision of the Cotton District Act or any order of the director issued under the act is guilty of a misdemeanor.

**History:** 1953 Comp., § 45-24-8, enacted by Laws 1965, ch. 107, § 8.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Food §§ 74 to 82.

36A C.J.S. Food §§ 39 to 49.

### **76-18-9. Injunction.**

The director may bring an action in the district court to enjoin the violation of any provision of the Cotton District Act or order of the director issued under the act.

**History:** 1953 Comp., § 45-24-9, enacted by Laws 1965, ch. 107, § 9.

#### **ANNOTATIONS**

**Cross references.** — For injunctions, see Rule 1-066 NMRA.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 36A C.J.S. Food § 29.

## **ARTICLE 19 Commercial Feeds**

### **76-19-1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-1 NMSA 1978, as enacted by Laws 1961, ch. 151, § 1, relating to the short title of the Commercial Feed Law, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.

### **76-19-2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-2 NMSA 1978, as enacted by Laws 1961, ch. 151, § 2, relating to the enforcing official, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*.

### **76-19-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-3 NMSA 1978, as enacted by Laws 1961, ch. 151, § 3, relating to definitions, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.



## **76-19-4. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-4 NMSA 1978, as enacted by Laws 1961, ch. 151, § 4, relating to registration, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.

## **76-19-5. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-5 NMSA 1978, as enacted by Laws 1961, ch. 151, § 5, relating to labeling, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.

## **76-19-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-6 NMSA 1978, as enacted by Laws 1973, ch. 102, § 6, relating to inspection fees, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.

## **76-19-7. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-7 NMSA 1978, as enacted by Laws 1961, ch. 151, § 7, relating to adulteration, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.

## **76-19-8. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-8 NMSA 1978, as enacted by Laws 1961, ch. 151, § 8, relating to misbranding, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For

comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.

## **76-19-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-9 NMSA 1978, as enacted by Laws 1961, ch. 151, § 9, relating to inspection, sampling and analysis, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.

## **76-19-10. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-10 NMSA 1978, as enacted by Laws 1961, ch. 151, § 10, relating to rules and regulations, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.

## **76-19-11. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-11 NMSA 1978, as enacted by Laws 1961, ch. 151, § 11, relating to detained commercial feeds, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.

## **76-19-12. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-12 NMSA 1978, as enacted by Laws 1961, ch. 151, § 12, relating to penalties, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.

## **76-19-13. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-13 NMSA 1978, as enacted by Laws 1973, ch. 102, § 13, relating to cooperation with other entities, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.

## **76-19-14. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2013, ch. 23, § 18 repealed 76-19-14 NMSA 1978, as enacted by Laws 1961, ch. 151, § 13, relating to publications, effective July 1, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMONESOURCE.COM*. For comparable provisions, see the New Mexico Commercial Feed Act, 76-19A-1 NMSA 1978 et seq.

## **ARTICLE 19A Commercial Feed**

### **76-19A-1. Short title.**

This act [76-19A-1 through 76-19A-17] may be cited as the "New Mexico Commercial Feed Act".

History: Laws 2013, ch. 23, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

### **76-19A-2. Definitions.**

As used in the New Mexico Commercial Feed Act:

- A. "board" means the board of regents of New Mexico state university;
- B. "brand name" means any word, name, symbol or device, or any combination of words, names, symbols or devices, that identifies a commercial feed and distinguishes it from that of other commercial feeds;
- C. "commercial feed" means one or more feed ingredients that are not otherwise exempt from the provisions of the New Mexico Commercial Feed Act that are manufactured into an animal feed or used as a feed ingredient in the manufacture of another commercial feed;

D. "contract feeder" means a person who is an independent contractor and who feeds commercial feed to animals pursuant to a contract whereby the commercial feed is supplied, furnished or otherwise provided to the person and whereby the person's remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product;

E. "customer-formula feed" means a commercial feed that consists of a mixture of feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser;

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

G. "distribute" means to offer for sale, exchange or barter or to sell, exchange or barter commercial feed;

H. "distributor" means a person who distributes commercial feed;

I. "drug" means an article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than humans and an article other than commercial feed intended to affect the structure or any function of the animal body;

J. "feed ingredient" means any of the constituent materials that make up a commercial feed;

K. "label" means a display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed;

L. "labeling" means all labels and other written, printed or graphic matter on a commercial feed or any of its containers or wrappers accompanying that commercial feed;

M. "manufacture" means to grind, mix or blend or further process a commercial feed for distribution;

N. "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients;

O. "official sample" means a sample of commercial feed taken by the department;

P. "pet food" means commercial feed prepared and distributed for consumption by dogs or cats;

Q. "product name" means the name of a commercial feed that identifies it as to kind, class or specific use and distinguishes it from all other products bearing the same brand name;

R. "quantity statement" means the net weight, net volume or count of commercial feed;

S. "registrant" means the person who registers commercial feed with the department;

T. "specialty pet food" means commercial feed prepared and distributed for consumption by domesticated animals other than dogs and cats that are normally maintained in a cage or tank, including gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles; and

U. "ton" means a net weight of two thousand pounds avoirdupois.

History: Laws 2013, ch. 23, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

### **76-19A-3. Board and department powers and duties.**

A. The New Mexico Commercial Feed Act shall be administered by the department under the direction of the board. The board shall adopt and promulgate rules to carry out the provisions of that act.

B. In promulgating rules as appropriate to the conditions that exist in New Mexico, the board shall consider current good manufacturing practices and definitions of feed ingredients and commercial feed terms recognized by the commercial feed industry and the federal government.

History: Laws 2013, ch. 23, § 3.

### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

### **76-19A-4. Applicability.**

The New Mexico Commercial Feed Act applies to mineral feed, pet food and specialty pet food as well as other commercial feed. That act applies to contract feeders as well as distributors.

History: Laws 2013, ch. 23, § 4.

## ANNOTATIONS

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

### **76-19A-5. Exemptions.**

The following are exempt from the provisions of the New Mexico Commercial Feed Act:

A. commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances that are not intermixed with other materials for animal feed and are not adulterated as provided in Section 8 [76-19A-8 NMSA 1978] of the New Mexico Commercial Feed Act; and

B. unmixed whole seeds and physically altered entire unmixed seeds, when they are not chemically changed and are not adulterated as provided in Section 8 of the New Mexico Commercial Feed Act.

History: Laws 2013, ch. 23, § 5.

## ANNOTATIONS

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

### **76-19A-6. Prohibited acts.**

A person shall not:

A. manufacture or distribute commercial feed that is adulterated or misbranded;

B. adulterate or misbrand commercial feed;

C. distribute otherwise exempt agricultural commodities or products that are adulterated as provided in Section 8 [76-19A-8 NMSA 1978] of the New Mexico Commercial Feed Act;

D. fail to register commercial feed in accordance with the New Mexico Commercial Feed Act;

E. fail to pay inspection fees and file reports as required by the New Mexico Commercial Feed Act;

F. sell, distribute or dispose of commercial feed in violation of a withdrawal from distribution order issued by the department or otherwise violate a withdrawal from distribution order;

G. impede, hinder or otherwise prevent or attempt to prevent an agent of the department from performing the agent's duty in accordance with the New Mexico Commercial Feed Act; or

H. reuse bags and totes for commercial feed unless they are cleaned as prescribed by the board.

History: Laws 2013, ch. 23, § 6.

### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

### **76-19A-7. Misbranding.**

A commercial feed shall be deemed to be misbranded if:

A. its labeling is false or misleading in any particular;

B. it is distributed under the name of another commercial feed;

C. it is not labeled as required in Section 9 [76-19A-9 NMSA 1978] of the New Mexico Commercial Feed Act;

D. it purports to be a commercial feed or it purports to contain a feed ingredient and the commercial feed or feed ingredient does not conform to the definition of the commercial feed or feed ingredient, if any, prescribed by board rule; or

E. any word, statement or other information that is required by the New Mexico Commercial Feed Act or rules adopted in accordance with that act to appear on the label or labeling is not prominently placed on the label with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary person under customary conditions of purchase and use.

History: Laws 2013, ch. 23, § 7.

### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

## **76-19A-8. Adulteration.**

A commercial feed is adulterated if:

A. it bears or contains any poisonous or deleterious substance that may render it injurious to health; provided, however, that if the poisonous or deleterious substance is not an added substance, the commercial feed shall not be considered adulterated pursuant to this subsection if the quantity of the poisonous or deleterious substance in the commercial feed does not ordinarily render it injurious to health;

B. it bears or contains any added poisonous, deleterious or nonnutritive substance that is unsafe as prescribed by the board;

C. it is or it bears or contains any food additive that is unsafe as prescribed by board rule;

D. it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe as provided in board rule; 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 by the board 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 as prescribed by the board;

E. it is or it bears or contains any color additive that is unsafe as prescribed by the board;

F. it is or it bears or contains any new animal drug that is unsafe as prescribed by the board;

G. it consists, in whole or in part, of any filthy, putrid or decomposed substance or it is otherwise unfit for animal feed;

H. it has been prepared, packed or held under unsanitary conditions under which it may have become contaminated with filth or been rendered injurious to animal health;

I. 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 as prescribed by the board;

J. its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to animal health;



K. it has been intentionally subjected to radiation except as prescribed by the board;

L. any valuable constituent has been, in whole or in part, omitted or abstracted from the commercial feed or any less valuable substance substituted for the valuable constituent;

M. its composition or quality falls below or differs from that it is purported or is represented to possess by its labeling;

N. it contains a drug and the methods used in or the facilities or controls used for the drug's manufacture, processing or packaging do not conform to current good manufacturing practice rules promulgated by the board to assure that the drug meets the requirement of the New Mexico Commercial Feed Act as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess; or

O. it contains viable weed seeds in amounts that exceed the limits established by the board.

History: Laws 2013, ch. 23, § 8.

## ANNOTATIONS

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

### **76-19A-9. Labeling.**

A. Commercial feed, except customer-formula feed, shall be accompanied by a label bearing the following information:

(1) the quantity statement;

(2) the product name and the brand name, if any, under which the commercial feed is distributed;

(3) the guaranteed analysis, expressed on an "as is" basis, stated in such terms as the board determines is required to advise the user of the composition of the feed or to support claims made in the labeling; provided that in all cases the substances or elements shall be determinable by laboratory methods approved by the board;

(4) the common or usual name of each ingredient used in the manufacture of the commercial feed; provided that the board may allow the use of a collective term for a group of ingredients that perform a similar function, or it may exempt such commercial feeds or any group of commercial feed from the requirement of an ingredient statement if the board finds that such statement is not required in the interest of consumers;

- (5) the name and principal mailing address of the manufacturer or distributor;
- (6) adequate directions for the use for commercial feed that contains drugs and for such other commercial feed that the board requires as necessary for safe and effective use; and
- (7) such precautionary statements as the board determines are necessary for the safe and effective use of the commercial feed.

B. Customer-formula feed shall be accompanied by a label, invoice, delivery slip or other shipping document that bears the following information:

- (1) the name and address of the manufacturer;
- (2) the name and address of the purchaser;
- (3) the date of delivery;
- (4) the product name and quantity statement of each commercial feed and each other feed ingredient used in the mixture;
- (5) adequate directions for use for customer-formula feed that contains drugs and for such other customer-formula feed that the board requires as necessary for safe and effective use;
- (6) precautionary statements as required by the board; and
- (7) if the customer-formula feed contains drugs:
  - (a) the purpose of the drugs; and
  - (b) the established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with board rules.

History: Laws 2013, ch. 23, § 9.

## ANNOTATIONS

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

### **76-19A-10. Registration of commercial feed.**

A. All commercial feed, except customer-formula feed, shall be registered with the department before being distributed in New Mexico. The application for registration shall be submitted on forms furnished by the department and accompanied by a label or

other printed matter describing the commercial feed and by a registration fee of two dollars (\$2.00). A copy of the approved registration shall be provided to the registrant. A commercial feed registration expires annually on December 31.

B. A distributor is not required to register a brand of commercial feed that is already registered by another person pursuant to the New Mexico Commercial Feed Act.

C. The department may refuse registration if the application does not comply with the provisions of the New Mexico Commercial Feed Act and may cancel a registration that is subsequently found not to be in compliance with the provisions of that act; provided, however, that a registration shall not be refused or canceled until the applicant or registrant has been given an opportunity to be heard before the board and to amend the application or to cure the problem in registration to comply with the requirements of the New Mexico Commercial Feed Act.

History: Laws 2013, ch. 23, § 10.

## ANNOTATIONS

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

### **76-19A-11. Inspection, sampling and analysis.**

A. Except as provided in Subsection E of this section, to enforce the provisions of the New Mexico Commercial Feed Act, an employee or agent of the department may enter upon the premises and inspect any factory, warehouse or other establishment in New Mexico in which commercial feeds are manufactured, processed, packed or held for distribution or enter any vehicle being used to transport or hold commercial feed. The employee or agent may inspect all pertinent equipment, finished and unfinished materials, containers and labeling in the establishment. Entry and inspection shall be during normal business hours and after written notice to the owner, operator or agent in charge. The employee or agent shall present appropriate credentials to the owner, operator or agent in charge of the factory, warehouse or other establishment. Inspections shall be within reasonable limits and in a reasonable manner and may include the verification of only such records and production and control procedures as may be necessary to determine compliance with the provisions of the New Mexico Commercial Feed Act and rules promulgated in accordance with that act. A separate notice shall be given for each inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

B. Before leaving the premises, the employee or agent of the department who is making the inspection shall give to the owner, operator or agent in charge a receipt for any official samples obtained during the inspection.

C. If the owner of a factory, warehouse or other establishment, or the owner's agent, refuses to admit the employee or agent of the department to inspect in accordance with Subsection A of this section, the department may ask the district court for a warrant directing such owner or the owner's agent to submit the premises described in the warrant to inspection.

D. An employee or agent of the department may enter upon any public or private premises, including any vehicle of transport, during regular business hours to have access to and to obtain official samples and to examine records relating to distribution of commercial feeds.

E. When an employee or agent of the department has reasonable cause to believe that any lot of commercial feed is being distributed in violation of any of the provisions of the New Mexico Commercial Feed Act or rules promulgated in accordance with that act, the employee or agent may issue a withdrawal from distribution order as provided in Section 13 [76-19A-13 NMSA 1978] of the New Mexico Commercial Feed Act.

F. Official sampling and analysis shall be conducted in accordance with methods approved by the board.

G. The results of all analyses of official samples shall be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the owner or operator may request a portion of the official sample, and the department shall comply with the request within thirty days following receipt of the analysis.

H. In determining for administrative purposes whether a commercial feed is deficient in any component, the department shall be guided by the official sample obtained and analyzed as provided in this section.

History: Laws 2013, ch. 23, § 11.

## ANNOTATIONS

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

### **76-19A-12. Inspection fees; reports; cancellation of registrations.**

A. An inspection fee shall be paid to the board for all commercial feeds distributed in New Mexico. The fee shall not exceed fifteen cents (\$.15) per ton, or, for each brand of commercial feed distributed in individual packages of ten pounds or less, a distributor shall pay an annual inspection fee not to exceed twenty-five dollars (\$25.00) and shall not pay the tonnage fee on such packages of the brand so registered.

B. Fees collected shall not exceed the costs of inspection, sampling and analysis and other expenses necessary for the administration of the New Mexico Commercial Feed Act. Fees collected shall constitute a fund for the payment of the costs of inspection, sampling and analysis and other expenses necessary for the administration of that act.

C. Except as otherwise provided in this section, a person who distributes commercial feed in New Mexico shall:

(1) file, not later than the last day of January, April, July and October of each year, a quarterly statement setting forth the number of net tons of commercial feeds distributed in New Mexico during the preceding calendar quarter and, upon filing the statement, shall pay the inspection fee. When more than one person is involved in the distribution of commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been made by a prior distributor of the feed; and

(2) keep such records as may be necessary or required by the board to indicate accurately the tonnage of commercial feeds distributed in New Mexico, and the board may examine those records to verify statements of tonnage. If a quarterly report is not filed or if the inspection fee is not paid within the thirty-day period after the end of a quarter, a penalty of twenty percent, or a sum of ten dollars (\$10.00), whichever is greater, will be due in addition to the inspection fees, and the inspection fees and the penalty shall constitute a debt for which suit may be brought by the board.

D. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply with the provisions of the New Mexico Commercial Feed Act shall constitute sufficient cause for the cancellation of all registrations on file for the distributor.

History: Laws 2013, ch. 23, § 12.

## **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

### **76-19A-13. Detained commercial feed.**

A. When an employee or agent of the department has reasonable cause to believe that any lot of commercial feed is being distributed in violation of any of the provisions of the New Mexico Commercial Feed Act or rules promulgated in accordance with that act, it may issue and enforce a written "withdrawal from distribution" order, warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the department or the district court.

B. The department shall release for distribution the lot of commercial feed that was withdrawn from distribution when the provisions of the New Mexico Commercial Feed Act have been complied with. If the department and the distributor agree that the lot of commercial feed is adulterated or otherwise cannot comply with that act within thirty days, the department shall release the lot of commercial feed for disposal in a manner approved by the department.

C. If the distributor has not complied with the provisions of the New Mexico Commercial Feed Act or rules promulgated in accordance with that act within thirty days or if the department has reasonable grounds to believe that the lot of commercial feed will be distributed in violation of the withdrawal from distribution order, the department shall begin condemnation and seizure proceedings against the lot of commercial feed. The department may file a complaint for seizure in the district court in the judicial district in which the commercial feed is located.

D. If, after hearing, the court finds that the commercial feed violates the provisions of the New Mexico Commercial Feed Act or rules promulgated in accordance with that act and orders the commercial feed to be condemned, the department shall ensure that it is disposed of in an appropriate manner. The court may allow the distributor to process or re-label the commercial feed to bring it into compliance with the New Mexico Commercial Feed Act.

History: Laws 2013, ch. 23, § 13.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

#### **76-19A-14. Injunctions; appeals of decisions of the department.**

A. The department may apply to the district court for a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of the New Mexico Commercial Feed Act or the rules promulgated in accordance with that act.

B. A person adversely affected by an act, order or ruling made pursuant to the provisions of the New Mexico Commercial Feed Act may appeal the decision as provided in Section 39-3-1.1 NMSA 1978.

History: Laws 2013, ch. 23, § 14.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

## **76-19A-15. Penalties.**

A person convicted of violating Section 6 [76-19A-6 NMSA 1978] of the New Mexico Commercial Feed Act is guilty of a misdemeanor and shall be fined in an amount not more than one hundred dollars (\$100) for the first violation and not more than one thousand dollars (\$1,000) for a second or subsequent violation.

History: Laws 2013, ch. 23, § 15.

### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

## **76-19A-16. Cooperation with other entities.**

The department may cooperate with and enter into agreements with governmental agencies of New Mexico, other states and the federal government and private associations to carry out the purpose and provisions of the New Mexico Commercial Feed Act.

History: Laws 2013, ch. 23, § 16.

### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

## **76-19A-17. Annual reports.**

The department shall publish an annual report on the manufacture and distribution of commercial feeds in New Mexico, together with such data on their production and use as the department determines, and a report of the results of the analyses of official samples of commercial feeds sold in New Mexico as compared with the analyses guaranteed in the registration and on the label; provided that the information concerning production and use of commercial feed shall not disclose the operations of any person.

History: Laws 2013, ch. 23, § 17.

### **ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

# **ARTICLE 20**

## **Agricultural Market Development**

### **76-20-1. Short title.**

This act [76-20-1 through 76-20-5 NMSA 1978] may be cited as the "Agricultural Market Development Act of 1979".

**History:** Laws 1979, ch. 130, § 1.

### **76-20-2. Definitions.**

As used in the Agricultural Market Development Act of 1979:

- A. "board" means the board of regents of New Mexico state university;
- B. "department" means the department of agriculture;
- C. "farm products" means all agricultural, floricultural, vegetable and fruit products of the soil, livestock and meats, poultry, eggs, dairy products and any and all products which have their situs of production on the farm; and
- D. "food products" means any and all products either in a natural or processed state used by man or animal as food.

**History:** Laws 1979, ch. 130, § 2.

### **76-20-3. Market development program.**

The department is authorized to and may engage in a program of agricultural market development, which may include but not be limited to the following services and functions:

- A. assisting in the development of new markets or expansion of existing markets for farm products produced or processed in the state;
- B. disseminating information relating to the availability, quality and use of farm products;
- C. collecting and disseminating information relating to prospective market conditions as well as current supplies, demand and prices of farm products;
- D. serving as an intermediary between prospective purchasers and sellers of farm products as to source of supply and demand;



E. cooperating with and aiding farmers and other producers of farm and food products and distributors and consumers of such products in improving and maintaining an efficient system of distribution and marketing in reaching advantageous markets;

F. developing and implementing certification standards in cooperation with the affected growers and industry for the branding of agricultural products that may receive unique labels based on region of origin, variety or other special characteristics; provided that nothing in this subsection shall be construed to affect the trademark or copyright of an agricultural product or convey authority for trademarks or copyrights;

G. accepting and receiving grants from public or private agencies for expenditure in furtherance of the purposes of the Agricultural Market Development Act of 1979;

H. consulting with other states in the development of joint programs for the establishment and development of markets on a mutual or regional basis; and

I. performing such other services as may be necessary to fulfill the purposes of the Agricultural Market Development Act of 1979.

History: Laws 1979, ch. 130, § 3; 2009, ch. 41, § 1.

#### **ANNOTATIONS**

**The 2009 amendment**, effective June 19, 2009, added Subsection F.

#### **76-20-4. Limitations.**

A. Nothing in the Agricultural Market Development Act of 1979 shall authorize the department to:

(1) engage in any commercial transaction involving farm or food products as purchaser, seller, broker or dealer; or

(2) acquire or own any farm or food product.

B. In the performance of his duties under the Agricultural Market Development Act of 1979, no official or employee of the department shall discriminate against any farm or food product, or against any producer, processor, distributor or dealer of any such products.

**History:** Laws 1979, ch. 130, § 4.

#### **76-20-5. Reporting.**

A. The department shall report to the legislature at each annual session the progress made in improving agricultural markets for New Mexico farm products. Such report shall include monetary and volume increases achieved.

**History:** Laws 1979, ch. 130, § 5.

## **ANNOTATIONS**

**Compiler's notes.** — This section contained no Subsection B as enacted.

# **ARTICLE 21**

## **Agricultural Commodity Commissions**

### **76-21-1. Short title.**

This act [76-21-1 through 76-21-22 NMSA 1978] may be cited as the "Agricultural Commodity Commission Act".

**History:** Laws 1983, ch. 231, § 1.

### **76-21-2. Definitions.**

As used in the Agricultural Commodity Commission Act:

- A. "animal" means any agricultural animal except beef cattle and horses;
- B. "commercial channels" means the sale of the commodity for use as food or for industrial, agricultural or chemurgic use, when sold to any commercial buyer or to any person who resells the commodity or any product derived therefrom;
- C. "commission" means a commodity commission established under the Agricultural Commodity Commission Act;
- D. "commodity" means any distinctive type of agricultural, horticultural, floricultural, viticultural, vegetable or animal product of any class, in its natural or processed state. The director of the New Mexico department of agriculture may determine what types or subtypes of commodity may be classed together as a commodity for the purposes of the Agricultural Commodity Commission Act;
- E. "director" means the director of the New Mexico department of agriculture;
- F. "first purchaser" means any person who buys the commodity, for which a commission is created, from the producer in the first instance, or the handler who received the commodity in the first instance from the producer for resale or processing;

G. "handler" means any producer, processor, distributor or other person engaged in the handling or marketing of or dealing in the commodity for which a commission is created, whether as an owner, agent, employee, broker or otherwise; and

H. "producer" means any person engaged in a proprietary capacity in the commercial production of a commodity for market within this state.

**History:** Laws 1983, ch. 231, § 2; 1987, ch. 94, § 1.

### **76-21-3. Petition for establishment of commission for a particular commodity.**

Any twenty-five or more persons interested in the production of a particular commodity for which it is proposed to establish a commission may file a petition with the department [New Mexico department of agriculture] asking that a commission be established for such commodity. The petition shall set forth:

- A. the name of the commodity for which the commission is to be established;
- B. a concise statement of the reasons for the establishment of a commission;
- C. a request that a referendum be held among the producers of the commodity on the question of the establishment of a commission;
- D. the name and address of the individual who is authorized to represent the petitioners;
- E. the number of persons to serve on the commission;
- F. the maximum per unit assessment on the commodity for which the commission is established; and
- G. the method of levy and collection of an assessment upon producers for the support of the commission.

**History:** Laws 1983, ch. 231, § 3.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The reference to "New Mexico department of agriculture" was inserted by the compiler, as the reference to "department" in the above section apparently refers to the department of agriculture. See 76-1-1 and 76-21-2E NMSA 1978.

#### **76-21-4. Petition filing fee.**

A. The director shall prepare and deliver to the petitioners an original budget estimate of the cost of the proposed hearings and referendum.

B. The petitioners, within thirty days after receipt of the cost estimate, shall remit to the director the amount of the cost estimate.

**History:** Laws 1983, ch. 231, § 4.

#### **76-21-5. Hearings regarding establishment of commodity commission; notice of hearings.**

A. Within sixty days after the petition has been filed with the director and upon payment of the cost estimate, the director shall cause notices to be given of the proposed hearings in areas of the state where the commodity is grown in economic quantities.

B. The notices of hearing shall be published at least fourteen days prior to the date of hearing in a newspaper of general circulation in the state.

**History:** Laws 1983, ch. 231, § 5.

#### **76-21-6. Determination by director regarding need for commodity commission.**

A. After hearing, the director shall determine, based upon the facts presented and other relevant data available, if there is a need for the creation of a commission whose interest is the general welfare of the producers of the commodity and if the need is sufficient to justify the holding of a referendum thereon.

B. Subsequent petitions relating to the same commodity may not be filed or action taken thereon within one year from the date the director has recorded a determination denying the need for the creation of a commission for a commodity.

**History:** Laws 1983, ch. 231, § 6.

#### **76-21-7. Referendum regarding establishment of commodity commission after determination by director.**

A. If the director determines the need for a commission is sufficient to justify the holding of a referendum, he shall within a reasonable time hold a referendum upon the proposition of the creation of the commission.

B. Notice of a referendum upon the proposition of the creation of a commission shall be given in the same manner as notice of other hearings. Included in the notice of referendum shall be:

- (1) the name of the commodity for which the commission is to be established;
- (2) a concise statement of the reasons for the establishment of a commission;
- (3) the name and address of the individual who is authorized to represent the petitioners;
- (4) the number of persons to be elected to the commission;
- (5) the maximum per unit assessment on the commodity for which the commission is established; and
- (6) method of levy and collection of an assessment upon producers for the support of the commission.

C. Preceding any referendum held pursuant to the Agricultural Commodity Commission Act, the director shall determine the number of producers in this state and their total production in the last preceding production season or year of the commodity for which a commission is proposed. The director's determination shall be predicated upon available relevant and reliable information establishing such facts from statistics of the New Mexico department of agriculture, the United States department of agriculture, the United States department of commerce or other sources as determined by the director. At the request of the director, any handlers or other persons shall furnish information available relevant to the determination required of the director.

D. A ballot on the referendum shall be sent to each producer of record. Included on the ballot shall be the minimum information required in the notice of referendum in Paragraphs (1) through (6) of Subsection B of this section.

**History:** Laws 1983, ch. 231, § 7.

### **76-21-8. Creation of commission.**

The director shall declare a commission created if the proposition received an affirmative vote in the referendum of two-thirds of the producers voting and if the total voting producers are producers of more than one-third of the total quantity of the commodity produced in the state in the last preceding year as determined by the director.

**History:** Laws 1983, ch. 231, § 8.

## **76-21-9. Election of members of commission; number of producers and handlers.**

A. The commission shall be composed of from five to eleven members, as stated in the petition for referendum. Members shall be elected by producers from nominations made to the director by producers or producers' organizations.

B. Members of the commission shall be elected as follows within sixty days following the director's declaration that a commission is created:

- (1) approximately one-third of the members for a one-year term;
- (2) one-third of the members for a two-year term; and
- (3) one-third of the members for a three-year term.

Thereafter, each member shall be elected for a term ending three years from the date of expiration of the term for which his predecessor was elected, except in case of a vacancy when the appointee shall serve the unexpired part of the term of the member whom he replaces.

C. A majority of the members shall be producers, and at least one member shall be a handler. All members other than handlers shall be producers.

**History:** Laws 1983, ch. 231, § 9.

## **76-21-10. Ex officio member of commission.**

The director or his designee shall be ex officio member of the commission, without right to vote.

**History:** Laws 1983, ch. 231, § 10.

## **76-21-11. Qualifications of members.**

Each member of the commission shall have the following qualifications which shall continue during his term of office:

- A. a legal resident of the United States;
- B. a bona fide resident of the state;
- C. shall have demonstrated an active interest in the development of the commodity industry in New Mexico; and

D. producer members shall be and have been actively engaged in producing and the handler members in the handling of the commodity for which the commission is established and shall derive a substantial portion of their incomes from the sale of the commodity.

**History:** Laws 1983, ch. 231, § 11.

### **76-21-12. Removal of members.**

A. The director shall immediately declare the office of any member of the commission vacant whenever such member has ceased to be an active producer or handler in this state, has become a resident of another state or is not performing the duties of his office.

B. The director may remove any member of the commission for inefficiency, neglect of duty or misconduct in office.

C. The director shall fill vacancies by appointing a replacement to serve the unexpired term.

**History:** Laws 1983, ch. 231, § 12.

### **76-21-13. Commission organization; meetings.**

The commission shall meet as soon as practicable for the purpose of organizing. It shall elect a chairman and a secretary-treasurer from among its members. It shall adopt a general statement of policy for guidance and shall transact such other business as is necessary to start the work of the commission. Thereafter, the commission shall meet regularly once each six months and at such other times as called by the chairman.

**History:** Laws 1983, ch. 231, § 13.

### **76-21-14. Authority of commission generally.**

The commission may:

A. conduct or cause to be conducted studies to increase the commercial value of, expand current markets and find new markets for and establish or provide for the establishment of marketing development projects for the commodity and products thereof;

B. disseminate or cause to be disseminated, reliable information relative to market conditions, current prices and sources of supply and demand showing the value of the commodity and its products for any purpose for which they may be found useful and profitable;

C. sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by the Agricultural Commodity Commission Act;

D. enter into contracts which it deems appropriate to the carrying out of the purposes of the commission as authorized by the Agricultural Commodity Commission Act;

E. make grants for studies or for the purchase of facilities necessary to carry out the purposes of the commission as authorized by the Agricultural Commodity Commission Act;

F. appoint subordinate officers and employees of the commission and prescribe their duties and fix their compensation;

G. cooperate or act jointly with any local, state or national organization or governmental agency, whether created by law or voluntary, engaged in work or activities similar to that of the commission and enter into contracts with such organizations or agencies for carrying on joint programs deemed by the commission to be beneficial to the commodity industry of this state, and expend funds in connection therewith, provided that such program is compatible with the powers conferred by the Agricultural Commodity Commission Act;

H. adopt, rescind, modify or amend all proper regulations, orders and resolutions for the exercise of its powers and duties; and

I. advertise the commodity and develop new markets through such advertising or enter into contracts for same.

**History:** Laws 1983, ch. 231, § 14; 1987, ch. 94, § 2.

## **76-21-15. Levy of assessment on commodity sales.**

A. The commission may assess, levy and collect an assessment, the amount of which shall not exceed the maximum stated in the petition for referendum, on all units, plants or animals of the commodity produced or handled within this state and sold in commercial channels. If the commission determines it is impractical to assess on units of the commodity sold into commercial channels, or on wire, twine, binding or packaging material, an assessment may be imposed on the producer. All casual sales of the commodity made by the producer direct to the consumer shall be exempt from the assessment. The amount of the assessment shall be determined by the commission and published annually.

B. The assessment shall be levied and assessed to the producer at the time of sale and shall be deducted by the first purchaser from the price paid to the producer. In the case of assessments imposed on wire, twine, binding or packaging materials, the



assessment shall be added to the purchase price by the seller and paid to the commission. In the case of acreage assessments, the amount shall be imposed on the producer at a time established by the commission and the producer shall pay the assessment directly to the commission.

**History:** Laws 1983, ch. 231, § 15; 1993, ch. 36, § 1.

## **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, inserted the second sentence in Subsection A and added the last two sentences in Subsection B.

### **76-21-16. Refunds.**

Any producer on whose behalf an assessment has been paid is entitled to a refund of the amount paid by making written application therefor to the commission. The application shall be made within thirty days after the sale was made giving rise to the assessment and shall contain enough detail to enable the commission to find the record of payment. Refunds shall be made within thirty days of the date of the application unless the proceeds and the necessary information have not been received by the commission, in which case the refund shall be made within fifteen days after receipt of the proceeds and necessary information.

**History:** Laws 1983, ch. 231, § 16.

### **76-21-17. First purchaser of commodity to make reports and pay assessment.**

A. On dates established by the commission, the first purchaser shall provide prescribed information and reports on forms designated by the commission.

B. The first purchaser shall deduct an assessment at the time of sale and pay to the commission the amount of the assessment on dates established by the commission.

**History:** Laws 1983, ch. 231, § 17.

### **76-21-18. Records of person required to pay assessment.**

Each person required to pay an assessment on a commodity under the Agricultural Commodity Commission Act shall keep records sufficient to enable the commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission. The commission or any person authorized by the commission may inspect and audit these records.

**History:** Laws 1983, ch. 231, § 18.

## **76-21-19. Records and accounts of commission.**

The commission shall:

A. submit to the director for approval a detailed annual budget for the commission on a fiscal year basis and provide a copy of such budget upon request to any person who has paid an assessment;

B. bond officers and employees of the commission who receive and disburse commission funds;

C. keep detailed and accurate records as approved by the director of all receipts and disbursements, have such records audited annually and keep such audit available for inspection in the commission office; and

D. establish procedures for the adoption of regulations that will provide for input from producers.

**History:** Laws 1983, ch. 231, § 19.

## **76-21-20. Referendum on continuance of commission.**

After three years from the date any commission is created, a referendum may be held at the petition of twenty-five or more producers of the commodity or at the request of the commission upon the question of the discontinuance of the commission. Any costs of such referendum are to be borne by the commission.

**History:** Laws 1983, ch. 231, § 20.

## **76-21-21. Disposition of funds.**

A. All funds received by the commission shall be received by the commission and disbursed directly by the commission according to procedures approved by the director and shall be subject to audit by the state auditor at his discretion. The commission is not required to submit vouchers, purchase orders or contracts to the department of finance and administration as otherwise required by Section 6-5-3 NMSA 1978.

B. The commission shall issue warrants against funds of the commission in payment of its lawful obligations. The commission shall provide its own warrants, purchase orders and contract forms as well as other supplies and equipment. All warrants shall be signed by two officers or employees designated by the commission.

C. The commission shall designate banks where its funds are to be deposited, provided such banks have been qualified as depository banks for state funds.

**History:** Laws 1983, ch. 231, § 21.

## **76-21-22. Public Purchases Act; Personnel Act; exemption; Tort Claims Act.**

The commission is exempt from the operation of the Public Purchases Act [repealed] and the Personnel Act [Chapter 10, Article 9 NMSA 1978]. The commission members and their employees are public employees for the purposes of the Tort Claims Act [41-4-1 through 41-4-27 NMSA 1978].

**History:** Laws 1983, ch. 231, § 22.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1984, ch. 65, § 175 repealed the Public Purchases Act, effective November 1, 1984. For present comparable provisions, see the Procurement Code, 13-1-28 to 13-1-199 NMSA 1978.

## **ARTICLE 21A Organic Production**

### **76-21A-1. Short title.**

This act may be cited as the "Organic Production Act" [76-21A-1 through 76-21A-5 NMSA 1978].

**History:** Laws 2011, ch. 29, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 29, § 8 made the Organic Production Act effective July 1, 2011.

### **76-21A-2. New Mexico department of agriculture; powers.**

A. The Organic Production Act shall be administered and enforced by the New Mexico department of agriculture, under the direction of the board of regents of New Mexico state university. The New Mexico department of agriculture is authorized to regulate the production, handling and certification of organic agricultural products pursuant to rules adopted by the board of regents of New Mexico state university. In promulgating the rules, the board shall consider the requirements of the federal Organic Foods Production Act of 1990 and the national organic program rules.

B. The department may:

(1) charge fees and assessments to fund its organic certification program;  
and

(2) implement education and marketing programs to assist organic producers and handlers and those considering certification as organic producers or handlers.

History: Laws 2011, ch. 29, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2011, ch. 29, § 8 made the Organic Production Act effective July 1, 2011.

**Cross references.** — For the federal Organic Foods Production Act of 1990, see Title 7 U.S.C., Chapter 94, §6501 et seq.

### 76-21A-3. Fees and assessments.

A. Pursuant to rules adopted by the board of regents of New Mexico state university, the New Mexico department of agriculture may impose and collect fees for certification and registration as follows:

(1) producers and handlers shall pay a fee not to exceed three hundred fifty dollars (\$350) for a new application and a fee not to exceed three hundred dollars (\$300) for annual renewal applications; and

(2) producers and handlers may be subject to late fees not to exceed five hundred dollars (\$500).

B. Pursuant to rules adopted by the board of regents of New Mexico state university, the New Mexico department of agriculture may impose and collect assessments for the basic certification process of certified organic producers and handlers at an annual rate not to exceed one percent of the total gross sales of the organically produced agricultural products based on the previous year's sales, provided that:

(1) assessments on total gross sales of over one million dollars (\$1,000,000) shall be assessed at a rate not to exceed nine thousand five hundred dollars (\$9,500) plus ninety-five thousandths percent of any amount over one million dollars (\$1,000,000) of total gross sales of organically produced agricultural products based on the previous year's sales; and

(2) after July 1, 2015, the amounts provided for in Paragraph (1) of this subsection may be increased to no more than one percent of the total gross sales of the organically produced agricultural products based on the previous year's sales.

C. The New Mexico department of agriculture shall provide a payment schedule for all assessments due to the department.

D. The board of regents of New Mexico state university may authorize an organic production inspector to charge reasonable fees not to exceed the actual costs of performing additional inspections due to noncompliance or at the request of a producer or handler.

History: Laws 2011, ch. 29, § 3.

### **ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 29, § 8 made the Organic Production Act effective July 1, 2011.

#### **76-21A-4. Disposition of funds.**

All money received by the New Mexico department of agriculture pursuant to the provisions of the Organic Production Act, including assessments, fees, appropriations, gifts, grants and donations, shall be expended only for the purpose of carrying out the provisions of that act.

History: Laws 2011, ch. 29, § 4.

### **ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 29, § 8 made the Organic Production Act effective July 1, 2011.

#### **76-21A-5. Applicability to other laws.**

A. Any transactions involving agricultural products that bear labels stating that the agricultural products are organically produced are subject to Sections 57-15-1 through 57-15-10 NMSA 1978.

B. Any transactions involving agricultural products that are food and that bear labels stating that the agricultural products are organically produced are subject to the New Mexico Food Act [25-2-1 through 25-2-20 NMSA 1978].

History: Laws 2011, ch. 29, § 5.

### **ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 29, § 8 made the Organic Production Act effective July 1, 2011.

**Temporary provisions.** — Laws 2011, ch. 29, § 6 provided:

- A. On July 1, 2011, all functions, appropriations, money, records, furniture, equipment and other property of the organic commodity commission are transferred to the New Mexico department of agriculture.
- B. On July 1, 2011, all contractual obligations of the organic commodity commission are binding on the New Mexico department of agriculture.
- C. On July 1, 2011, all money in the organic market development fund shall be transferred to the New Mexico department of agriculture.
- D. On July 1, 2011, all references in the law or rule to the organic commodity commission are deemed to be references to the New Mexico department of agriculture.
- E. The rules of the organic commodity commission are deemed to be the rules of the board of regents of New Mexico state university for the New Mexico department of agriculture until amended or repealed by the board of regents of New Mexico state university.

## **ARTICLE 22**

### **Organic Commodities**

#### **76-22-1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-1 NMSA 1978, as enacted by Laws 1990, ch. 122, § 1, relating to the short title of the former Organic Commodities Act, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

#### **76-22-2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-2 NMSA 1978, as enacted by Laws 1990, ch. 122, § 2, relating to the purpose of the act, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

#### **76-22-3. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-3 NMSA 1978, as enacted by Laws 1990, ch. 122, § 3, relating to findings, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

### 76-22-4. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-4 NMSA 1978, as enacted by Laws 1990, ch. 122, § 4, relating to definitions, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

### 76-22-5. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-5 NMSA 1978, as enacted by Laws 1990, ch. 122, § 5, relating to the organic market development fund, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

### 76-22-6. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-6 NMSA 1978, as enacted by Laws 1990, ch. 122, § 6, relating to the organic commodity commission, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

### 76-22-7. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-7 NMSA 1978, as enacted by Laws 1990, ch. 122, § 7, relating to duties of the organic commodity commission, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

### 76-22-8. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-8 NMSA 1978, as enacted by Laws 1990, ch. 122, § 8, relating to commission reports, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-9 NMSA 1978, as enacted by Laws 1990, ch. 122, § 9, relating to adoption of a seal, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-10. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 330, § 18 repealed 76-22-10 NMSA 1978, as enacted by Laws 1990, ch. 122, § 10, relating to the continuance of the organic commodity commission, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-11. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-11 NMSA 1978, as enacted by Laws 1990, ch. 122, § 11, relating to limitation on liability, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-12. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-12 NMSA 1978, as enacted by Laws 1990, ch. 122, § 12, relating to standards, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-13. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-13 NMSA 1978, as enacted by Laws 1990, ch. 122, § 13, relating to the organic certification program, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.



## **76-22-14. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-14 NMSA 1978, as enacted by Laws 1990, ch. 122, § 14, relating to certification, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-14.1. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-14.1 NMSA 1978, as enacted by Laws 2001, ch. 157, § 5, relating to certifying agents, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-15. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 330, § 18 repealed 76-22-15 NMSA 1978, as enacted by Laws 1990, ch. 122, § 15, relating to the organic certification handbook, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-16. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-16 NMSA 1978, as enacted by Laws 1990, ch. 122, § 16, relating to levy of assessments, organically produced food articles and sales, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-17. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-17 NMSA 1978, as enacted by Laws 1990, ch. 122, § 17, relating to supplemental assessments, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-18. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-18 NMSA 1978, as enacted by Laws 1993, ch. 330, § 12, relating to collection of assessments, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-19. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-19 NMSA 1978, as enacted by Laws 1990, ch. 122, § 19, relating to disposition of assessments, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-20. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-20 NMSA 1978, as enacted by Laws 1990, ch. 122, § 20, relating to records of persons required to pay assessments, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-21. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-21 NMSA 1978, as enacted by Laws 1990, ch. 122, § 21, relating to proprietary information, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-22. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-22 NMSA 1978, as enacted by Laws 1990, ch. 122, § 22, relating to state organic chemist duties, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-23. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-23 NMSA 1978, as enacted by Laws 1990, ch. 122, § 23, relating to stewards' powers and duties, effective July 1,

2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-24. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-24 NMSA 1978, as enacted by Laws 1990, ch. 122, § 24, relating to authority to inspect, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-25. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-25 NMSA 1978, as enacted by Laws 1990, ch. 122, § 25, relating to inspections, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-26. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-26 NMSA 1978, as enacted by Laws 1990, ch. 122, § 26, relating to labeling, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-27. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-27 NMSA 1978, as enacted by Laws 1990, ch. 122, § 27, relating to violations, enforcing authority and civil penalties, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **76-22-28. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 29, § 7 repealed 76-22-28 NMSA 1978, as enacted by Laws 1990, ch. 122, § 28, relating to applicability to other laws, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

## **ARTICLE 23**

### **Apple Commission**

(Repealed by Laws 2001, ch. 23 § 2 and Laws 2001, ch. 36, § 2.)

**76-23-1 to 76-23-9. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 23, § 2, and Laws 2001, ch. 36, § 2 repealed 76-23-1 through 76-23-9 NMSA 1978, as enacted by Laws 1994, ch. 33, §§ 1 to 9, relating to the New Mexico apple commission, effective June 15, 2001. For provisions of former sections, see the 2000 NMSA 1978 on *NMONESOURCE.COM*.