



**NEW MEXICO STATE UNIVERSITY
BOARD OF REGENTS
SPECIAL MEETING AGENDA
October 17, 2022 at 1:00 PM**

Regents Room (Room 001)
Educational Services Building
NMSU Las Cruces Campus,
1780 East University Avenue
Las Cruces, NM

Livestreamed at <https://nmsu.zoom.us/j/93914730638>

Regents of New Mexico State University

Chair Ammu Devasthali, Vice Chair Arsenio Romero, Secretary/Treasurer Neal Bitsie, Dina Chacón-Reitzel, Christopher T. Saucedo

Non-Voting Advisory Members - ASNMSU President Garrett Moseley, Faculty Senate Chair Gaylene Fassenko, Ph.D., Employee Council Chair Susanne Berger

University Officials - Chancellor Dan E. Arvizu, Ph.D., Interim Provost Dorothy Campbell, Ph.D., Vice Chancellor Ruth A. Johnston, Ph.D., General Counsel Roy Collins III, J.D.

AGENDA

A. Call to Order, Chairwoman Ammu Devasthali

1. Confirmation of Quorum and Roll Call

B. Approval of Agenda, Chairwoman Ammu Devasthali

C. Confirmation of Prior Closed Executive Sessions, Chairwoman Ammu Devasthali

1. Confirmation of Prior Closed Executive Session September 15, 2022

2. Confirmation of Prior Closed Executive Session October 12, 2022

3. Confirmation of Prior Closed Executive Session October 17, 2022

D. Consent Items, Chairwoman Ammu Devasthali

1. Acceptance of honorary naming request for Pan American Center thoroughfare, Chancellor Dan Arvizu

2. Geothermal Drive Renaming to Tortugas Trail, Chancellor Dan Arvizu

3. NMDOT Acquisition – DACC/Gadsden Right of Way, Special Assistant to the President Scott Eschenbrenner

4. Amend 21.17.36 NMAC Pecan Weevil Interior Quarantine, NMDA Secretary Jeff Witte

5. Repeal and replace 21.17.28 NMAC Pecan Weevil Exterior Quarantine, NMDA Secretary Jeff Witte

E. Action Items

1. None.

F. Closed (Executive) Session

1. **Close meeting to discussion the performance evaluation and objective statement for the 2022 – 2023 Academic Year for Chancellor Arvizu as permitted under the personnel matters exemption the New Mexico Open Meetings Act, NMSA Section 10-15-1, subsection (H)(2).**
 - a. **Quantitative Performance Targets and Goals (Objective Statement) for Chancellor Dan Arvizu for Academic Year 2022 – 2023**
2. **Reconvene in open session and take final action, if any, on such matters which shall be acted upon in open session following conclusion of the closed session.**

G. Informational Items, *Chairwoman Ammu Devasthali*

1. None.

H. Adjournment, *Chairwoman Ammu Devasthali*



**NEW MEXICO STATE UNIVERSITY BOARD OF REGENTS
SPECIAL MEETING
October 17, 2022**

Item C-1

Confirmation of Prior Executive Session – September 15, 2022

The Board of Regents met in closed executive session at 1:45 pm on September 15, 2022.

The closed executive session meeting was held to discuss limited personnel matters concerning individual NMSU employees in accordance with NMSA Section 10-15-1 H(2).

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

Regent Saucedo ____

Regent Chacón-Reitzel ____

Regent Bitsie ____

Regent Romero ____

Regent Devasthali ____



**NEW MEXICO STATE UNIVERSITY BOARD OF REGENTS
SPECIAL MEETING
October 17, 2022**

Item C-2

Confirmation of Prior Executive Session – October 12, 2022

The Board of Regents met in closed executive session at 10:00 am on October 12, 2022.

The closed executive session meeting was held to discuss limited personnel matters concerning individual NMSU employees in accordance with NMSA Section 10-15-1 H(2).

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

Regent Saucedo ____

Regent Chacón-Reitzel ____

Regent Bitsie ____

Regent Romero ____

Regent Devasthali ____



**NEW MEXICO STATE UNIVERSITY BOARD OF REGENTS
SPECIAL MEETING
October 17, 2022**

Item C-3

Confirmation of Prior Executive Session – October 17, 2022

The Board of Regents met in closed executive session at 8:00 am on October 17, 2022.

The closed executive session meeting was held to discuss the incentive compensation and evaluation for Chancellor Arvizu as permitted under the personnel matters exemption the New Mexico Open Meetings Act, NMSA Section 10-15-1, subsection (H)(2).

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

Regent Saucedo ____

Regent Chacón-Reitzel ____

Regent Bitsie ____

Regent Romero ____

Regent Devasthali ____



Board of Regents Meeting
Meeting Date: October 17, 2022
Agenda Item Cover Page

Agenda Item # D-1

- Action Item
- Consent Item
- Informational Item

Presented By: Dan Arvizu, Ph.D.
Chancellor

Agenda Item:

Acceptance of honorary naming request for Pan American Center thoroughfare

Requested Action of the Board of Regents:

Approval of naming of access road

Executive Summary:

Honorific naming for the access road west of Arrowhead Drive, south of Lot 29 to the entrance to Lot 27 in the attached noted snippet of the campus at Pan Am Center.

References:

Map included

Prior Approvals:

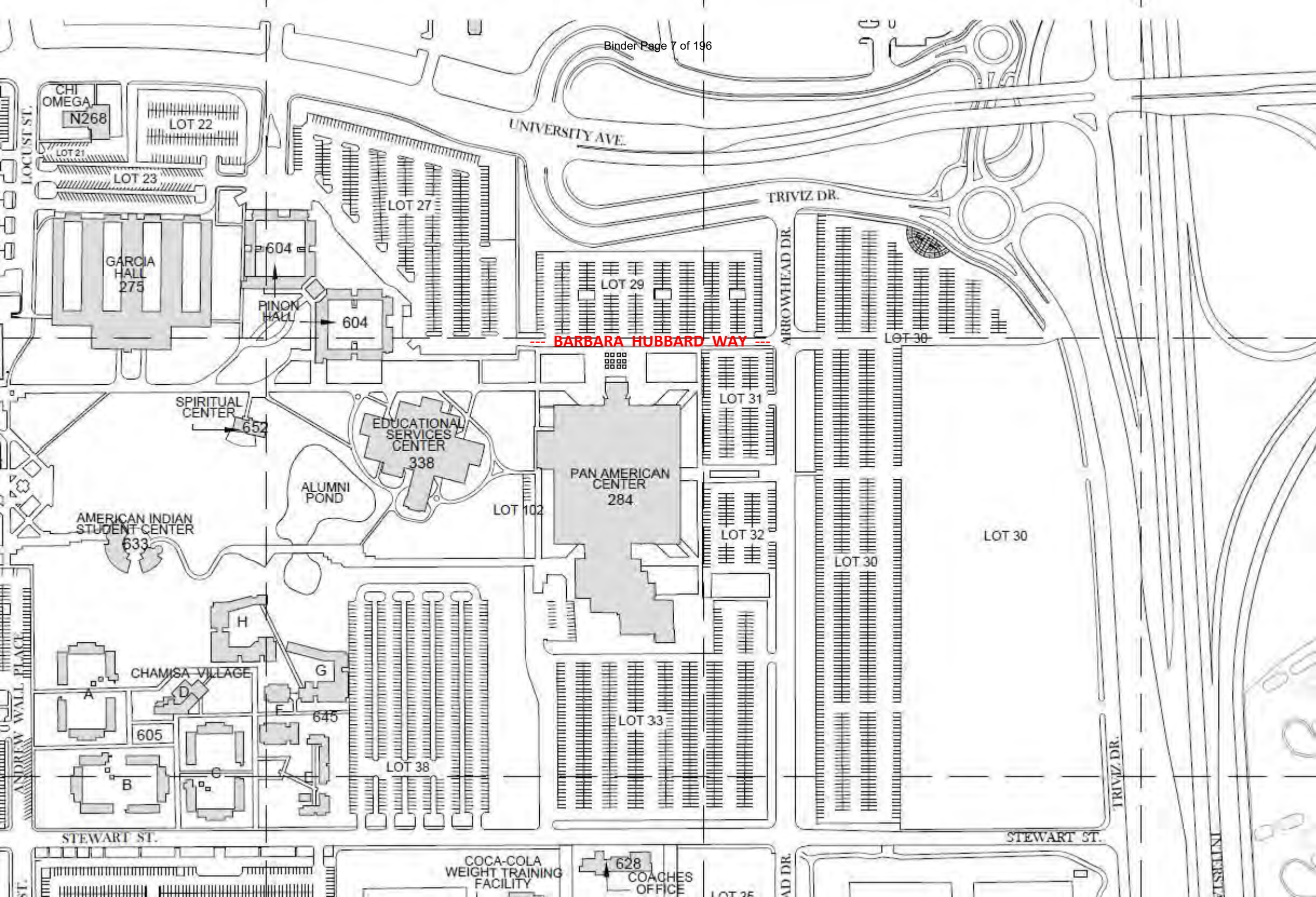
Naming Committee

Agenda Item Approved By:

A handwritten signature in blue ink that reads "Dan E. Arvizu". The signature is written over a horizontal line.

Dan E. Arvizu
Chancellor

10/11/22
Date



UNIVERSITY AVE.

TRIVIZ DR.

ARROWHEAD DR.

BARBARA HUBBARD WAY

LOCUST ST.

ANDREW WALL PLACE

TRIVIZ DR.

STEWART ST.

STEWART ST.

WATSON ST.

CHI OMEGA N268

LOT 22

LOT 23

LOT 27

LOT 29

LOT 30

LOT 31

LOT 32

LOT 30

LOT 30

LOT 33

LOT 38

LOT 102

LOT 35

GARCIA HALL 275

604

PINON HALL

604

SPIRITUAL CENTER

652

EDUCATIONAL SERVICES CENTER 338

ALUMNI POND

PAN AMERICAN CENTER 284

AMERICAN INDIAN STUDENT CENTER 633

CHAMISA VILLAGE

H

G

645

605

COCA-COLA WEIGHT TRAINING FACILITY

628

COACHES OFFICE



Board of Regents Meeting
Meeting Date: October 17, 2022
Agenda Item Cover Page

Agenda Item # D-2

- Action Item
- Consent Item
- Informational Item

Presented By: Chancellor Dan E. Arvizu, Ph.D.

Agenda Item:

Geothermal Drive Renaming to Tortugas Trail

Requested Action of the Board of Regents:

Approval of the renaming of Geothermal Drive to Tortugas Trail.

Executive Summary:

Geothermal Drive currently extends from Interstate 25 east to a cul-de-sac at the entrance to the NMSU Golf Course and then continues its course eastward along a limited access road to the base of "Tortugas Mountain". Tortugas Mountain rises above the East Mesa to elevation of 4,928 feet above sea level. Tortugas, or "Tortoise" Mountain derives its name from its resemblance to a turtle making its way across the desert – when viewed from the south.

For neighboring tribal communities including the Tortugas Pueblo and the Piro-Manso-Tiwa (PMT), Tortugas Mountain serves as a sacred ceremonial site. In addition to tribal ceremonies, Tortugas Mountain has also long been used for mining, ranching, scientific studies, and recreation. The mountain is also used by outdoor enthusiast, families and NMSU students who participate in recreational activities on this mountain.

Previously, geothermal wells served the University Center and Residence, as well as greenhouses near the Aggie Rodeo Arena. Today, none of these facilities utilize the geothermal well due to operating issues with the system.

Today the Geothermal Drive address is used by the golf course maintenance facility (4225 Geothermal), Passive Solar Building (4003 Geothermal) and the University Center and Residence (4501 Geothermal). Therefore, the impact for system changes and occupants would be minimal.

As an HIS and MSI, located in the borderland's region, it is important that NMSU continues strong relationships with the local communities. We are focused on a street naming that recognizes the campus and community culture along with the local geography.

References:



EAST CAMPUS MAP
2021-Geothermal-HI2022-CAMPUS MAP



CAMPUS MAP



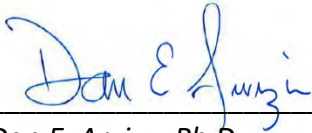
CPC-Summary
Report- Fast-track- C

Prior Approvals:

Campus Planning Committee – July 18, 2022

Campus Planning Committee (CPC) is a standing committee that represents the NMSU campus community to review proposed projects that impact the visual, physical appearance of the campus.

Agenda Item Approved By:



Dan E. Arvizu, Ph.D.
Chancellor

Oct. 10, 2022

Date



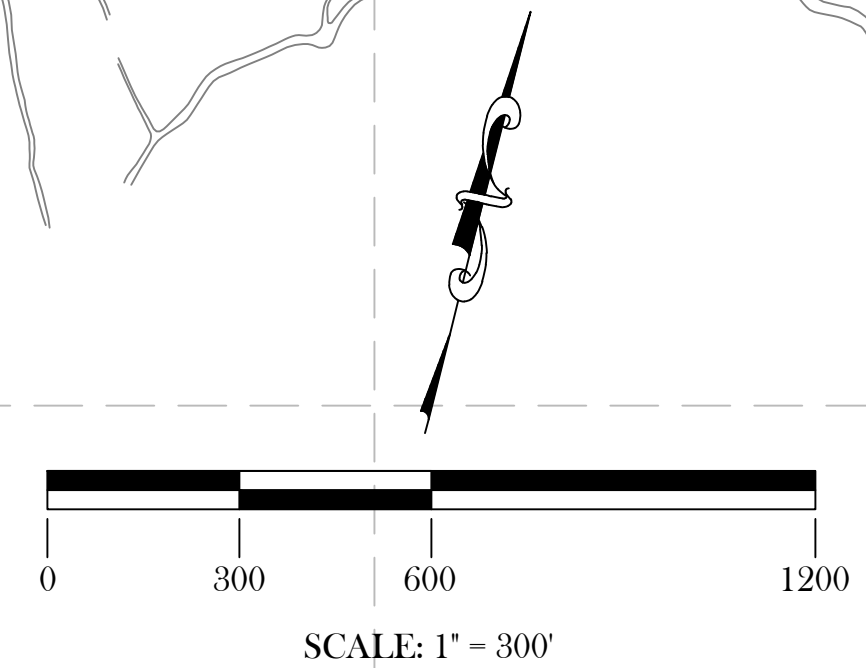
BLDG #	BUILDING	GRID
383	Chemical Waste Facility	H-5
527	Chemical Waste Site Showers	H-5
392	Geothermal Greenhouse	F-5
393	Geothermal Greenhouse	G-5
464	Geothermal Storage	G-5
575	Golf Course Chemical Storage	B-5
587	Golf Course Clubhouse	C-6
577	Golf Course East Restrooms	B-4
399	Golf Course Maintenance Building	B-5
576	Golf Course West Restrooms	B-5
582	Golf Driving Range Facility	C-6
294	Observatory 24" 'A' Mountain South	K-7
283	Observatory 24" 'A' Mountain North	L-5
348	Passive Solar	A-7
366	President's Residence	C-6
500	PSL Antenna Range Central Tower	I-3
519	PSL Antenna Range South Tower	I-3
259	PSL Central Control Building Antenna Range	I-3
256	PSL High Bay Antenna Range	I-3
522	PSL Pyro Building	H-4
258	PSL Receiver - South Antenna Range	I-3
441	Rodeo Arena Supervisor's Trailer	G-5
377	Rodeo Task Room	G-5
562	SWTDI Aquaculture Greenhouse	F-5
553	VERL Farm, Peatstone Storage	G-4
535	VERL Farm, Scabias Colony Lab	G-4
534	VERL Farm, Scabias Mite Lab	G-4
532	VERL Farm, Storage Shed	G-4
428	VERL Farm, Shop	G-4
458	VERL Farm, Trailer 1	G-3
459	VERL Farm, Trailer 2	G-4
615	VERL Farm, Trailer 3	H-4
367	VERL Office Lab	G-4

Geothermal Drive up to
Observatory Road and
'A' Mountain.



New Mexico State University

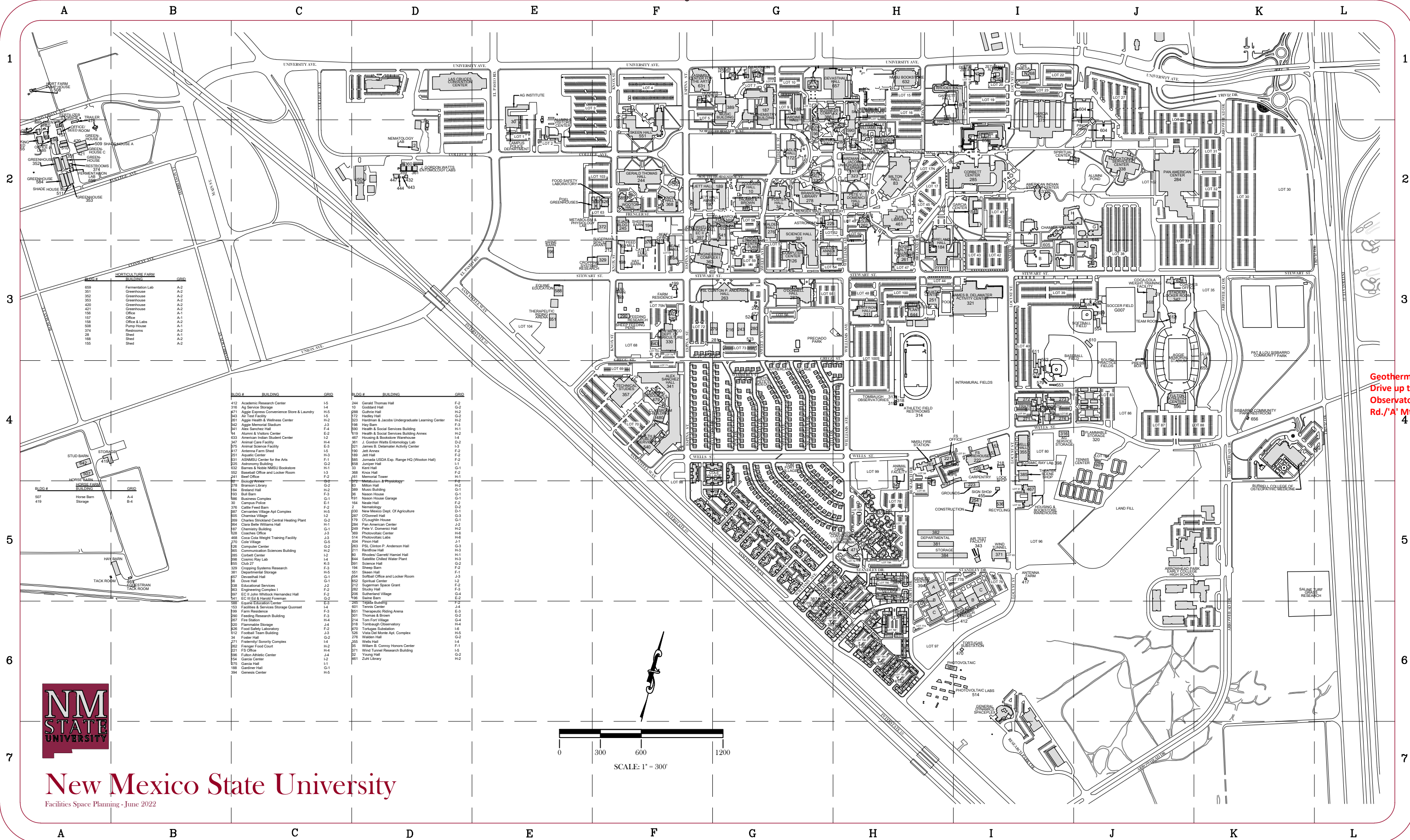
Facilities Space Planning - October 2021



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NORTHCULTURE FARM

BLDG #	BUILDING	GRID
659	Fermentation Lab	A-2
351	Greenhouse	A-2
352	Greenhouse	A-2
353	Greenhouse	A-2
420	Greenhouse	A-2
421	Greenhouse	A-2
156	Office	A-1
157	Office & Labs	A-1
158	Pump House	A-1
374	Restrooms	A-2
28	Shed	A-1
168	Shed	A-2
155	Shed	A-2

HORSE FARM

BLDG #	BUILDING	GRID
419	Horse Barn Storage	A-4

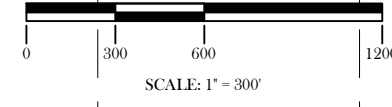
BLDG #	BUILDING	GRID
412	Academic Research Center	I-5
316	Ag Services Storage	I-4
471	Agge Express Convenience Store & Laundry	H-5
443	Air Test Facility	I-5
261	Agge Health & Wellness Center	H-2
462	Agge Memorial Stadium	J-3
341	Alex Sanchez Hall	F-4
14	Alumni & Visitor Center	E-2
633	American Indian Student Center	I-2
347	Animal Care Facility	H-4
375	Animal Science Facility	I-3
417	Antenna Farm Shed	I-5
451	Aquatic Center	H-3
331	ASNMUSU Center for the Arts	F-1
325	Astronomy Building	G-2
632	Barrett & Noble NMSU Bookstore	H-1
552	Barrett Office and Locker Room	I-3
241	Beef Office	F-2
278	Biological Sciences	G-2
318	Brannon Library	G-2
384	Brookland Hall	H-2
393	Bull Barn	F-3
386	Business Complex	G-1
30	Campus Police	E-1
376	Cattle Feed Barn	F-2
387	Cavanites Village Ag Complex	H-5
305	Chamisa Village	I-2
269	Charles DeWittland Central Heating Plant	G-2
364	Clara Belle Williams Hall	H-1
387	Chemistry Building	G-1
328	Coaches Office	J-3
468	Coca Cola Weight Training Facility	J-3
270	Cole Village	G-5
126	Computer Center	G-2
365	Communication Sciences Building	H-2
285	Corbett Center	I-2
368	Cosmos Ray Lab	I-4
365	Club 27	G-2
329	Cropping Systems Research	F-3
381	Departmental Storage	H-5
657	Devaesthall Hall	G-1
84	Dove Hall	G-1
338	Educational Services	J-2
363	Engineering Complex I	F-2
397	Ed & John Wilcock Hernandez Hall	F-2
541	Ed & Harold Foreman	G-2
188	Equine Education Center	F-3
153	Facilities & Services Storage Quonset	I-4
389	Farm Residence	F-3
290	Feeding Research Building	F-3
290	Fire Station	J-4
320	Flammable Storage	J-4
308	Food Safety Laboratory	F-2
512	Football Team Building	J-3
34	Foster Hall	G-2
271	Fraternity/Sorority Complex	I-4
362	Fringer Food Court	H-4
221	FS Office	H-4
396	Fulton Athletic Center	J-4
354	Garcia Center	I-2
575	Garcia Hall	I-1
188	Gardiner Hall	G-1
394	Genesis Center	H-5

BLDG #	BUILDING	GRID
244	Gerald Thomas Hall	F-2
10	Godard Hall	G-2
288	Gulfinch Hall	H-2
172	Hadley Hall	G-2
323	Hardman & Jacobs Undergraduate Learning Center	H-2
198	Hay Barn	F-3
399	Health & Social Services Building	H-2
149	Health & Social Services Building Annex	H-2
467	Housing & Bookstore Warehouse	I-4
361	J. Gordon Watts Entomology Lab	D-2
321	James B. Delanater Activity Center	I-3
190	Jett Annex	F-2
189	Jett Hall	F-2
385	Jomada USDA Exp. Range HQ (Woolton Hall)	F-1
33	Kent Hall	G-1
368	Koza Hall	F-2
461	Memorial Tower	H-1
33	Milton Hall	H-2
389	Music Building	G-1
36	Nason House	G-1
391	Nason House Garage	F-2
194	Neele Hall	I-1
2	Nematology	D-2
390	New Mexico Dept. Of Agriculture	D-1
287	O'Donnell Hall	G-3
779	O'Laughlin House	G-1
284	Pan American Center	J-2
449	Pete V. Domenici Hall	H-2
361	Photovoltaic Labs	H-6
514	Photovoltaic Labs	J-1
263	PSL Clinton P. Anderson Hall	G-3
211	Randolph Hall	H-3
80	Rhodes/Garrett Hamlet Hall	H-1
444	Satellite Chilled Water Plant	H-3
391	Science Hall	G-2
194	Sheep Barn	F-1
351	Spence Hall	F-1
654	Softball Office and Locker Room	J-3
362	Spiritual Center	I-2
212	Sugerman Space Grant	F-2
262	Sturdy Hall	F-3
206	Sutherland Village	G-4
196	Swine Barn	E-2
205	TBQA Building	F-2
601	Tennis Center	J-4
361	Thompson Riding Arena	E-3
301	Thomas & Brown	G-2
214	Tom Fort Village	G-3
518	Tombagh Observatory	H-4
470	Tortugas Substation	I-6
526	Vista Del Monte Agt. Complex	H-5
276	Walden Hall	G-2
395	Wells Hall	I-4
35	William B. Conroy Honors Center	F-1
371	Wind Tunnel Research Building	I-5
32	Young Hall	G-2
461	Zuhl Library	H-2



New Mexico State University

Facilities Space Planning - June 2022



Geothermal Drive up to Observatory Rd./'A' Mtn.

New Mexico State University

Office of the University Architect

7/18/2022

Summary

NMSU Campus Planning Committee

Fast-track item for Renaming Geothermal Drive

July 12, 2022

College Appointments Voting: Yesenia Palma-Dominguez, Jim Murphy, Pat Gavin, David Mitchell, Conni DeBlicek, Kate Terpis, Mike Luchau, Garrett Mosley (ASNMSU President), Sam and Leora (ASNMSU graduate students), Gaylene Fasenko, Susanne Berger

College Appointments Voting Absent: Pat Gavin, Mike Luchau, Loera and Sam

Positions (Ex-Officio, voting) Appointments Attendees: Heather Watenpaugh, D'Anne Stuart, Robert Herrera, Patrick Turner, Scott Eschenbrenner, Lynn Schlemeyer, Tanner Schaub, Michael Smith, Braun Cartwright, Jack Kirby

Resource (Non-Voting): Jon Webster, Jose Loera, Bart Lane, Orasa Vaught, Chief Andy Bowen and Tessa Abeyta

Fast-track Message to CPC membership on 7/12/22:

You are being asked to review the attached letter of support for Renaming the Geothermal Drive on NMSU campus to Tortugas Trail. **Please provide your feedback and comments via email along with your recommendation ('Yes' or 'No' that will be shared with the Chancellor for consideration) by Monday, July 15, 2022 at 5PM.** Information on Non-honorific Namings may go to the CPC, representative of the campus community, as an ad hoc advisory committee.

Process and timeline for CPC/Chancellor/BOR approval:

- Non-honorific Namings, per ARP 18.10 may be proposed for consideration to the chair of the CPC to coordinate with the Chancellor as an ad hoc advisory committee.

- Per ARP 18.10 – Namings and Other Honorific Recognition

PART 4: NON-HONORIFIC NAMINGS

Namings which are **neither honorific nor involve private philanthropy** on behalf of NMSU fall within the reserved authority of the Board of Regents. Such naming proposals may be proposed for consideration to the chair of the Campus Planning Committee, who will coordinate with the chancellor to appoint an *ad hoc* advisory committee. The advisory committee will consider the naming proposal as presented and any responses from relevant stakeholders potentially affected by the naming.

Campus Planning Committee initial review

- Chancellor reviews comments from CPC fast-track recommendation and takes the BOR for final approval
- Next Regular BOR meeting is 9/15/22

Location Description:

- Wells Street becomes Geothermal Drive when it travels under Interstate 25 at east campus
- Attached are the main campus map and the extension of the roadway up to Observation Road at 'A' Mountain, also referred to as Tortugas Mountain, at east campus with the roadway to be renamed noted

Summary of Responses:

- Responses received from 13/22 voting members



New Mexico State University

Office of the University Architect

7/18/2022

- All response were 'Yes' in favor of recommending the renaming to Tortugas Trail
- **Comments included:**
 - I do think it is a shame to lose the connection to renewable energy, which is a university and state strategic aim, but I did see that unfortunately the geothermal wells are no longer functional, so agree that it is appropriate to change if there is no such use now or planned use in the future.
 - Support for this request
 - Recommend holding on other name changes if there are others specifically being discussed for the east end of campus to present as a group
 - My only comment is that for future naming efforts that aim to honor/highlight native cultural significance in the area, it might be worth considering words from the native language in question.
 - I have reviewed the materials; I strongly support the local indigenous communities and their celebrations of traditions and believe that our University community should also celebrate their cultural impact.





Aggie Development, Inc.
P.O. Box 3145
Las Cruces, NM 88003-8001
575-646-1727

June 22, 2022

Heather Watenpaugh
Co-Chair
NMSU Planning Committee

Re: Geothermal Drive Renaming to Tortugas Trail
New Mexico State University
Las Cruces, NM

Dear University Architect Watenpaugh,

I am reaching out in my capacity as the President of Aggie Development, Inc. and on behalf of the Chancellor's office, to respectfully submit the following request to the Campus Planning Committee. Specifically, the request is to rename Geothermal Drive to Tortugas Trail.

Geothermal Drive currently extends from Interstate 25 east to a cul-de-sac at the entrance to the NMSU Golf Course and then continues its course eastward along a limited access road to the base of "Tortugas Mountain." Tortugas Mountain rises above the East Mesa to an elevation of 4,928 feet above sea level.

Often called "A" Mountain for the NMSU Aggies large "A" painted on the west side of the mountain. To NMSU's neighboring tribal communities, "A" mountain is ~~A much preferred older name is~~ Tortugas, or "Tortoise" Mountain, because of its resemblance to a turtle making its way across the desert – when viewed from the south. For neighboring tribal communities including the Tortugas Pueblo and the Piro Manso Tiwa, Tortugas Mountain serves various tribal members as a sacred ceremonial site. The ceremonies attract visitors from all over the country who participate in a peaceful procession to the top of Tortugas Mountain along the sandy Tortugas Arroyo and then up the current Geothermal Drive. These ceremonies typically take place in early December.

In addition to tribal ceremonies, Tortugas Mountain has also long been used for mining, ranching, scientific studies, and recreation. The mountain is used by outdoor enthusiast, families and NMSU students who enjoy hiking to the top and biking or jogging the base of the mountain. In our conversations with both the Tortugas Pueblo and the Piro Manso Tiwa, they do not disparage the use of the mountain for recreational purposes. They are more concerned about long-term development plans that might unduly impact the mountain and are very pleased that NMSU has included them in recent updates regarding Aggie Uptown development.

The structures visible on top are communication sites and astronomical observatories managed by NMSU. NMSU currently manages the western side of the mountain through a cooperative effort with the Bureau of Land Management who owns the eastern portion of the mountain.

Heather Watenpaugh

June 22, 2022

Page 2

Geothermal Drive address is currently used by the golf course maintenance facility (4225 Geothermal), Passive Solar Building (4003 Geothermal) and Presidents Residence (4501 Geothermal). Therefore, the impact for system changes and occupants would be minimal.

According to The Buildings of New Mexico State University book, the University Center and Residence is located on Geothermal Drive. The building's location is unique because it shares the site with a geothermal well. New Mexico State University engineers started pumping water from the well January 18, 1980. "The connection of the well to the residence would serve as a demonstration for geothermal techniques in the southern New Mexico area" according to President Gerald Thomas at a March 22, 1979, Board of Regents meeting.

Additional Geothermal uses were for Greenhouses that were constructed in 1985 near the Aggie Rodeo Arena. Today, the University Center and Residence no longer utilizes the geothermal well. Originally, water for the house came from a secondary geothermal well near the main one. Several years ago, the secondary well stopped working so the system was re-routed to work off of the main well that supplied the rest of campus. In early 2002 the building became completely independent of the resource because of problems with piping and because the water supplied only heated to about 130°F, which was not hot enough for heating air. Currently the building is dependent on natural gas for space heating and electricity for other heating needs.

As an HSI and MSI, located in the borderlands region, it is important that NMSU continue strong relationships with the local communities. We are focused on a street name that recognizes the campus and community culture along with the local geography. We appreciate your consideration of this request and I would be happy to provide additional information should you require.

Respectfully Submitted,

W. Scott Eschenbrenner

Scott Eschenbrenner
President



Board of Regents Meeting
Meeting Date: October 17, 2022
Agenda Item Cover Page

Agenda Item # D-3

- Action Item
- Consent Item
- Informational Item

Presented By: Scott Eschenbrenner
Special Assistant to the President

Agenda Item:

NMDOT Acquisition – DACC/Gadsden Right of Way

Requested Action of the Board of Regents:

Approval of the NMDOT Acquisition – DACC/Gadsden Right of Way

Executive Summary:

NMSU has received a formal offer letter from New Mexico Department of Transportation (NMDOT) to acquire 1.646 acres of land from the Regents of NMSU at the DACC Gadsden campus. The valuation for the land is \$1.70 per square foot or \$121,950 for the taking area. There is agreement with NMDOT that as part of their Highway 404 project, they will compensate NMSU for the DACC marquee sign currently situated on the proposed right-of-way. NMDOT obtained four quotes from regional sign companies and selected the estimate from EEI Signs at \$32,500. Additional compensation for gross receipts tax and entrepreneurial incentive has brought the total damage estimate to \$40,000 to reconstruct a replica sign on the remainder parcel at the entrance to the DACC-Gadsden facility.

References:

Please see attached supporting documents.



Revised Offer Letter
parcel 2-4 & 3-2...9-2



Contract revised
9-27-22.doc

Prior Approvals:

9/1/2022 Regents Real Estate Committee



Control # E100203
 Project: E100203
 Parcel(s): 2-4 & 3-2
 County: Dona Ana

REVISED OFFER LETTER

September 27th, 2022

THE BOARD OF REGENTS OF NEW MEXICO STATE UNIVERSITY

Attn: Mr. Scott Eschenbrenner

PO Box 30001

Las Cruces, NM 88003-8001

RE: **FORMAL OFFER** for Parcel(s) 2-4 & 3-2 CN E100203 Reconstruction of NMSR 404 (O'Hara Road) interchange between I-10 to NMSR 213 at Chaparral, New Mexico, a distance of about 8 miles. With development of the frontage road on the North and South sides of NMSR 404, east of I-10 and the reconstruction of the bridge over the interstate.

Dear Property Owner:

The New Mexico Department of Transportation is presently acquiring right of way required for the construction of the above captioned project and wishes to purchase from you Fee Simple Interest in the property described herein.

For this property, the Department hereby makes an offer of \$ 161,950.00 which is considered to represent just compensation as supported a reviewed and approved appraisal prepared by a qualified appraiser for the subject property.

The above compensation is allocated as follows:

Parcel	Sq. Ft.	\$/Unit	% Fee	Land	Improvements	Net Damages	Total
2-4	70,910	\$1.70	100%	\$120,550	\$0.00	\$0.00	\$120,550.00
3-2	800	\$1.70	100%	\$1,400	\$0.00	*\$40,000.00	*\$41,400.00

Total Compensation \$ *\$161,950.00

(Rounded per NMDOT guidelines)

*This Parcel Summary has been revised to reflect a new bid from EEI Signs to remove & replace the existing sign on parcel 3-2. The previous company who provided the original bid has stated they cannot do the work due to staff shortage, therefore a new bid was required adjusting the total compensation. (Please see attached bid)
 **As in the original appraisal (pg. 33), 15% Entrepreneurial Incentive has been added.

There are no improvements to this property.

Michelle Lujan Grisham
 Governor

Justin Reese
 Acting Cabinet Secretary

Commissioners

Jennifer Sandoval
 Commissioner, Vice-Chairman
 District 1

Bruce Ellis
 Commissioner
 District 2

Hilma E. Chynoweth
 Commissioner
 District 3

Walter G. Adams
 Commissioner, Chairman
 District 4

Thomas C. Taylor
 Commissioner
 District 5

Charles Lundstrom
 Commissioner, Secretary
 District 6

In connection with this offer, the following documents are enclosed:


1. *Right of Way Map*
2. *Acquisition Booklet*
3. *Appraisal*
4. *Contract*
5. *(2) Warranty Deed(s)*
6. *Form W-9*

We sincerely trust that this offer meets with your approval. If so, please sign and date the contract where indicated, complete and sign the conveyance document in the presence of a notary public, and return them in the self-addressed, stamped envelope provided for your convenience.


The New Mexico Department of Transportation is required under section 6045(3)(1) of the Internal Revenue Code to file an information return with the Internal Revenue Service related to the acquisition of property interests. If the total compensation is more than \$600.00, the Department is required to send you a form 1099. In order to process a form 1099, a completed W-9 form is needed from you. The law (26 CFR section 1.6045-4(1) also requires you to provide the Department with the correct taxpayer identification number and failure to do so may subject you to civil or criminal penalties. Although you will not receive a 1099 for payments under \$600.00, the Department is required to obtain a W-9 from all property owners, regardless of compensation amount, needed for payment processing. Therefore, in order to allow the Department to process the payment for acquisition of the parcel(s), all payments will require a completed W-9 form. Please complete the enclosed W-9 and mail it in the enclosed envelope addressed to NMDOT Financial Control Bureau.

Should you have any questions or need further information, please feel free to contact Daniel Pavlakovich at (505) 490-2567. I can also be contacted via email at Daniel.Pavlakovich@state.nm.us Your cooperation in our efforts to provide better roads for your community is greatly appreciated.

Sincerely,


Daniel Pavlakovich
Right of Way Acquisition Agent

Concur:


Jeff Valdéz
Right of Way Acquisition Unit Supervisor
xc: Records

New Mexico Department of Transportation

CONTRACT

Project: E100203	Control # E100203
Termini: NMSR 404, (O'Hara Rd.) & I-10 Interchange NM 404 from I-10 to NM 2013 milepost 1.1 to 9 (7.9 mile)	District: 1
Parcel: 2-4 & 3-2	County: Dona Ana

THIS AGREEMENT made and entered into this _____ day of _____, _____
between **THE BOARD OF REGENTS OF NEW MEXICO STATE UNIVERSITY**
whose address is Attn: Mr. Scott Eschenbrenner
PO Box 30001
Las Cruces, NM 88003-8001

Party of the First Part, and the New Mexico Department of Transportation, hereinafter referred to as the Department. For the purposes of this contract, Party shall be deemed to be either singular or plural as the context requires.

WITNESSETH: For good and valuable consideration, receipt of which is hereby acknowledged, the Party of the First Part hereby delivers to the Department, (2) Warranty Deed to real estate for highway purposes situated in Dona Ana County, State of New Mexico, and subject to the following terms and conditions:

CONDITIONS:

1. Taxes and Special Assessments, if any, delinquent from former years, and Taxes and Special Assessments for the current year, if due and/or payable, shall be paid by the Party of the First Part.
2. Party of the First Part will be responsible for the payment of all property taxes for the parcel of property heretofore described to the date of closing of this transaction. The Department will reimburse the Party of the First Part for all property taxes paid by said Party of the First Part after the date of closing for the parcel of property heretofore described.
3. THIS CONTRACT embodies the whole Agreement between the parties hereto, and there are no promises, terms, conditions, or obligations referring to the subject matter hereof, other than as contained herein.
4. The Party of the First Part hereby agrees that the compensation herein provided to be paid includes full compensation for their interests, and the interests of their life tenants, remaindermen, reversioners,

lienors and lessees, and any and all other legal and equitable interests which are or may be outstanding and said Party of the First Part agrees to discharge the same.

5. THIS CONTRACT shall be binding upon the parties hereto and upon the respective heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties, only when the same shall have been approved by the Secretary or his/her authorized representative.

6. The terms of this Agreement are understood and assented to by us, and payment is to be made in accordance with the above. It is further understood and agreed that, except as noted or specified above, IMMEDIATE POSSESSION of said premises, and the right to enter thereon, is HEREBY GRANTED to the Department, its duly authorized Agents and Contractors, upon receipt of payment by First Party.

7. The terms and conditions of this contract have been fully explained and are understood by the undersigned, and payment is to be made in accordance with the above conditions.

8. The consideration as set forth in the contract shall constitute full payment for the premises and all damages, of whatever nature, arising out of or by reason of the use of said premises for highway purposes.

9. Terms and conditions contained on the reverse side of this contract are part of this contract as fully as if written on this side.

10. Party of the first part will hold the Department harmless for any and all claims, demands or causes of action arising out of or as a result of the transactions as described herein.

THE DEPARTMENT agrees to purchase the above-described real estate, or interest therein, and to pay upon delivery of a good and sufficient conveyance therefore, as follows:

Parcel	Sq. Ft.	\$/Unit	% Fee	Land	Improvements	Net Damages	Total
2-4	70,910	\$1.70	100%	\$120,550	\$0.00	\$0.00	\$120,550.00
3-2	800	\$1.70	100%	\$1,400	\$0.00	*\$40,000.00	*\$41,400.00

Total Compensation \$ \$161,950.00

(Rounded per NMDOT guidelines)

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Daniel Pavlakovich, Right of Way Negotiator

Approved By: _____ Date: _____
Jeff Valdez, Right of Way Acquisition Supervisor

Party of the First Part: THE BOARD OF REGENTS OF NEW MEXICO STATE UNIVERSITY

By: _____ Date: _____

Title: _____



Board of Regents Meeting
Meeting Date: October 17, 2022
Agenda Item Cover Page

Agenda Item # D-4

Action Item

Consent Item

Informational Item

Presented By: Jeff M. Witte
 Director/Secretary NMDA

Agenda Item:

Amend 21.17.36 NMAC Pecan Weevil Interior Quarantine.

Requested Action of the Board of Regents:

Approval of the amendments 21.17.36 NMAC Pecan Weevil Interior Quarantine.

Executive Summary:

The hearings concerning New Mexico Department of Agriculture's (NMDA) proposed repeal and replace of 21.17.28 NMAC took place as follows:

1. Friday, August 26, 2022, in-person/telephonic and in-person hearing at the New Mexico Department of Agriculture, at 3190 S. Espina, Las Cruces, New Mexico, on the corner of Espina and Gregg.
2. Monday, August 29, 2022, public hearing at the Artesia Public Schools Board Room, Admin Building located at 301 Bulldog Boulevard (advertised as 1106 W. Quay) in Artesia, New Mexico.
3. Friday, September 9, 2022, public hearing at the Tularosa Community Center, located at 1050 N. Bookout Rd. in Tularosa, New Mexico.

The proposed amendments to 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE include: changing the duration of the rule to permanent; moving the definition for non-compliant to the definitions section; changing treatment certificate documentation requirements to include treatment dates, destination contact information, and other information as deemed relevant by the department; adding an additional cold storage treatment for regulated articles at 12.2°F for a period of fourteen days to align with cold treatments allowed under California Code of Regulations (CCR) 3273 "Walnut and Pecan Pests"; and updating formatting to comply with state requirements. Amending the Disposition of Violations section to clarify authorities related to the expulsion of non-compliant regulated articles for the purpose of addressing specific instances of non-compliance, and adding terms for reimbursement for costs incurred by the department for disposition of non-compliant regulated articles to ensure the state is not held responsible for those costs including non or delinquent payments. Adding Otero County to the list of pecan weevil quarantined counties. due to the continued presence of pecan weevil in two locations over multiple years and the possible spread of pecan weevil to unknown locations in the county through equipment used in infested orchards.

After review of the submitted written and oral comments the hearing officer suggested one additional change based on comment to 21.17.36 Part 7G NMAC:

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

I hereby recommend adoption with the change.

References:

Prior Approvals:

21.17.36 NMAC, Pecan Weevil Interior Quarantine (Emergency Rule), filed November 20, 2017
- Expired May 20, 2018. New Rule filed November 01, 2018.

Agenda Item Approved By:



Name, Ph.D.
Title

October 11, 2022

Date

New Mexico Department of Agriculture

Amendment 21.17.28 NMAC Pecan Weevil Interior Quarantine

October 17, 2022



Pecan Weevil Exterior Quarantine 21.17.28 NMAC

Table of Contents

Director/Secretary Recommendation Memo	4
Final Replacement for Adoption.....	7
Hearing Officer Recommendation.....	11
Hearing Transcript Las Cruces	15
Hearing Transcript Artesia.....	24
Hearing Transcript Tularosa	28
Hearing Process Deviation and Resolution	37
Exhibits	40
Notice of Rulemaking Published	41
Notice of Extended Public Comment & Additional Hearing Published.....	43
Current Rule.....	45
Proposed Rule.....	47
Pest Control Act.....	50
21.1.2 NMAC, Fees for Documents and Services	55
Payne, J.A. and J.M. Wells. 1974. Postharvest control of the pecan weevil in inshell pecans. Journal of Economic Entomology (6): 789-790	57
CCR 3273 Walnut and Pecan Pests State Exterior Quarantine. Appendix A: Approved treatments for in-shell	59
Comments Received	60
Hearing Sign-In Sheets	65



New Mexico Department of Agriculture

Director/Secretary Recommendation Memo






NEW MEXICO DEPARTMENT OF AGRICULTURE
Office of the Director/Secretary
MSC 3189
New Mexico State University
P.O. Box 30005
Las Cruces, NM 88003-8005
Phone: (575) 646-3007

October 11, 2022

MEMORANDUM

TO: New Mexico State University Board of Regents

FROM: Jeff M. Witte, Director/Secretary 

SUBJECT: Recommendation to Adopt the Hearing Officer's Recommendations
RE: New Mexico Department of Agriculture Hearing on Pecan Weevil Interior Quarantine Amendments – Amendments Title 21, Chapter 17, Part 36 of the New Mexico Administrative Code (21.17.36 NMAC, Pecan Weevil Interior Quarantine).

BACKGROUND INFORMATION

The hearings concerning New Mexico Department of Agriculture's (NMDA) proposed amendment to 21.17.36 NMAC took place on three different occasions and locations as follows:

1. Friday, August 26, 2022, in-person/telephonic and in-person hearing at the New Mexico Department of Agriculture, at 3190 S. Espina, Las Cruces, New Mexico, on the corner of Espina and Gregg.
2. Monday, August 29, 2022, public hearing at the Artesia Public Schools Board Room, Admin Building located at 301 Bulldog Boulevard (advertised as 1106 W. Quay) in Artesia, New Mexico.
3. Friday, September 9, 2022, public hearing at the Tularosa Community Center, located at 1050 N. Bookout Rd. in Tularosa, New Mexico.

The Rulemaking Notice was published in the *New Mexico Register* on July 26, 2022. Notice was provided to the Sunshine Portal; *Albuquerque Journal*; *Las Cruces Sun-News*; *Roswell Daily Record*; *Alamogordo Daily News*; *Carlsbad Current-Argus*; and in Spanish and English in the *Santa Fe New Mexican*, and NMDA's website. A subsequent notice was published regarding an additional hearing location and extended comment period was published on August 9, 2022 in the *New Mexico Register*; Sunshine Portal; *Albuquerque Journal*; *Las Cruces Sun-News*; *Roswell Daily Record*; *Alamogordo Daily News*; *Carlsbad Current-Argus*; and in Spanish and English in the *Santa Fe New Mexican*, and NMDA's website.

The New Mexico Economic Development Department's Small Business Advisory Commission and the Legislative Council Service were notified.

New Mexico Economic Development Department's Small Business Advisory Commission reported no findings.

The proposed amendments to 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE include: changing the duration of the rule to permanent; moving the definition for non-compliant to the definitions section; changing treatment certificate documentation requirements to include treatment dates, destination contact information, and other information as deemed relevant by the department; adding an additional cold storage treatment for regulated articles at 12.2°F for a period of fourteen days to align with cold treatments allowed under California Code of Regulations (CCR) 3273 “Walnut and Pecan Pests”; and updating formatting to comply with state requirements. Amending the Disposition of Violations section to clarify authorities related to the expulsion of non-compliant regulated articles for the purpose of addressing specific instances of non-compliance, and adding terms for reimbursement for costs incurred by the department for disposition of non-compliant regulated articles to ensure the state is not held responsible for those costs including non or delinquent payments. Adding Otero County to the list of pecan weevil quarantined counties. due to the continued presence of pecan weevil in two locations over multiple years and the possible spread of pecan weevil to unknown locations in the county through equipment used in infested orchards.

After review of the submitted written and oral comments the hearing officer suggested one additional change based on comment to 21.17.36 Part 7G NMAC:

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

The hearing officer provided this information for my consideration. I hereby recommend adoption with the change.

Attachments: Hearing Officer Recommendation
 Hearing Transcript

Amendments for Adoption

NMMDA

New Mexico Department of Agriculture

This is an amendment to 21.17.36 NMAC, Sections 1, 4, 7, 8, 9, 10, 11 and 14, effective xx/xx/xxxx.

21.17.36.1 ISSUING AGENCY: [~~New Mexico state university,~~] New Mexico department of agriculture, MSC, 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007.
[21.17.36.1 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.4 DURATION: [~~March 1, 2023~~] Permanent.
[21.17 36.4 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.7 DEFINITIONS:

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

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

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

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

E. “Director” means director secretary of New Mexico department of agriculture.

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

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

~~[G.]~~ **H. “Originating”** means produced within or having spent sufficient time in a quarantined area to be believed to be at risk of being infested.

~~[H.]~~ **I. “Pecan weevil”** means any live developmental stage or synonym of *curculio caryae* (horn) including adult, pupae, larvae, or egg.

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

[21.17.36.7 NMAC – N, 11/01/2018; A, xx/xx/xxxx]

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

[21.17.36.8 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

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

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

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

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

(3) Transportation of regulated articles using alternative methods ~~[may be]~~ as approved under a compliance agreement ~~[issued by the director]~~.

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

[21.17.36.9 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.10 DISPOSITION OF VIOLATIONS: Any non-compliant regulated article ~~[transported in New Mexico that is in violation of this rule]~~ will be subject to immediate quarantine and ~~[treatment]~~ returned back to place of origin or destruction under parameters set forth by the department, or ~~[otherwise disposed of as necessary to prevent the spread or establishment of pecan weevil in non-quarantined areas in New Mexico]~~ other method of disposition as directed by the department that serves the best interest of the state. All ~~[treatment]~~ transportation or disposal of non-compliant articles will be at the expense of the owners, ~~[or]~~ agents or both and performed under the direction of the department. If necessary for the department to incur any cost associated with the disposition of non-compliant regulated articles, the owner, agents or both shall reimburse the department for all costs, including attorney's fees and cost, incurred by the department. Reimbursement to the department is required within 30 days after notification via issuance of invoice requesting payment. If payment is not received within 30 days of notification, the department shall initiate legal action to collect or recuperate actual cost.

[21.17.36.10 NMAC - N, 11/01/2018; A xx/xx/xxxx]

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

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

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

~~[B.]~~ **C.** Immersion in at least 140 degrees fahrenheit ~~[hot]~~ water for a period of at least five minutes ~~[after reaching a temperature of 140 degrees fahrenheit]~~; or

~~[C.]~~ **D.** Other treatment methods ~~[may be]~~ approved under a compliance agreement issued by the director.

[21.17.36.11 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.14 ADDITIONAL LAWS AND REGULATIONS: All regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico, ~~[or the]~~ United States ~~[department of agriculture]~~ or both now in effect or which may hereafter be promulgated.

[21.17.36.14 NMAC - N, 11/01/2018; A xx/xx/xxxx]

Integrated Rule



TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 17 PEST, DISEASE, AND WEED CONTROL
PART 36 PECAN WEEVIL INTERIOR QUARANTINE

21.17.36.1 ISSUING AGENCY: [~~New Mexico state university,~~] New Mexico department of agriculture, MSC, 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007.
[21.17.36.1 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.2 SCOPE: Part 36 of Chapter 17 applies to all person(s) transporting regulated articles from infested counties in New Mexico to New Mexico pecan weevil-free counties.
[21.17.36.2 NMAC - N, 11/01/2018]

21.17.36.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9 NMSA 1978 compilation and the Pecan Act, Chapter 76, Article 16, Sections 1 through 9, NMSA 1978 compilation.
[21.17.36.3 NMAC - N, 11/01/2018]

21.17.36.4 DURATION: [~~March 1, 2023~~] Permanent.
[21.17.36.4 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.5 EFFECTIVE DATE: November 1, 2018, unless a later date is listed at the end of a section.
[21.17.36.5 NMAC - N, 11/01/2018]

21.17.36.6 OBJECTIVE: The objective of Part 36 of Chapter 17 is to establish an interior quarantine to restrict the transportation of pecan weevil from quarantined areas to non-quarantined areas in New Mexico.
[21.17.36.6 NMAC - N, 11/01/2018]

21.17.36.7 DEFINITIONS:

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

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

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

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

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

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

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

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

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

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

[21.17.36.7 NMAC – N, 11/01/2018; A, xx/xx/xxxx]

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

[21.17.36.8 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

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

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

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

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

(3) Transportation of regulated articles using alternative methods ~~may be~~ as approved under a compliance agreement ~~issued by the director~~.

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

[21.17.36.9 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.10 DISPOSITION OF VIOLATIONS: Any non-compliant regulated article ~~transported in New Mexico that is in violation of this rule~~ will be subject to immediate quarantine and returned back to place of origin or destruction under parameters set forth by the department, or ~~otherwise disposed of as necessary to prevent the spread or establishment of pecan weevil in non-quarantined areas in New Mexico~~ other method of disposition as directed by the department that serves the best interest of the state. All ~~treatment~~ transportation or disposal of non-compliant articles will be at the expense of the owners, ~~or~~ agents or both and performed under the direction of the department. If necessary for the department to incur any cost associated with the disposition of non-compliant regulated articles, the owner, agents or both shall reimburse the department for all costs, including attorney's fees and cost, incurred by the department. Reimbursement to the department is required within 30 days after notification via issuance of invoice requesting payment. If payment is not received within 30 days of notification, the department shall initiate legal action to collect or recuperate actual cost.

[21.17.36.10 NMAC - N, 11/01/2018; A xx/xx/xxxx]

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

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

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

~~B.~~ **C.** Immersion in at least 140 degrees fahrenheit ~~hot~~ water for a period of at least five minutes ~~after reaching a temperature of 140 degrees fahrenheit~~; or

~~C.~~ **D.** Other treatment methods ~~may be~~ approved under a compliance agreement issued by the director.

[21.17.36.11 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

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

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

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

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

21.17.36.14 ADDITIONAL LAWS AND REGULATIONS: All regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico, ~~[or the]~~ United States ~~[department of agriculture]~~ or both now in effect or which may hereafter be promulgated.

[21.17.36.14 NMAC - N, 11/01/2018; A xx/xx/xxxx]

HISTORY OF 21.17.36 NMAC: [RESERVED]

History of Repealed Material:

21.17.36 NMAC, Pecan Weevil Interior Quarantine, filed November 20, 2017 - Expired May 20, 2018.

Hearing Officer Recommendation Memo





New Mexico Department of Agriculture

Laboratory Division
MSC 3-LD
P.O. Box 30005
Las Cruces, NM 88003-8005
575-646-1551, fax: 575-646-2361

Binder Page 36 of 196

October 7, 2022

MEMORANDUM

TO: Director/Secretary Jeff Witte
FROM: Tim Darden, Division Director - Hearing Officer
SUBJECT: Hearing Officer's Report - RE: New Mexico Department of Agriculture Hearings on Pecan Weevil Interior Quarantine Proposed Amendments - Amendments Title 21, Chapter 17, Part 36 of the New Mexico Administrative Code (21.17.36 NMAC, Pecan Weevil Interior Quarantine).

Handwritten notes: Approved w/ Recommended Change 10/11/22, JH [Signature]

BACKGROUND INFORMATION

The hearings concerning New Mexico Department of Agriculture's (NMDA) proposed amendments to 21.17.36 NMAC took place on three different occasions and locations as follows:

- 1. Friday, August 26, 2022, public video/telephonic and in person hearing at NMDA, 3190 S. Espina, Las Cruces, NM. This hearing included a court reporter and a Zoom component to allow participation in person or via Zoom.
2. Monday, August 29, 2022, public hearing at the Artesia Public Schools Board Room, Admin Building located at 301 Bulldog Boulevard (advertised as 1106 W. Quay) in Artesia, NM. This hearing was recorded and audio posted on the NMDA website (I have an unofficial typed written transcription with this report (Transcripts) and provided a report of the change in venue, Exhibit 1).
3. Friday, September 9, 2022, public hearing at the Tularosa Community Center, located at 1050 N. Bookout Rd., Tularosa, New Mexico. This hearing included a court reporter.

The Rulemaking Notice was published July 26, 2022 in the New Mexico Register; Albuquerque Journal; Las Cruces Sun-News; Roswell Daily Record; Alamogordo Daily News; Carlsbad Current Argus; and in Spanish and English in the Santa Fe New Mexican as well as July 28, 2022 in the Artesia Daily Press (Exhibit 2). A subsequent notice was published regarding an additional hearing location and extended comment period on August 9, 2022 in the New Mexico Register; Albuquerque Journal; Las Cruces Sun-News; Roswell

Daily Record; Alamogordo Daily News; Carlsbad Current Argus; and in Spanish and English in Santa Fe New Mexican (Exhibit 3).

Notification was sent to the New Mexico Economic Development's Small Business Regulatory Advisory Commission, and to Legislative Council Service. The New Mexico Economic Development Small Business Regulatory Advisory Commission advised there was "no findings" with respect the proposed rule amendments.

The hearing officer provides the following information for consideration by NMDA's director/secretary.

SUMMARY OF THE PROPOSED AMENDMENTS

Primary statutory elements contained in the proposed Pecan Weevil Interior Quarantine amendments includes the following (as presented by Agricultural and Environmental Services Division staff):

Section 4 replaces the expiration date with the word permanent as a result of continued spread and establishment of pecan weevil in the state.

Section 7 adds "non-compliant" to the list of definitions

Section 8 adds Otero County to the list of pecan weevil quarantined counties. The county was added for the purpose of regulating the transportation of in-shell pecans grown in the county to help slow the spread of pecan weevil to uninfested New Mexico counties, including Dona Ana. Factors contributing to Otero County's quarantine include:

1. continued presence of pecan weevil in two locations over multiple years, therefore confirming establishment of pecan weevil populations in the county;
2. possible spread of pecan weevil to unknown locations in the county through equipment use in infested orchards;
3. Dona Ana County is a destination for both cleaned and field-run pecans.

Section 9 clarifies existing language and adds "compliance agreement" as an accepted document for transport of regulated articles. The addition of compliance agreement allows for alternative methods of transport of regulated articles not specifically identified in rule.

Section 9 clarifies the department authorities to request other transport related information that is not explicitly stated in rule and clarifies department authorities to inspect regulated articles.

Section 10 clarifies the department's authority regarding the disposition of non-compliant regulated articles including destruction and return to origin options. Proposed amendments also clarify fiscal responsibilities regarding disposition of non-compliant articles to ensure the department is reimbursed for costs associated with disposition of non-compliant regulated articles.

Section 11 adds an additional cold treatment that will be accepted by the department for intrastate transport to kill pecan weevil. The additional treatment allows for the use of freezer facilities that were unable to comply with cold treatment requirements stated in current law.

See Exhibit 4 for the complete text of the current rule and Exhibit 5 for the rule with amendments in context these hearings cover.

PUBLIC COMMENT by LOCATION

Written Comments Received with Summary

Levi WilliamSon, August 3, 2022 – Hand written edits submitted via e-mail to the record – Wording changes and edits to Parts 2, 4, 7F, 7H, 7K, 8, 9A, and 10 (Exhibit 6).

Gloria Chestnut, September 9, 2022 – Hand written comment to the rule provided to the Hearing Officer (also submitted to the record via e-mail by the Hearing Officer) – Wording changes to 21.17.36 NMAC Parts 3 and 7G (Exhibit 7).

Richard Sharrio, September 10, 2022 – E-mail submitted to the record – Against the proposed amendment due to additional farmer costs (Exhibit 8).

Tonya WilliamSon, September 12, 2022 – E-mail submitted to the record – Against the proposed amendments and does not feel the whole county needs quarantined. Would like to stop or delay until an acceptable solution is reach. Includes additional, identical e-mail, signed and scanned with the same content (Exhibit 9).

New Mexico Pecan Growers, September 12, 2022 – Letter of support for changes to the interior quarantine (Exhibit 10).

Las Cruces Comments Received with Summary August 26, 2022

No comments received.

Artesia Comments Received with Summary August 29, 2022

No comments received.

Tularosa Comments Received with Summary September 9, 2022

Much of the public comments centered around inspection processes, funding and an understanding of the quarantine versus non-quarantined county's as well as a suggestion to quarantine the whole state. There were little to no alternatives offered in the public comment besides self-reporting and again, quarantine the whole state. There were also requests for more education concerning the pecan weevil and eradication efforts and procedures to attempt to eradicate.

HEARING OFFICER'S CONCLUSION

This memorandum represents the summary of the hearings held at the end of August and first part of September. The content is provided for your consideration and a decision tool for you to present a recommendation to the New Mexico State University Board of Regents for its adoption of the proposed Amendments to Title 21, Chapter 17, Part 36 of the New Mexico Administrative Code (21.17.36 NMAC, Pecan Weevil Interior Quarantine).

The purpose of the proposed amendment of 21.17.36 NMAC is to change the duration of the rule to permanent; moving the definition for non-compliant to the definitions section; change treatment certificate documentation requirements to include treatment dates, destination contact information, and other information as deemed relevant by the department; add an additional cold storage treatment for regulated articles at 12.2°F for a period of fourteen days to align with cold treatments allowed under California Code of Regulations (CCR) 3273 "Walnut and Pecan Pests"; and update formatting to comply with state requirements. Amend the Disposition of Violations section to clarify authorities related to the expulsion of non-compliant regulated articles for the purpose of addressing specific instances of non-compliance, and add terms for reimbursement for costs incurred by the department for disposition of non-compliant regulated articles to ensure the state is not held responsible for those costs including non or delinquent payments. Add Otero County to quarantined counties due to the detection of additional pecan weevil infested areas in the county in an effort to slow the spread of pecan weevil to uninfested pecan growing areas of the state.

While the formal and written comments from Ms. Chestnut presented at the Tularosa hearing have merit the amendments follow formatting required by the State Records Center and Archives as to the wording changes suggested to 21.17.36 NMAC Part 3. However, the second requested change does pertain to this rule as this is in fact an interior quarantine which impacts regulated articles moving within New Mexico. I propose the following change to 21.17.36 Part 7G NMAC:

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

I have no further suggested changes to the proposed amendments and rule based upon the three hearings and comments presented. The only alternatives to the proposed rule include quarantining individual farms and increased surveillance, however, that will mean also revisiting quarantines in other areas of the state as well. I suggest providing more education about what to look for, how to spot and how to effectively treat for pecan weevil throughout growing regions of the state.

Please contact me if you have any questions.

Hearing Transcript

Las Cruces, NM

August 26, 2022



PECAN WEEVIL INTERIOR QUARANTINE
Transcript of Proceedings

August 26, 2022
3:02 p.m. to 3:08 p.m.
3190 S. Espina
Las Cruces, NM

REPORTED BY: JAN WIMBERLY, CCR

CCR No. 13

Dama's Reporting Service, LLC

P.O. Box 2022

Alamogordo, New Mexico 88311

Las Cruces meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
August 26, 2022

1 MR. DARDEN: Good afternoon. At this time
2 we will start the hearing that addresses proposed
3 amendments to the Pecan Weevil Interior Quarantine,
4 21.17.36 of the New Mexico Administrative Code. My
5 name is Tim Darden, and I am a Division Director
6 with the New Mexico Department of Agriculture.

7 Today I will be initiating two hearings.
8 The first hearing addresses proposed amendments to
9 the Pecan Weevil Interior Quarantine, 21.17.36 of
10 the New Mexico Administrative Code. The second
11 hearing will commence immediately following the
12 close of the first hearing and will address the
13 repeal and replacement of the Pecan Weevil Exterior
14 Quarantine, 21.17.28 of the New Mexico
15 Administrative Code.

16 Please make sure that you have signed in
17 for the record and that your cell phone is either
18 off or silenced. Thank you. Copies of the proposed
19 amendments to the Pecan Weevil Interior Quarantine
20 and procedural steps were made available as you
21 walked in.

22 The date is Friday, August 26th, 2022, and
23 the time is 3:02 p.m. This hearing is being held
24 via Zoom and in person at New Mexico Department of
25 Agriculture's main conference room located at 3190

Las Cruces meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
August 26, 2022

1 South Espina Street in Las Cruces, New Mexico. This
2 is the published date and time and location for this
3 hearing. The hearing is being recorded, and either
4 a transcript of today's hearing or the recording
5 will be available from the department's web page.

6 Following a summary of the proposed
7 amendments, the public will be provided an
8 opportunity to provide testimony hearing the
9 proposed amendments. Mr. Lewis will now provide a
10 summary of the public notices and primary proposed
11 amendments to the Pecan Weevil Interior Quarantine.

12 MR. LEWIS: Good afternoon. I am Brad
13 Lewis, a Division Director with New Mexico
14 Department of Agriculture. The Pecan Weevil
15 Interior Quarantine, New Mexico Administrative Code
16 21.17.36, was promulgated to slow the spread of
17 pecan weevil from New Mexico pecan weevil infested
18 counties to uninfested counties of the state by
19 regulating the movement of articles that may be
20 infested with pecan weevil.

21 Public notices on for this hearing were
22 published as follows and in accordance to state
23 laws: July 26th -- New Mexico Register, Albuquerque
24 Journal, Las Cruces Sun-News, Roswell Daily Record,
25 Alamogordo Daily News, Carlsbad Current Argus; and

1 in Spanish and English in the Santa Fe New Mexican;
2 July 28th -- Artesia Daily Press. Notices were
3 posted on the New Mexico Department of Agriculture
4 website and the New Mexico Sunshine Portal.

5 A subsequent notice was published
6 regarding an additional hearing location and
7 extended comment period as follows: August 9th --
8 New Mexico Register, Albuquerque Journal, Las Cruces
9 Sun-News, Roswell Daily Record, Alamogordo Daily
10 News, Carlsbad Current Argus, and in Spanish and
11 English in Santa Fe New Mexican. Notices were
12 posted on the New Mexico Department of Agriculture
13 website and the New Mexico Sunshine Portal.

14 Notification was sent to the New Mexico
15 Economic Development's Small Business Regulatory
16 Advisory Commission, and to Legislative Council
17 Service. The New Mexico Economic Development Small
18 Business Regulatory Advisory Commission advised
19 there was "no findings" with respect to the proposed
20 rule amendments.

21 The primary proposed amendments of Pecan
22 Weevil Interior Quantity include Section 4, relaces
23 the expiration date with the word "permanent";
24 Section 7, adds "noncompliant" to the list of
25 definitions; Section 8, adds Otero County to the

1 list of pecan weevil quarantined counties; Section
2 9, clarifies existing language and adds "compliance
3 agreement" as an accepted document for transport of
4 regulated articles as well as providing the
5 department authority to request other
6 transport-related information that is not explicitly
7 stated state in rule; language was added to clarify
8 department authorities to inspect regulated
9 articles; Section 10, clarifies the department's
10 authority regarding the disposition of noncompliant
11 regulated articles including destruction/return to
12 origin options.

13 Proposed amendments also clarify fiscal
14 responsibilities regarding disposition of
15 noncompliant articles. Section 11 adds an
16 additional cold treatment that will be accepted by
17 the department to kill pecan weevil.

18 MR. DARDEN: Thank you. New Mexico
19 Department of Agriculture has received written
20 comments prior to this hearing from the following:
21 Mr. Levi Williamson.

22 We will now open the floor for comments.
23 Please begin by stating your name and affiliation
24 for the record. Your comments and questions should
25 be limited to the proposed amendments.

1 Those of you joining by Zoom, please use
2 the "raise hand feature," and you will be unmuted.
3 Those in the room, please raise your hand and wait
4 until I call on you. We will now begin accepting
5 comments. No comments from those on Zoom? Seeing
6 none, we will close the public oral comment period
7 for this hearing.

8 Written comments will be accepted until
9 5:00 p.m., September 12th, 2022. All public
10 comments will be presented to the Director/Secretary
11 of New Mexico Department of Agriculture, Mr. Jeff
12 Witte, and will be submitted for consideration to
13 the New Mexico State University Board of Regents.
14 Submitted comments and either a transcript of
15 today's hearing and/or the recording will be
16 available from New Mexico Department of
17 Agriculture's web page. Thank you all for
18 participating. We will close the hearing at 3:08
19 p.m.

20 (The proceedings concluded at 3:08 p.m.)
21
22
23
24
25

Las Cruces meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
August 26, 2022

1 IN RE :

2 PECAN WEEVIL INTERIOR QUARANTINE MEETING - LAS
3 CRUCES

4

5

6

REPORTER'S CERTIFICATE

7 I, JAN WIMBERLY, New Mexico CCR No. 13, DO

8 HEREBY CERTIFY that on August 26, 2022, the

9 Proceedings in the above-captioned matter were taken

10 before me, that I did report in stenographic

11 shorthand the Proceedings set forth herein, and that

12 the foregoing pages are a true and correct

13 transcription to the best of my ability.

14 I FURTHER CERTIFY that I am neither employed by

15 nor related to nor contracted with (unless excepted


16 by the rules) any of the parties or attorneys in

17 this case, and that I have no interest whatsoever in

18 the final disposition of this case in any court.

19

20



21

22

JAN WIMBERLY, CCR No. 13
License Expires: 12/31/22
Dama's Reporting Service, LLC
P.O. Box 2022
Alamogordo, NM 88311-2022

23

24

25

Hearing Transcript

Artesia, NM

August 29, 2022



PECAN WEEVIL INTERIOR QUARANTINE Public hearing #2 Transcript on August 29

This document contains the transcript from the second Public Meeting held on August 29, 2022, on NMDA's request for input to amend 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE.

Tim Darden: Good afternoon, at this time we will start the hearing that addresses proposed amendments to the Pecan Weevil Interior Quarantine 21.17.36 of the New Mexico Administrative Code. My name is Tim Darden, and I am a Division Director with New Mexico Department of Agriculture. Today, I will be officiating two hearings. The first hearing addresses proposed amendments to the Pecan Weevil Interior Quarantine, 21.17.36 of the New Mexico Administrative Code. The second hearing will commence immediately following the close of the first hearing, and will address the repeal and replacement of the Pecan Weevil Exterior Quarantine, 21.17.28 of the New Mexico Administrative Code.

Please make sure that you have signed in for the record, and that your cell phone is either off or silenced, Thank you.

Copies of the proposed amendments to the Pecan Weevil Interior Quarantine, and procedural steps were made available as you walked in.

The Date is Monday, August 29, 2022, and the time is 4:17 pm. This hearing is being held in person at Artesia Public Schools Board Room, Administration Building in Artesia, New Mexico. This is the published date and time for this hearing.

The hearing is being recorded, and either a transcript of today's hearing, or the recording will be available from the department's webpage.

Following a summary of the proposed primary amendments, the public will be provided an opportunity to provide testimony regarding the proposed amendments. Mr. Lewis, will now provide a summary of the public notices and primary proposed amendments to the Pecan Weevil Interior Quarantine.

Brad Lewis: Good afternoon. I am Brad Lewis, a Division Director with New Mexico Department of Agriculture. The Pecan Weevil Interior Quarantine, New Mexico Administrative Code 21.17.36, was promulgated to slow the spread of pecan weevil from New Mexico pecan weevil infested counties to uninfested counties of the state by regulating the movement of articles that may be infested with pecan weevil.

Public notices for this hearing were published as follows, and in accordance to state laws: July 26: New Mexico Register; Albuquerque Journal; Las Cruces Sun-News; Roswell Daily Record; Alamogordo Daily News; Carlsbad Current Argus; and in Spanish and English in the Santa Fe New Mexican. July 28: Artesia Daily Press

Notices were posted on the New Mexico Department of Agriculture Website and the New Mexico Sunshine Portal. A subsequent notice was published regarding an additional hearing location and extended comment period as follows: August 9: New Mexico Register; Albuquerque Journal; Las Cruces Sun-News; Roswell Daily Record; Alamogordo Daily News; Carlsbad Current Argus; and in Spanish and English in Santa Fe New Mexican. Notices were posted on the New Mexico Department of Agriculture Website and the New Mexico Sunshine Portal.

Notification was sent to the New Mexico Economic Development's Small Business Regulatory Advisor Commission, and to Legislative Council Service. The New Mexico Economic Development Small Business Regulatory Advisory Commission advised there was "no findings" with respect the proposed rule amendments.

The primary proposed amendments to the Pecan Weevil Interior Quarantine include: Section 4 replaces the expiration date with the word permanent. Section 7 adds "non-compliant" to the list of definitions. Section 8 adds Otero County to the list of pecan weevil quarantined counties. Section 9 clarifies existing language and adds "compliance agreement" as an accepted document for transport of regulated articles as well as providing the department authority to request other transport related information that is not explicitly stated in the rule. Language was added to clarify department authorities to inspect regulated articles. Section 10 clarifies the department's authority regarding the disposition of non-compliant regulated articles including destruction and return to origin options. Proposed Amendments also clarify fiscal responsibilities regarding disposition of non-compliant articles. Section 11 adds an additional cold treatment that will be accepted by the department to kill pecan weevil.

Tim Darden: Thank you. New Mexico Department of Agriculture has received written comments prior to this hearing from the following: Mr. Levi Williamson

We will now open the floor for comments. Please begin by stating your name and affiliation for the record. Your comments and questions should be limited to the proposed amendments. Please raise your hand and wait until I call on you. At this time, I will begin accepting comments.

--

Seeing none, we will close the public oral comment period for this hearing. Written comments will be accepted until 5:00 pm, September 12, 2022. All Public comments will be presented to the Secretary/Director of New Mexico Department of Agriculture, Mr. Jeff Witte, and will be submitted for consideration to the New Mexico State University Board of Regents. Submitted comments, and either a transcript of today's hearing, and/or the recording will be available from New Mexico Department of Agriculture's webpage.

Thank you all for participating. We will close this hearing at 4:22 pm.

Hearing Transcript

Tularosa, NM

September 9, 2022



PECAN WEEVIL INTERNAL QUARANTINE
Transcript of Proceedings

September 9, 2022
3:05 p.m. to 3:48 p.m.
1050 N. Bookout
Tularosa, NM

REPORTED BY: JAN WIMBERLY, CCR

CCR No. 13

Dama's Reporting Service, LLC

P.O. Box 2022

Alamogordo, New Mexico 88311

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

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2 we will start the hearing that addresses the
3 proposed amendments to the Pecan Weevil Interior
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11 second hearing will commence immediately following
12 the close of the first hearing and will address the
13 repeal and replacement of the Pecan Weevil Exterior
14 Quarantine 21.17.28 of the New Mexico Administrative
15 Code.

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17 for the record and that your cell phone is either
18 off or silenced. Thank you. Copies of the proposed
19 amendments to the Pecan Weevil Interior Quarantine
20 and procedural steps were made available as you
21 walked in.

22 The date is Friday, September 9th, 2022,
23 and the time is 3:05 p.m. This hearing is being
24 held in person at the Tularosa Community Center,
25 located at 1050 North Bookout Road in Tularosa, New

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

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3 recorded, and either a transcript of today's hearing
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9 proposed amendments. Mr. Lewis will now provide a
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11 amendments to the Pecan Weevil Interior Quarantine.

12 MR. LEWIS: Good afternoon. I'm Brad
13 Lewis, a division director with New Mexico
14 Department of Agriculture. The Pecan Weevil
15 Interior Quarantine, New Mexico Administrative Code
16 21.17.36 was promulgated to slow the spread of pecan
17 weevil from New Mexico pecan weevil infested
18 counties to uninfested counties of the state by
19 regulating the movement of articles that may be
20 infested with pecan weevil.

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Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 in Spanish and English in the Santa Fe New Mexican;
2 July 28th -- Artesia Daily Press. Notices were
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4 website and in the New Mexico Sunshine Portal.

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13 website and in New Mexico Sunshine portal.

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15 Economic Development's Small Business Regulatory
16 Advisory Commission and to Legislative Council
17 Service. The New Mexico Economic Development's
18 Small Business Regulatory Advisory Commission
19 advised there was "no findings" with respect to the
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23 relaces the expiration date with the word
24 "permanent" as a result of continued spread and
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Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 7, adds noncompliant to the list of definitions;
2 Section 8, adds Otero County to the list of pecan
3 weevil quarantined counties. The county was added
4 for the purpose of regulating the transportation of
5 in-shell pecans grown in the county to help slow the
6 spread of pecan weevil to uninfested New Mexico
7 counties, including Doña Ana.

8 Factors contributing to Otero County's
9 quarantine include continued presence of pecan
10 weevil in two locations over multiple years
11 therefore confirming establishment of pecan weevil
12 populations in the county, possible spread of pecan
13 weevil to unknown locations in the county through
14 equipment used in infested orchards, Doña Ana County
15 is a designation for both cleaned and field-run
16 pecans.

17 Section 9 clarifies existing language and
18 adds "compliance agreement" as an accepted document
19 for transport of regulated articles. The addition
20 of "compliance agreement" allows for alternative
21 methods of transport of regulated articles not
22 specifically identified in rule. Section 10
23 clarifies the department authorities to request
24 other transport related information that is not
25 explicitly stated in rule and clarifies department

1 authorities to inspect regulated articles.

2 Section 10 clarifies the department
3 authority regarding the disposition of noncompliant
4 regulated articles including destruction and return
5 to origin options. Proposed amendments also clarify
6 fiscal responsibilities regarding disposition of
7 noncompliant articles to ensure the department is
8 reimbursed for costs associated with the disposition
9 of noncompliant regulated articles.

10 Section 11 adds an additional cold
11 treatment that will be accepted by the department
12 for intrastate transport to kill pecan weevil. The
13 additional treatment allows for the use of freezer
14 facilities that were unable to comply with cold
15 treatment requirements stated in current law.

16 MR. DARDEN: Thank you. New Mexico
17 Department of Agriculture has received written
18 comments prior to this hearing from the following:
19 Mr. Levi Williamson. We will now open the floor for
20 comments. Please begin by stating your name and
21 affiliation for the record. Your comments and
22 questions should be limited to the proposed
23 amendments. Please raise your hand and wait until I
24 call on you. At this time I will begin accepting
25 comments. Yes, sir.

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 MR. LEVI WILLIAMSON: Levi Williamson. I
2 have a question. The proposed amendments are only
3 targeting Eddy, Lea, Otero, and Chaves Counties to
4 go abide by this quarantine. There's large pecan
5 orchards in other counties, other than Doña Ana,
6 like the one in Valencia County, I believe, the way
7 up heading to Belen on the west side of I-25. I'm
8 sure that they utilize Doña Ana County's
9 infrastructure to process their pecans. If they
10 come up with a quarantine, they do not have to abide
11 by this rule. And I mean -- and that's the way I
12 read this rule.

13 So I'm wondering why is it strictly just
14 to these four counties and not to the entire state
15 of New Mexico? And there's a bunch of them. We can
16 bring up a lot of other examples. I'm just going to
17 stick with one to cut time.

18 MR. LEWIS: I think -- and I'll speak in
19 generalities. So when they look at quarantining a
20 county, we look at a number of factors. Is it
21 spreading in the county? Is there the mechanisms to
22 control it and so forth? So an example would be
23 three trees in somebody's backyard that has an
24 issue. They don't move the pecans anywhere, they're
25 being treated and sprayed, so forth. Then we

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 probably do not quarantine that county on that. And
2 I do not know what the issues are in other counties
3 at this point in time.

4 MR. LEVI WILLIAMSON: And I'd like to
5 respond to that. I feel like the pecan weevil is
6 known as something that's going to have to
7 constantly be eradicated, or try to. Our efforts to
8 remove the pecan weevil are going to be a constant.
9 I don't think that we're ever going to see a beetle
10 just disappear off the face of the earth. So to
11 better prepare this rule that you guys are
12 proposing, it would make more sense to make it to
13 the entire state than just four particular counties.
14 That's just a comment. I don't need a response on
15 that. And then as well as in -- and we've recently
16 received some information from the Agriculture
17 Department, State of New Mexico, that shows every --
18 every documented area that the pecan weevil has been
19 located and the only county right now that currently
20 uses a different terminology is Doña Ana. I guess
21 you guys don't have pecan weevil there in that
22 county, however it shows that there's several -- or
23 a few areas spread out that are under surveillance.
24 There's not one under-surveillance tract in any
25 other counties. That's the only county that gets to

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 utilize that kind of language. Why?

2 MR. LEWIS: The "surveillance" term is
3 because we have not confirmed that. That means we
4 do not have a specimen, adult or larvae, to confirm
5 its presence. What we have found or what the
6 growers have brought to us is a nut with a hole in
7 it. And we look at those holes and we decide is it
8 close enough that it may be pecan weevil. If it's
9 close enough that it may be, then we start looking
10 at the orchards very heavily and the products and so
11 forth on that, so that's the difference. All others
12 are confirmed.

13 MR. LEVI WILLIAMSON: So when we do, in
14 the future, get confirmed pecan weevil infestation,
15 is there going to have to be a new -- a revision to
16 this chapter 17 to add that county to it, or
17 what's -- what's going to be forthcoming to ensure
18 that, you know, the process of keeping the pecan
19 weevil quarantine is going to continue?

20 MR. LEWIS: The rules are made that they
21 can be adjusted every year or twice a year or
22 however often it needs to be as pecan weevil has
23 moved through the state. I think that addresses
24 your question.

25 MR. LEVI WILLIAMSON: Yeah, it does. It

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 just doesn't make sense to me why we're rewriting
2 this chapter 17 for just four counties where we
3 could have this in place to help improve our
4 agriculture with the pecans in New Mexico, just to
5 do it all in one clean slate. Just put all the
6 counties on it; put the entire state of New Mexico.

7 MR. LEWIS: Well, I think the whole intent
8 has always been to continue to slow its spread and
9 so that's what the quarantines do county by county,
10 is to try to slow its spread through New Mexico.

11 MR. LEVI WILLIAMSON: I'm finished.

12 MR. DARDEN: Yes, sir.

13 MR. RICK WILLIAMSON: Rick Williamson.
14 I'm having to hard time following what you said. In
15 the orchards in Las Cruces, they had a little hole
16 in it. Now, don't you tear that pecan apart to see
17 if there's some kind of bug or something in there?

18 MR. LEWIS: We do, but in many cases there
19 is nothing inside it, or there's not enough to
20 confirm one way or another that it is weevil.

21 MR. RICK WILLIAMSON: We spend hours --
22 they spend hours looking for pecans with holes in
23 there.

24 MR. LEWIS: Um-hmm.

25 MR. RICK WILLIAMSON: It just doesn't seem

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 like that goes along with the whole idea of looking
2 for pecan weevils. I just can't see that. I'm
3 sorry.

4 MR. DARDEN: Yes, ma'am.

5 MS. CHESTNUT: Gloria Chesnut. Do you
6 have any kind of picture or anything to show us what
7 this weevil looks like or the adult looks like? So
8 we'll know to keep an eye on orchards, if we see
9 something lying around or doing something? I
10 thought that's what this was for, is to show us --
11 help us to know, you know, something's here.

12 MR. LEWIS: We are more than willing to
13 come back with a total show and everything else for
14 you at a later date.

15 MS. CHESTNUT: It's like the stink bug, we
16 know what to look for for the stink bug, but the
17 weevil we have no idea what to look for. We thought
18 you guys were going to present at this meeting.

19 MR. LEWIS: We will do it at a later time
20 closer to harvest.

21 MR. DARDEN: Is there anyone else wishing
22 to comment? Yes, sir.

23 MR. BURT: Yeah, Bill Burt. I just was
24 kind of curious as -- I'm not a grower, so I'm
25 curious as to what the process is that would find a

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 beetle or declare this an infestation? I mean, do
2 you have inspectors who go out or do you wait for
3 producers to say, "Hey, I think I have a problem"?
4 How does this work?

5 MR. LEWIS: All of those. So in some
6 instances we do have inspectors that come out for
7 those that have cleaning plants, part of it as a
8 reminder and educational, look for it in the
9 cleaning plants to take samples and return them to
10 Las Cruces. And then we have growers, too, that
11 take them in to the extension service, and they'll
12 photograph them or send them in to Las Cruces for
13 the taxonomist to look at them and confirm them.

14 MR. BURT: And do you have a group of
15 people who go out and inspect the orchards from time
16 to time? Are they on a regular schedule? Or do you
17 just make spots checks? Or how is that process
18 done?

19 MR. LEWIS: So during the -- during the
20 harvest season, we add seasonals onto the payroll.
21 We try to go to everyone that has a cleaning plant
22 that we know of in the state. And we also go to the
23 buying stations that we know of that are supposed to
24 be licensed and those that are aggregating nuts and
25 so forth and make inspections there. To go to every

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 field and so forth, it is -- is very difficult for
2 us, considering the constraints of staff.

3 MR. BURT: Okay. I assume -- it sounds
4 like most of the processing is done in Doña Ana
5 County, certainly for the southern part of the
6 state. Are there inspectors that spend more time at
7 that processing -- or those processing plants than
8 they do, say, in the field?

9 MR. LEWIS: That is correct. We have
10 inspectors that are making routine visits to those
11 cold storage facilities and to the shelling
12 facilities in Doña Ana County.

13 MR. BURT: And I guess -- again, thank you
14 for the education. So if you have an orchard in
15 Otero or Roosevelt County that goes to Doña Ana and
16 you know that that orchard has had beetles, is
17 there -- how do you handle that? I mean, you don't
18 want that to get into other orchards, certainly not
19 into Doña Ana. How does that -- how do you protect
20 the Doña Ana orchards from pecans coming in from
21 other parts of the state?

22 MR. LEWIS: The current quarantine
23 regulations require that they be either cold or hot
24 treated before they go into Doña Ana County to kill
25 pecan weevil, or they go into department certified,

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 sealed vans for transport. They go directly to a
2 certified cold storage facility where they're put in
3 cold storage to kill the weevil.

4 MR. BURT: And how many cold storage
5 facilities are there around, let's say, southern New
6 Mexico?

7 MR. LEWIS: There are three that I believe
8 we have certified.

9 MR. BURT: And may I ask where those are
10 located?

11 MR. LEWIS: There is Valley Cold Storage,
12 which is located in the southern part of Doña Ana
13 County on the south side of Las Cruces. There is
14 Southern Roots, that is along the freeway towards --
15 right across from the mall in Las Cruces, across the
16 freeway to the east of it. And then there's another
17 certified up on the hill.

18 MR. BURT: In Doña Ana County.

19 MR. LEWIS: In Doña Ana County. Not all
20 of them are commercial. Many of them will require
21 that they purchase your nuts to put them in there.
22 So you have to call first.

23 MR. BURT: And those are all owned by
24 private sector interests?

25 MR. LEWIS: That's correct.

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 MR. BURT: That's all I have right now.

2 Thank you.

3 MR. DARDEN: Yes, ma'am.

4 MS. CHESTNUT: Gloria Chestnut. If we
5 take our nuts to Roswell, they don't have to be put
6 in cold storage and all this stuff?

7 MR. LEWIS: That is correct. You can go
8 east with them.

9 MS. CHESTNUT: But they have to go through
10 Lincoln County. It's okay if we keep them in an
11 enclosed trailer?

12 MR. LEWIS: Yeah. We don't feel that
13 there's a threat to Lincoln going through that
14 direction.

15 MR. DARDEN: Yes, sir.

16 MR. RICK WILLIAMSON: Can we go to El
17 Paso?

18 MR. LEWIS: That's up to El Paso. Right
19 now they're getting much tougher on their
20 regulations. We do have some agreements that are on
21 the desk of their secretary of agriculture now
22 regarding movement of nuts from New Mexico
23 quarantined counties into El Paso.

24 MR. RICK WILLIAMSON: Because quite
25 honestly, there's not that much freezer space in New

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 Mexico.

2 MR. LEWIS: Well, Valley Cold Storage is
3 quite large; they're huge.

4 MR. RICK WILLIAMSON: But it has to stay
5 in the truck, right?

6 MR. LEWIS: Has to stay -- no. Typically
7 what the compliance agreement says is that they go
8 and certify conveyance method to ensure that larvae
9 and adults, so forth, don't fall out on the road.
10 If they're in super sacks, they'll pick them up and
11 dump them, or they'll dump them -- it depends on the
12 cold storage facility whether they can belly dump or
13 dump right there, pick them up. And then they're
14 responsible for sweeping out the facility to make
15 sure there's no nuts on the outside of the facility
16 and the containers that they brought into it. So
17 they all sign these agreements for those type of
18 things.

19 MR. RICK WILLIAMSON: Do they do any kind
20 of stuff other than pecans as well?

21 MR. BURT: I guess I'm just trying to
22 understand. If the pecans go to Doña Ana County,
23 you have to freeze them and protect that part of the
24 state, where it's okay to take them through Lincoln
25 into Roosevelt County or wherever the case may be

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 without freezing them or anything like that. Can
2 you explain that?

3 MR. LEWIS: That county -- well, there are
4 quarantine counties to the east. So going to
5 Roswell, Roswell's a quarantine county; they're
6 already infested.

7 MR. BURT: Okay.

8 MR. LEWIS: The other thing is that the
9 pecan industry in the state and the west recognizes
10 that they have to have and accept some risk in order
11 to allow people to move the product in and around
12 the state. So right now, Texas says you will
13 require them to be frozen before they move into El
14 Paso. Our agreement that we're trying to get signed
15 in Texas is similar to what we have provided
16 allowances for intrastate. They go in a sealed
17 container and go to cold storage. So the industry
18 recognizes that they can't put up a solid wall in
19 the industry, and they're willing to accept a little
20 bit of risk by providing other alternative ways of
21 doing things.

22 MR. BURT: Okay. I guess in one aspect
23 that it sounds like a logical way to go; however, it
24 just seems like a double standard for certain
25 counties and certain areas of the state rather than

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 other parts of the state. It just seems like you
2 have a double standard here.

3 MR. LEWIS: Well, the standard is the
4 same. If you're uninfested, the rules are the same,
5 and if you're infested, the rules are the same. So
6 if you're meaning that there's a double standard
7 between the two, that is correct. That's the
8 difference between a quarantine and non-quarantine
9 county. It's confusing for us.

10 MR. BURT: You're still taking quarantined
11 pecans into Doña Ana County which is not
12 quarantined.

13 MR. LEWIS: Doña Ana County is not
14 quarantined.

15 MR. BURT: Yeah, you're still -- but you
16 can take pecans from here to there, although they
17 have to go into cold storage, I understand that.

18 MR. LEWIS: And the same from Roswell,
19 Eddy, any of the other infested counties. We do the
20 same thing.

21 MR. BURT: I still have trouble
22 understanding.

23 MR. LEWIS: I could talk to you
24 afterwards.

25 MR. BURT: Okay.

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 MR. LEWIS: We'll get out of the formal
2 process.

3 MR. DARDEN: Yes, sir.

4 MR. HERNANDEZ: Rudy Hernandez. I think
5 what Mr. Burt's trying to say is you're going to
6 back to this gentleman's comment. Why not
7 quarantine the whole state? Because if you're going
8 to take the risk of allowing pecans from Otero
9 County into Doña Ana County -- you said you're
10 willing to take a small risk -- then why not
11 quarantine the whole state?

12 MR. LEWIS: Because if we quarantine the
13 whole state, that means that the infested pecans
14 will be able to move freely throughout the state,
15 and so that movement of pecan weevil from an
16 infested to an uninfested occurs much more rapidly.
17 And so the whole idea of the quarantine is to slow
18 that movement into Doña Ana County, Luna County,
19 Arizona and California.

20 MR. DARDEN: Yes, ma'am.

21 MS. WILLIAMSON: So Las Cruces --

22 MR. DARDEN: State your name, please.

23 MS. WILLIAMSON: My name's Tonya
24 Williamson. Doña Ana County, all the counties in
25 New Mexico, have a lot of trees that are in people's

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 backyards, and there's not really a system for
2 finding the weevils in all of those trees that are
3 around here.

4 MR. LEWIS: The best system we have is if
5 they show up in accumulators or they're showing up
6 in cleaning or if the people themselves find it.

7 MS. WILLIAMSON: There's so many that
8 don't sell.

9 MR. LEWIS: You're exactly right. And all
10 we can do is once in a while we try to advertise in
11 the newspaper or something like that for the public
12 on that, but you're right.

13 MR. DARDEN: Yes, ma'am.

14 MS. TYLER: Katherine Tyler. Is it
15 correct me saying that the eastern part of the state
16 where Roswell is, Lea County, they've been
17 quarantined maybe like 15 years or you've been
18 watching them for 15 years?

19 MR. LEWIS: It has been five years, six
20 years it's been quarantined over there. There are
21 some places that have been quarantined longer. So
22 as it's moved from one county to an adjacent county,
23 then we pick up a new quarantine.

24 MR. DARDEN: Yes, sir.

25 MR. RICK WILLIAMSON: Rick Williamson. If

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 we can't sell it in Texas, our pecans -- this is
2 directly, because I know that Jay sends his to
3 Texas.

4 MR. LEWIS: That's right. You can go
5 east.

6 MR. RICK WILLIAMSON: Right now I can't
7 because Texas won't accept it.

8 MR. LEWIS: That's all quarantined, pecan
9 weevil infested all through San Saba, all that area.
10 They can move unrestricted through there.

11 MR. RICK WILLIAMSON: There's a huge
12 amount of freight difference between El Paso, Las
13 Cruces, and San Saba, Texas. I want these little
14 people to be able to move and sell pecans, the ones
15 that don't sell together.

16 MR. DARDEN: Is there anybody else wishing
17 to comment? Yes, sir.

18 MR. LEVI WILLIAMSON: Levi Williamson.
19 How do you guys plan on quarantining Santa -- what
20 county is T or C in?

21 FEMALE VOICE: Sierra County.

22 MR. LEVI WILLIAMSON: -- Sierra County
23 versus down in the Rio Grande valley? You have
24 Sierra County and you have Doña Ana where you have
25 groves that may be, you know, in close vicinities.

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 Not so much -- Otero's kind of isolated, right? And
2 so Sierra County gets -- because I think that you
3 guys are building a case if we're isolated away from
4 Doña Ana, but if you get that weevil in Sierra
5 County -- which I can't understand how Doña Ana, the
6 second in the world's larger pecan grower don't have
7 a weevil -- but say that Sierra gets it. This
8 quarantine rule that you guys have developed is not
9 to say that we don't want you driving through with
10 your pecans through here. I mean, the weevil can
11 jump ship into Doña Ana County real easy. I mean, I
12 just -- I think that the format that's laid out for
13 this -- I think where you find the weevil, it should
14 be quarantined, and the folks on those orchards
15 should help the state and themselves to eradicate
16 it, as with the best practices that are possible,
17 but if you don't have any findings of weevil, why
18 are we punishing four counties for this? I don't
19 understand that. Because eventually it's going to
20 be in a situation where you don't have an isolated
21 county, it's going to be right next to Doña Ana.

22 MR. LEWIS: Right, and there are
23 mechanisms that we can write into rule for those
24 instances.

25 MR. DARDEN: Yes, ma'am.

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 MS. CHESTNUT: In your next meeting, if
2 you can't do it now, can you give us ideas of what
3 insecticide we can use so we can kill the weevil?
4 Is this thing a flying or a crawling?

5 MR. LEWIS: Can we visit about that after
6 the meeting?

7 MR. DARDEN: We need to stick just to the
8 rule. So any other comments?

9 MS. CHESTNUT: Well, I do have one
10 correction, No. G, 7G. It says, "Noncompliant means
11 regulated articles transported into New Mexico." It
12 doesn't say into and within. So "into" means that
13 I'm within New Mexico, so I can transfer it, and I
14 won't be noncompliant.

15 MR. LEWIS: Good point. We'll look at
16 that. Thank you.

17 MR. DARDEN: Yes, sir.

18 MR. MATHERLY: Gerald Matherly. You take
19 an orchard with a thousand trees --

20 MR. DARDEN: Can you please state your
21 name.

22 THE REPORTER: He did. Gerald Matherly.

23 MR. DARDEN: Oh, sorry.

24 MR. MATHERLY: Take an orchard that's got
25 a thousand trees in it and you take those people

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 that have maybe three or four trees. The economic
2 impact of them having to go to Roswell versus going
3 to Doña Ana is going to be devastating for the
4 amount of trees. If their orchards are clean and no
5 signs of insects, why don't they have a set of
6 mandates? Their equipment doesn't leave the
7 orchard, they do the proper spraying. And why are
8 they being punished if they're doing the right thing
9 where the homeowner with two or three trees are the
10 ones that -- the impact would not hurt them to go to
11 Roswell with their nuts. The impact, economic
12 impact would hurt the big farms.

13 MR. LEWIS: We understand that, and the
14 issue with pecan weevil is it's so hard to find. It
15 is very difficult to find.

16 MR. MATHERLY: There needs to be
17 inspections before they leave the orchards.

18 MR. LEWIS: And that becomes an issue with
19 staffing. You know, we have to hire -- I don't
20 know -- if that was the same for here and the other
21 counties, I don't know how many staff we'd have to
22 hire, you know, 30, 40, 50, something like that.
23 It's just -- it's just somewhat problematic from
24 that point of view to try to go through and do
25 individual lots.

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 MR. MATHERLY: If this is that big a deal,
2 then the staffing ought to be, because it is a big
3 deal to these people with the big orchards.

4 MR. LEWIS: It's a big deal for everybody,
5 and we recognize that. At this point in time --
6 which is what the hearings are good for, is if there
7 are better ideas out there and protecting
8 noninfested counties, yet allow for the movement of
9 possibly infested nuts into those counties, that's
10 what these hearings are good for, is we're willing
11 to hear the ideas that others have.

12 MR. MATHERLY: But if the nuts from Otero
13 County go to Roswell, then they'll be graded on a
14 different level than if they went west, correct?

15 MR. LEWIS: I have no idea. That's a
16 business decision that's made independent of the
17 state.

18 MR. MATHERLY: Yeah. I don't understand
19 why there can't be guidelines saying that if you
20 have the weevil in your orchard -- I understand that
21 you have to play by the rules and do what they do --
22 but if you have not been tested and never had any
23 findings, why can't you carry on with business, set
24 some rules and regulations on them. Your big
25 orchards are not going to go take care of the

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 shaking or picking up these little three or four
2 trees around, so they're not going to be
3 contaminated. And it's the same as the African Rue.
4 When you leave your orchard or do whatever, you have
5 a cleaning process to do on your equipment. So why
6 can't there be some rules set up like that?

7 MR. LEWIS: Again, the issue is, is it's
8 so difficult to try to find. You know, you look at
9 a thousand pounds and take the time to go through
10 and look for holes in a thousand pounds of nuts,
11 it's problematic.

12 MR. MATHERLY: I understand that, but
13 these people with the big orchards, it's a full year
14 of their time and their money. So it's a big deal
15 to them, and, I mean, I think it should be something
16 that's very important. I mean, I don't know who --
17 you've got a senator right there and some local
18 government right here sitting here. Why can't we do
19 something to try to work with this and develop a
20 good program?

21 MR. LEWIS: Well, and we're here to listen
22 to your ideas, and the more everybody understands --
23 and we can talk about this at a sidebar, too, on
24 these things.

25 MR. DARDEN: Yes, sir.

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 MS. WILLIAMSON: Rick Williamson again.
2 We discussed that. We volunteer to spray our trees.
3 We do everything. We get inspected all the time by
4 your staff. We know that little hole's hard to
5 find. We volunteered to spray. We volunteered to
6 do anything we need to do not to get quarantined,
7 and it's fallen on deaf ears. Nobody's listening,
8 just like right now.

9 MR. BURT: How many open positions do you
10 have right now?

11 MR. LEWIS: Four.

12 MR. BURT: Four inspectors or people to do
13 this process?

14 MR. LEWIS: I think during the season --
15 Mr. Hiles there.

16 MR. HILES: There's two open inspector
17 positions that we currently have that would assist
18 with that, and then during the season we also hire
19 temporary inspectors. Usually those are easier. I
20 believe last year we had three temporary inspectors
21 during the harvest season.

22 MR. BURT: So to do your job effectively,
23 how many more FTEs do you think you need?

24 MR. LEWIS: We have added one full-time.
25 That's a good question. I'd have to sit and look at

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 exactly what the industry wants us to do to see how
2 many staff would be able to do that.

3 MR. DARDEN: Yes, sir.

4 MR. CHESNUT: Milton Chestnut. When can
5 we expect your decision on this?

6 MR. LEWIS: I want to say it's the latter
7 part of October, November, I believe, is when the
8 Board of Regents --

9 MR. CHESNUT: I didn't know if it was
10 going to be at the end of this week you guys are
11 going make a decision, or if it's going to be
12 further down the line. And how will the
13 notification come out?

14 MR. LEWIS: Well, the process is that all
15 of your comments are put into a record book. That
16 record then goes to the Secretary of Agriculture for
17 review, and then that goes to the Board of Regents.
18 So the only thing those people see is what's
19 contained in those books, and the decision is made
20 off of that.

21 MR. CHESNUT: So the people that have
22 pecan weevil in Otero County are not really going to
23 know what to do with them until it's harvest time?

24 MR. LEWIS: We'll make a point to
25 advertise as soon as we hear something regarding the

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 rule.

2 MS. CHESTNUT: If they've already
3 harvested, they can still deal with it until you get
4 told by you guys that you can't. So they could go
5 ahead and take their pecans over, because you
6 haven't made the division yet.

7 MR. LEWIS: Until it's promulgated, until
8 it's signed off on, and then at that point it
9 becomes law.

10 MR. DARDEN: Yes, ma'am.

11 MS. PRICE: Well, at the last --

12 MR. DARDEN: Name, please.

13 MS. PRICE: Oh, Joan Price.

14 MR. DARDEN: Thank you.

15 MS. PRICE: At the last meeting, you did
16 not want to tell the names of the people whose
17 places have been discovered to be infested in Otero
18 County; is that correct?

19 MR. LEWIS: So that information is
20 available, but we usually provide those type of
21 things under Inspection of Public Records Act. So
22 that information has an IPRA. It is out there.

23 MS. PRICE: Well, in your proposed
24 regulations, I think there needs to be a strong
25 statement that the individual -- individuals should

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 be looking for the holes in shells and informing
2 your staff. You're very understaffed, and you don't
3 have any -- at least requests. I'm not advocating,
4 you know, any kind of violation situation for
5 individuals who might find the infestation in their
6 trees, but at least individuals could be looking and
7 could be, you know, involved in this process. And
8 I -- you know, I mean there is a huge range of
9 numbers of pecan trees different people have here.
10 And if you start saying, well, there's, you know,
11 three trees -- I mean, we have an acequia district
12 here. We have, you know, lots of trees in the
13 historic district.

14 So that's totally different than the
15 people who have maybe nine trees or people who have
16 30 trees. You've got a huge range. So it seems to
17 me that you need to have some pretty strong requests
18 for individuals to be recording what they find. And
19 then that would be part of your Secretary of
20 Agriculture's consideration. There was a deadline
21 for individuals to report we have none or we do. So
22 I think that is missing in your proposal. Does that
23 make sense?

24 MR. LEWIS: It does, and if we could
25 address that after we close the formal portion of

Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 these things, I'll be more than happy to visit with
2 you.

3 MS. PRICE: Well, that's my
4 recommendation --

5 MR. LEWIS: For the comments, so we have
6 that.

7 MS. PRICE: -- for the hearing, there
8 should be a strong individual recruitment. I don't
9 know what the legal word would be.

10 MR. DARDEN: Yes.

11 MR. BURT: I'm not a fan of growing
12 government, but if you don't have enough people in
13 your department to do the job so that this industry
14 in the state of New Mexico is not done correctly,
15 then we're coming up to budget time in the state of
16 New Mexico. I strongly urge you to really do some
17 really good evaluation to find out how many people
18 you really need and maybe get some input from the
19 producers in this state to find out how many people
20 need to do this job correctly so that you can make
21 sure that you're not missing any weevils, number
22 one, but number two, to catch them early enough to
23 where you might not have to take as radical a step
24 as isolating an entire county. Or is there a way to
25 to completely eradicate the weevil?

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 I haven't heard any discussion about that.
2 I don't know if you can or not, but there needs to
3 be something done, or we're going to lose this
4 industry if we keep down this path. And you guys --
5 evidently, the growers and you are the first line of
6 defense. And I strongly suggest that you find out
7 how many people you really need to do the job and
8 then make that request.

9 MR. LEWIS: And we -- I'll address part of
10 it, part of it I'll leave. We have eradicated it
11 out of several places in the state. In fact, we're
12 the only state that's ever done that in the nation.

13 MR. BURT: Then let's take whatever we did
14 to do that and apply it Otero County, Eddy County,
15 and every county that we possibly can. That's what
16 we need to do to eliminate this problem.

17 MR. LEWIS: And we can talk about the
18 barriers and so forth during the informal period.

19 MR. BURT: That's why I'm trying to help.
20 I'm trying to encourage you to ask for the amount of
21 money you need to do the job right.

22 MR. DARDEN: If there are no --

23 MR. LEWIS: You have one, Tim.

24 MR. DARDEN: Yes, ma'am.

25 MS. WILLIAMSON: Tonya Williamson. We've

Tularosa meeting
Pecan Weevil Interior QuarantineTranscript of Proceedings
September 09, 2022

1 been farming pecans in the Tularosa Basin since
2 1979, and to this date we've not found the weevil on
3 our farm. I just want to go on the record so that
4 you guys know that our farm has not had the weevil.
5 I don't feel anybody has done enough for us at all.
6 You guys are standing up for the people in Doña Ana
7 that don't have a weevil, but you take a farm that
8 doesn't have a weevil in Otero County and you're
9 discriminating the difference.

10 MR. LEWIS: We understand.

11 MS. WILLIAMSON: That's what's not right
12 about the way this is written. It discriminates and
13 it's hypocritical.

14 MR. DARDEN: We will now close the public
15 oral comment period for this hearing. Written
16 comments will be accepted until 5:00 p. m.,
17 September 12th, 2022. All public comment will be
18 presented to the Secretary/Director of New Mexico
19 Department of Agriculture, Mr Jeff Witte, and will
20 be submitted for consideration to the New Mexico
21 State University Board of Regents. Submitted
22 comments and either a transcript of today's hearing
23 and/or the recording will be available from New
24 Mexico Department of Agriculture's web page. Thank
25 you all for participating. We will close this

1 hearing at 3:48 p m.

2 (The proceedings concluded at 3:48 p.m.)

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Tularosa meeting
Pecan Weevil Interior Quarantine

Transcript of Proceedings
September 09, 2022

1 IN RE:

2 PECAN WEEVIL INTERIOR QUARANTINE MEETING - TULAROSA

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REPORTER'S CERTIFICATE

7

I, JAN WIMBERLY, New Mexico CCR No. 13, DO

8

HEREBY CERTIFY that on September 9, 2022, the

9

Proceedings in the above-captioned matter were taken

10

before me, that I did report in stenographic

11

shorthand the Proceedings set forth herein, and that

12

the foregoing pages are a true and correct

13

transcription to the best of my ability.

14

I FURTHER CERTIFY that I am neither employed by

15

nor related to nor contracted with (unless excepted

16

by the rules) any of the parties or attorneys in

17

this case, and that I have no interest whatsoever in

18

the final disposition of this case in any court.

19

20



21

22

JAN WIMBERLY, CCR No. 13
License Expires: 12/31/22
Dama's Reporting Service, LLC
P.O. Box 2022
Alamogordo, NM 88311-2022

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Hearing Process Deviation and Resolution





New Mexico Department of Agriculture

Laboratory Division
MSC 3-LD
P.O. Box 30005
Las Cruces, NM 88003-8005
575-646-1551, fax: 575-646-2361

NEW MEXICO DEPARTMENT OF AGRICULTURE HEARING PROCESS DEVIATION

HEARINGS: 1. Interior Pecan Weevil Quarantine Proposed Amendments
2. Exterior Pecan Weevil Quarantine Proposed Repeal/Replacement

DATE: August 29, 2022

LOCATION: Artesia, NM

DEVIATION: The hearing location was advertised as '1106 W. Quay Avenue, Artesia New Mexico'. The Hearing Officer found the building inadequate for a hearing and determined that an inaccurate address may have been obtained as a result of two Artesia Public Schools Administration Buildings located within .2 miles of each other.

RESOLUTION: The following steps were taken to ensure the public was aware of the change in location:

1. At least twenty minutes prior to the advertised 4:00 pm start of the hearings, signs were posted on the entry doors to the 1106 W. Quay Avenue location notifying the public the hearing will take place at 301 Bulldog Boulevard;
2. A New Mexico Department of Agriculture staff member was posted at the 1106 W. Quay Avenue location to help direct the public to the 301 Bulldog Boulevard location;
3. The start of the hearing was postponed for no less than 15 minutes to provide the public time to travel from the 1106 W. Quay Avenue location to 301 Bulldog Boulevard location; and
4. Hearing Officer and New Mexico Department of Agriculture Staff stayed at the 301 Bulldog Boulevard location 20 minutes past the close of the final hearing to address possible questions from the public regarding a change of venue.

OUTCOME: From the start to the close of the hearings, no individuals entered the hearing room. Any public input related to the change of the hearing location and received by the department will be attached to this document prior to submission to Secretary Witte.

Submitted for the Record: 31 August 2022
Date


Hearing Officer (Mr. Tim Darden)

31 August 2022
Date

September 8, 2022

MEMORANDUM

TO: Ryan Hiles


FROM: Sean Tracy

SUBJECT: Pecan Quarantine Hearing Location Artesia (August 29, 2022)

On August 29, 2022, due to change of location in regard to board room facilities for the Pecan Weevil Interior Quarantine and Pecan Weevil Exterior Quarantine rule change public hearing, I monitored the old Artesia Public Schools' Administration building located at 1106 W. Quay in Artesia, New Mexico and directed attendees to the new location at 301 Bulldog Blvd, Artesia, NM. I was on site providing directions and new location to interested parties from approximately 3:50pm to 4:15pm. Signs were left posted on both entrances of the building at 1106 W. Quay until conclusion of the hearing and removed at approximately 5:20pm.

Regards,

Sean Tracy



9/8/22

Exhibits



NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Department of Agriculture (NMDA), proposes to repeal and replace 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE and amend 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE.

PURPOSE AND SUMMARY OF THE PROPOSED RULES:

The proposed repeal and replace of 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE creates a definition section; updates the list of Texas pecan weevil quarantined counties to correspond with those identified in Texas law; clarifies disposition of non-compliant regulated articles; adds an additional cold storage treatment that provides for treatment of regulated articles at 12.2°F for a period of fourteen days as also provided in California Code of Regulations (CCR) 3273 “Walnut and Pecan Pests”; adds a Liability Disclaimer that relinquishes the board and the department from liability for costs incurred related to inspection, expulsion or disposition of non-compliant regulated articles, or compliance with other provisions of the exterior quarantine rule; and creates additional sections which state that all regulated articles are further subject to the provisions of any other laws, regulations, or regulatory order of the state of New Mexico or the United States Department of Agriculture.

The proposed amendments to 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE include: changing the duration of the rule to permanent; moving the definition for non-compliant to the definitions section; changing treatment certificate documentation requirements to include treatment dates, destination contact information, and other information as deemed relevant by the department; adding an additional cold storage treatment for regulated articles at 12.2°F for a period of fourteen days to align with cold treatments allowed under California Code of Regulations (CCR) 3273 “Walnut and Pecan Pests”; and updating formatting to comply with state requirements. Amending the Disposition of Violations section to clarify authorities related to the expulsion of non-compliant regulated articles for the purpose of addressing specific instances of non-compliance, and adding terms for reimbursement for costs incurred by the department for disposition of non-compliant regulated articles to ensure the state is not held responsible for those costs including non or delinquent payments. Adding Otero County to quarantined counties due to the detection of additional pecan weevil infested areas in the county in an effort to slow the spread of pecan weevil to uninfested pecan growing areas of the state.

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

Copies of the Notice of Proposed Rulemaking and proposed rules (including any technical information) are available by electronic download from the New Mexico Department of Agriculture website (<https://www.nmda.nmsu.edu>) and at agency district and field offices.

Friday, August 26, 2022, at 3:00 pm NMDA will host a public video/telephonic and in person hearing at the New Mexico Department of Agriculture, at 3190 S. Espina, Las Cruces, NM, on the corner of Espina and Gregg.

Join via Video for Friday, August 26, 2022, 3:00 pm hearing:

Meeting URL: <https://nmsu.zoom.us/j/95032243174>

Meeting ID: 950 3224 3174

Passcode: 538839

or

Join via Phone for Friday, August 26, 2022, 3:00 pm hearing:

+1 669 900 6833 or +1 253 215 8782

Meeting ID: 950 3224 3174

Passcode: 538839

Monday, August 29, 2022, at 4:00 pm NMDA will host a public hearing at the Artesia Public Schools Board Room, Admin Building located at 1106 W. Quay in Artesia, New Mexico.

The hearing for proposed amendment of 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE will immediately follow the hearing for the proposed repeal and replace of 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE.

Oral comments will be accepted at the hearing from members of the public and any interested parties. Written comments will be accepted through 5:00 pm on August 30, 2022. Comments may be submitted via email to comments@nmda.nmsu.edu or may be filed by sending original copies to:

New Mexico Department of Agriculture, Office of Director
MSC 3189, PO Box 30005, 3190 S. Espina, Las Cruces, NM 88003-8005

Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, NMDA reserves the right to require that original signatures be provided to verify the electronic or facsimile signature.

SPECIAL NEEDS: If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact NMDA at (575) 646-3702 at least one week prior to the meeting or as soon as possible.

The Director will consider all oral comments and will review all timely submitted written comments and responses.

NOTICE OF PROPOSED RULEMAKING EXTENDED PUBLIC COMMENT AND ADDITIONAL HEARING

NOTICE IS HEREBY GIVEN that the New Mexico Department of Agriculture (NMDA), proposes to repeal and replace 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE and amend 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE.

PURPOSE AND SUMMARY OF THE PROPOSED RULES:

The proposed repeal and replace of 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE creates a definition section; updates the list of Texas pecan weevil quarantined counties to correspond with those identified in Texas law; clarifies disposition of non-compliant regulated articles; adds an additional cold storage treatment that provides for treatment of regulated articles at 12.2°F for a period of fourteen days as also provided in California Code of Regulations (CCR) 3273 "Walnut and Pecan Pests"; adds a Liability Disclaimer that relinquishes the board and the department from liability for costs incurred related to inspection, expulsion or disposition of non-compliant regulated articles, or compliance with other provisions of the exterior quarantine rule; and creates additional sections which state that all regulated articles are further subject to the provisions of any other laws, regulations, or regulatory order of the state of New Mexico or the United States Department of Agriculture.

The proposed amendments to 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE include: changing the duration of the rule to permanent; moving the definition for non-compliant to the definitions section; changing treatment certificate documentation requirements to include treatment dates, destination contact information, and other information as deemed relevant by the department; adding an additional cold storage treatment for regulated articles at 12.2°F for a period of fourteen days to align with cold treatments allowed under California Code of Regulations (CCR) 3273 "Walnut and Pecan Pests"; and updating formatting to comply with state requirements. Amending the Disposition of Violations section to clarify authorities related to the expulsion of non-compliant regulated articles for the purpose of addressing specific instances of non-compliance, and adding terms for reimbursement for costs incurred by the department for disposition of non-compliant regulated articles to ensure the state is not held responsible for those costs including non or delinquent payments. Adding Otero County to quarantined counties due to the detection of additional pecan weevil infested areas in the county in an effort to slow the spread of pecan weevil to uninfested pecan growing areas of the state.

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

Copies of the Notice of Proposed Rulemaking and proposed rules (including any technical information) are available by electronic download from the New Mexico Department of Agriculture website (<https://www.nmda.nmsu.edu>) and at agency district and field offices.

Previously noticed in Issue 14, July 26, 2022, of the NM Register. **Friday, August 26, 2022**, at 3:00 pm NMDA will host a public video/telephonic and in person hearing at the New Mexico Department of Agriculture, at 3190 S. Espina, Las Cruces, NM, on the corner of Espina and Gregg.

Join via Video for Friday, August 26, 2022, 3:00 pm hearing:

Meeting URL: <https://nmsu.zoom.us/j/95032243174>

Meeting ID: 950 3224 3174

Passcode: 538839

or

Join via Phone for Friday, August 26, 2022, 3:00 pm hearing:

+1 669 900 6833 or +1 253 215 8782

Meeting ID: 950 3224 3174

Passcode: 538839

Monday, August 29, 2022, at 4:00 pm NMDA will host a public hearing at the Artesia Public Schools Board Room, Admin Building located at 1106 W. Quay in Artesia, New Mexico.

An additional hearing date has been scheduled for **Friday, September 9, 2022**, at 3:00 pm NMDA will host a public hearing at the Tularosa Community Center, located at 1050 N. Bookout Rd. in Tularosa, New Mexico.

The hearing for proposed amendment of 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE will immediately follow the hearing for the proposed repeal and replace of 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE.

Oral comments will be accepted at the hearing from members of the public and any interested parties. Written comments will now be accepted through 5:00 pm on September 12, 2022. Comments may be submitted via email to comments@nmda.nmsu.edu or may be filed by sending original copies to:

New Mexico Department of Agriculture, Office of Director
MSC 3189, PO Box 30005, 3190 S. Espina, Las Cruces, NM 88003-8005

Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, NMDA reserves the right to require that original signatures be provided to verify the electronic or facsimile signature.

SPECIAL NEEDS: If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact NMDA at (575) 646-3702 at least one week prior to the meeting or as soon as possible.

The Director will consider all oral comments and will review all timely submitted written comments and responses.

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 17 PEST, DISEASE, AND WEED CONTROL
PART 36 PECAN WEEVIL INTERIOR QUARANTINE

21.17.36.1 ISSUING AGENCY: New Mexico state university, New Mexico department of agriculture, MSC, 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007.
[21.17.36.1 NMAC - N, 11/01/2018]

21.17.36.2 SCOPE: Part 36 of Chapter 17 applies to all person(s) transporting regulated articles from infested counties in New Mexico to New Mexico pecan weevil-free counties.
[21.17.36.2 NMAC - N, 11/01/2018]

21.17.36.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9 NMSA 1978 compilation and the Pecan Act, Chapter 76, Article 16, Sections 1 through 9, NMSA 1978 compilation.
[21.17.36.3 NMAC - N, 11/01/2018]

21.17.36.4 DURATION: March 1, 2023.
[21.17.36.4 NMAC - N, 11/01/2018]

21.17.36.5 EFFECTIVE DATE: November 1, 2018, unless a later date is listed at the end of a section.
[21.17.36.5 NMAC - N, 11/01/2018]

21.17.36.6 OBJECTIVE: The objective of Part 36 of Chapter 17 is to establish an interior quarantine to restrict the transportation of pecan weevil from quarantined areas to non-quarantined areas in New Mexico.
[21.17.36.6 NMAC - N, 11/01/2018]

21.17.36.7 DEFINITIONS:

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

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

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

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

E. “Director” means director secretary of New Mexico department of agriculture.

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

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

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

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

[21.17.36.7 NMAC – N, 11/01/2018]

21.17.36.8 QUARANTINE AREAS: The following counties are quarantined areas: Eddy, Lea, and Chaves counties. The director may make changes to the quarantine status of a county by issuing an emergency quarantine, amendment of this rule, or the promulgation of a new quarantine rule.
[21.17.36.8 NMAC - N, 11/01/2018]

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

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

(1) Accompanied by a certificate of treatment, issued by an authorized representative of the department, for each shipment of regulated articles, certifying treatment under official supervision or agreement prior to transporting out of the quarantined area. Acceptable treatments are prescribed under Subsections A through C of 21.17.36.11 NMAC. The certificate must include contact information for pecan owner, shipment amount, date, treatment method, destination address and name.

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

(3) Transportation of regulated articles, using alternative methods, may be approved under a compliance agreement issued by the director.

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

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

21.17.36.10 DISPOSITION OF VIOLATIONS: Any regulated article transported in New Mexico that is in violation of this rule will be subject to immediate quarantine and treatment or otherwise disposed of as necessary to prevent the spread or establishment of pecan weevil in non-quarantined areas in New Mexico. All treatment or disposal will be at the expense of the owners or agents and under the direction of the department.

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

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

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

B. Immersion in hot water for a period of five minutes after-reaching a temperature of 140 degrees fahrenheit; or

C. Other treatment methods may be approved under a compliance agreement issued by the director.

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

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

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

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

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

21.17.36.14 ADDITIONAL LAWS AND REGULATIONS: All regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico or the United States department of agriculture now in effect or which may hereafter be promulgated.

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

HISTORY OF 21.17.36 NMAC: [RESERVED]

History of Repealed Material:

21.17.36 NMAC, Pecan Weevil Interior Quarantine, filed November 20, 2017 - Expired May 20, 2018.

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 17 PEST, DISEASE, AND WEED CONTROL
PART 36 PECAN WEEVIL INTERIOR QUARANTINE

21.17.36.1 ISSUING AGENCY: [~~New Mexico state university,~~] New Mexico department of agriculture, MSC, 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007.
[21.17.36.1 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.2 SCOPE: Part 36 of Chapter 17 applies to all person(s) transporting regulated articles from infested counties in New Mexico to New Mexico pecan weevil-free counties.
[21.17.36.2 NMAC - N, 11/01/2018]

21.17.36.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9 NMSA 1978 compilation and the Pecan Act, Chapter 76, Article 16, Sections 1 through 9, NMSA 1978 compilation.
[21.17.36.3 NMAC - N, 11/01/2018]

21.17.36.4 DURATION: [~~March 1, 2023~~] Permanent.
[21.17.36.4 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.5 EFFECTIVE DATE: November 1, 2018, unless a later date is listed at the end of a section.
[21.17.36.5 NMAC - N, 11/01/2018]

21.17.36.6 OBJECTIVE: The objective of Part 36 of Chapter 17 is to establish an interior quarantine to restrict the transportation of pecan weevil from quarantined areas to non-quarantined areas in New Mexico.
[21.17.36.6 NMAC - N, 11/01/2018]

21.17.36.7 DEFINITIONS:

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

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

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

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

E. “Director” means director secretary of New Mexico department of agriculture.

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

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

[~~G.~~] **H. “Originating”** means produced within or having spent sufficient time in a quarantined area to be believed to be at risk of being infested.

[~~H.~~] **I. “Pecan weevil”** means any live developmental stage or synonym of *curculio caryae* (horn) including adult, pupae, larvae, or egg.

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

[21.17.36.7 NMAC – N, 11/01/2018; A, xx/xx/xxxx]

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

[21.17.36.8 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

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

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

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

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

(3) Transportation of regulated articles using alternative methods ~~may be~~ as approved under a compliance agreement ~~issued by the director~~.

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

[21.17.36.9 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.10 DISPOSITION OF VIOLATIONS: Any non-compliant regulated article ~~transported in New Mexico that is in violation of this rule~~ will be subject to immediate quarantine and returned back to place of origin or destruction under parameters set forth by the department, or ~~otherwise disposed of as necessary to prevent the spread or establishment of pecan weevil in non-quarantined areas in New Mexico~~ other method of disposition as directed by the department that serves the best interest of the state. All ~~treatment~~ transportation or disposal of non-compliant articles will be at the expense of the owners, ~~or~~ agents or both and performed under the direction of the department. If necessary for the department to incur any cost associated with the disposition of non-compliant regulated articles, the owner, agents or both shall reimburse the department for all costs, including attorney's fees and cost, incurred by the department. Reimbursement to the department is required within 30 days after notification via issuance of invoice requesting payment. If payment is not received within 30 days of notification, the department shall initiate legal action to collect or recuperate actual cost.

[21.17.36.10 NMAC - N, 11/01/2018; A xx/xx/xxxx]

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

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

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

~~B.~~ **C.** Immersion in at least 140 degrees fahrenheit ~~hot~~ water for a period of at least five minutes ~~after reaching a temperature of 140 degrees fahrenheit~~; or

~~C.~~ **D.** Other treatment methods ~~may be~~ approved under a compliance agreement issued by the director.

[21.17.36.11 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

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

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

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

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

21.17.36.14 ADDITIONAL LAWS AND REGULATIONS: All regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico, ~~or the~~ United States ~~department of agriculture~~ or both now in effect or which may hereafter be promulgated.

[21.17.36.14 NMAC - N, 11/01/2018; A xx/xx/xxxx]

HISTORY OF 21.17.36 NMAC: [RESERVED]

History of Repealed Material:

21.17.36 NMAC, Pecan Weevil Interior Quarantine, filed November 20, 2017 - Expired May 20, 2018.

DRAFT

ARTICLE 6

Pest Control

76-6-1. Short title.

This act [76-6-1 to 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:

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. 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.

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 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, 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, 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.

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 1 AGRICULTURE AND RANCHING GENERAL PROVISIONS
PART 2 FEES FOR DOCUMENTS AND SERVICES

21.1.2.1 ISSUING AGENCY: New Mexico State University, New Mexico Department of Agriculture
[7/1/97; 21.1.2.1 NMAC - Rn & A, 21 NMAC 1.2.1, 05/29/09]
[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.1.2.2 SCOPE: Part 2 shall apply to all persons requesting special documents, or special services from the New Mexico department of agriculture, division of agricultural and environmental services or one of the division's sections.
[7/1/97; 21.1.2.2 NMAC - Rn, 21 NMAC 1.2.2, 05/29/09; A, 01/29/10]

21.1.2.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Agriculture Law, Chapter 76, Article 1, Section 2, paragraph M, NMSA 1978.
[7/1/97; 21.1.2.3 NMAC - Rn, 21 NMAC 1.2.3, 05/29/09]

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

21.1.2.5 EFFECTIVE DATE: July 1, 1997
[7/1/97; 21.1.2.5 NMAC - Rn, 21 NMAC 1.2.5, 05/29/09]

21.1.2.6 OBJECTIVE: The objective of Part 2 of Chapter 1 is to establish fees for [requested lists and] services plus certain documents issued by the New Mexico department of agriculture, division of agricultural and environmental services.
[7/1/97; 21.1.2.6 NMAC - Rn, 21 NMAC 1.2.6, 05/29/09; A, 01/29/10]

21.1.2.7 DEFINITIONS:
A. "Division" means the division of agricultural and environmental services and its sections within the New Mexico department of agriculture.
B. "Request for service" means any written or oral request by any public or private entity for services, or documents not routinely provided by the division as part of its official regulatory responsibilities or determined to be for the personal or commercial benefit of the person making the request.
[7/1/97; 21.1.2.7 NMAC - Rn, 21 NMAC 1.2.7, 05/29/09; A, 01/29/10]

21.1.2.8 DETERMINATION OF SPECIAL REQUEST: The director of the division is authorized to determine the circumstances under which fees are to be charged to recover the cost of a request for service.
[7/1/97; 21.1.2.8 NMAC - Rn, 21 NMAC 1.2.8, 05/29/09]

21.1.2.9 FEE SCHEDULE:
A. All fees for documents, or services rendered are due and payable at the time they are ordered or when billing is received, as appropriate. Failure to pay for either documents or services shall result in withholding all further services by the division until outstanding amounts are paid in full by cashier's check or money order.
B. Per diem at standard rates, hourly wages, and mileage charges may be assessed in addition to fees charged for documents when the use of New Mexico department of agriculture personnel is required to inspect or draw samples of a particular agricultural commodity for laboratory analysis as a prerequisite to preparation of the documents. Per diem, wage, and mileage charges may be portal to portal- the time and distance traveled to perform the service and return. In addition, per diem at standard rates or other expenses for materials or shipping incurred as a result of providing special inspections or commodity sampling may be charged when applicable. These other expenses will be charged at actual cost.
C. The following fees shall apply:

- (1) Certificates of inspection - \$5 per certificate.
 - (2) Federal phytosanitary certificate - not to exceed federal charges (certificate only; inspection and laboratory fees may be charged in addition to fees charged for certificates).
 - (3) State phytosanitary certificates and state certificates of origin - \$15 per certificate (either fully or partially completed by New Mexico department of agriculture staff).
 - (4) Faxing of either state or federal certificates prepared by New Mexico department of agriculture to any destination requested by the shipper or consignee - \$5 per page.
 - (5) Special local need 24(c) registrations - \$35 each.
 - (6) Section 18 exemption from federal registration, preparation and submission - \$350 each.
 - (7) Laboratory analysis:
 - (a) pesticide formulation - \$150 per active ingredient.
 - (b) tank mix samples - \$150 per active ingredient.
 - (c) residue samples - \$300 per active ingredient.
- D. For request for service not specifically covered by this rule, the division may charge a fee not to exceed the cost of providing the service as determined by the division director.
[7/1/97; 21.1.2.9 NMAC - Rn, 21 NMAC 1.2.9, 05/29/09; A, 01/29/10]

21.1.2.10 WAIVER OF FEES: The division director may waive any or all fees if in the division director's opinion the public interest would be served by exempting the party from the fee, or the fee is incidental to the cost of providing the service.
[7/1/97; 21.1.2.10 NMAC - Rn, 21 NMAC 1.2.10, 05/29/09; A, 01/29/10]

HISTORY OF 21.1.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

NMDA Rule No. 92-6, Fees for Lists, Certificates, and Services - Division of Agricultural and Environmental Services, filed 12/29/92.

History of Repealed Material: [RESERVED]

SCIENTIFIC NOTES

Effect of a Juvenile Hormone Analogue on Mediterranean Flour Moth¹
in Stored Grains^{2,3}THOMAS HOPPE⁴

Insect pests of stored grains, which cause high economical losses in many countries of subtropical and tropical regions, have developed resistance to conventional insecticides. Therefore, a need exists for the development of alternative control methods. Synthetic materials with juvenile hormone activity may become one of the potential protective measures against stored grain insect pests. Thomas and Bhatnagar-Thomas (1968) and Bhatnagar-Thomas (1973) reported results of laboratory trials with juvenile hormone analogues (JHA) against some important coleopterous species on stored grain. Strong and Diekman (1973) reported the effects of 15 JHA against several coleopterous as well as lepidopterous pests of stored products. Reported here are the results of tests with a juvenile hormone analogue against the Mediterranean flour moth, *Anagasta kuehniella* (Zeller).

MATERIALS AND METHODS.—The test was carried out in 5-liter tin cans at room temperature, $21 \pm 1^\circ\text{C}$. A dust formulation of Ro 20-3600 (6,7-Epoxy-3,7-dimethyl,1-1 [3,4(methylenedioxy)-phenoxy]-2-nonene) containing 1% AI was used to treat 1.5 kg wheat grain/replicate. The grain was mixed thoroughly with an adequate amount of the formulated compound to get a concentration of 0.5, 3, or 5 ppm. Three replicates were used per concentration as well as per untreated control variant. Thirty young 5th instars from the laboratory strain of *A. kuehniella* were introduced into each replicate immediately after treatment.

RESULTS AND DISCUSSION.—The number of specimens for each replicate was determined 2 months after treatment. Treatments of 3 and 5 ppm showed total inhibition of adult emergence. In replicates treated with 0.5 ppm,

only 40% of the introduced larvae developed normally. The 2nd assessment was made 4 months later. In replicates treated with 3 and 5 ppm, the initial larvae remained in their cocoons and the treated grains were observed to be clean and dry. However, at 0.5 ppm a mixed population of larvae and adults had completely destroyed the grains, leaving only rotten residues. Obviously, there could be no difference observed between these replicates and untreated ones. The larvae treated with 3 and 5 ppm were removed from their cocoons and transferred to untreated wheat flour for further investigation. They all pupated within 2 wk; however, only 50% managed to develop into adults. Most of the emerging moths possessed slightly deformed wings and strongly bent abdomens. Although incapable of flight, they were capable of copulating. The progeny was observed a few days later, and the number of emerging larvae indicated no effect on fertility.

The results show that Ro 20-3600 is a highly effective compound against *A. kuehniella*. Its persistence of at least 6 months may be attributed to the lack of degradational factors such as light, UV-rays, moisture, etc. Since relatively long persistence is required in practice, these results indicate that JHA could very well be used to control a population of *A. kuehniella* by preventing the occurrence of a 2nd generation.

REFERENCES CITED

- Bhatnagar-Thomas, P. L. 1973. Control of insect pests of stored grains using a juvenile hormone analogue. *J. Econ. Entomol.* 66: 277-8.
- Strong, R. G. and J. Diekman. 1973. Comparative effectiveness of fifteen insect growth regulators against several pests of stored products. *Ibid.*, p. 1167-73.
- Thomas, P. J. and P. L. Bhatnagar-Thomas. 1968. Use of a juvenile hormone analogue as insecticide for pests of stored grain. *Nature (Lond.)* 219: 949.

¹ Lepidoptera: Pyralidae.

² Endorsed and communicated by Dr. W. Hangartner.

³ Received for publication on Mar. 18, 1974.

⁴ Dipl. Ing.-Agric., Biological Laboratory, Dr. R. Maag Ltd., 8157 Dielsdorf, Switzerland.

Postharvest Control of the Pecan Weevil¹ in Inshell Pecans²JERRY A. PAYNE and JOHN M. WELLS³

Southeastern Fruit and Tree Nut Research Station, Agric. Res. Serv., USDA, Byron, GA 31008

In 1972, the Western Pecan Insect Taskforce (WPIT) was formed to prevent or delay the westward movement of pecan insect pests into previously uninfested areas (Stahmann and Hulbert 1972). The western irrigated pecan producing states (Arizona, New Mexico, and west Texas) are currently free of a major pecan pest, the pecan weevil, *Curculio caryae* (Horn). In other pecan producing areas of

the United States, this insect reduces yield and increases production costs (Gentry et al. 1973).

Pecan weevil larvae feed on the nut kernel, and their feeding often leads to the destruction of the interior of the nut and to adherence of the shuck to the shell (Osburn et al. 1966). Infested inshell pecans may be transported into previously uninfested areas, resulting in serious economic problems if the insects become established.

In 1972, the WPIT requested that the USDA Southeastern Fruit and Tree Nut Research Station, Byron, Ga., investigate the effectiveness of hot water, steam, and low temperature treatments for postharvest control of this pest.

MATERIALS AND METHODS.—Pecan weevil-infested

¹ Coleoptera: Curculionidae.

² This paper reflects results of research only. Mention of a proprietary product does not constitute an endorsement by the USDA. Received for publication Apr. 16, 1974.

³ Research Entomologist and Research Plant Pathologist, respectively.

pecans (avg 72% infested) were harvested from experimental plots at Byron and held in storage for 2-3 wk at 4°C until treated.

Low Temperature Tests.—Infested inshell 'Schley' and 'Stuart' pecans, with and without shucks, were exposed for 1-4 wk to 5 (-18°, -11°, -5°, 0°, and 6°C) controlled cold air environment treatments. Aluma-Shield® (16 × 12-1/2 × 9 ft) walk-in coolers and Forma Scientific® (2 × 2-1/2 × 5 ft) environmental chambers were used to maintain the temperature. Check (or control) treatment was maintained at ca. 22°C. Each treatment was applied to 4 replicates of ca. 1000 pecans each. After treatment, pecans were held at ambient temperature (ca. 22°C) for 1 wk before they were shelled to determine larval mortality.

Hot Water and Steam Tests.—Infested Schley and Stuart pecans, with and without shucks, were exposed to hot water dips at 60° and 77°C for periods of 1-5 min in an immersion tank (manufactured by Durant Equipment Company, LaGrange, Ga.) containing 100 gal of circulating hot water. Also, similar infested pecans were exposed to steam treatment (ca. 5 lb/in.²) for 1-3 min in an American Sterilizer® steam retort (autoclave). Each treatment was applied to 4 replicates of ca. 500 pecans each. After treatment, pecans were held at ambient temperature (ca. 22°C) for 1 wk before they were shelled.

Quality Tests.—Samples of treated pecans exposed to each treatment were shelled, and discolored sections of kernels adjoining weevil burrows were aseptically removed and the nutmeat was placed in petri dishes containing malt-salt agar. After 4 weeks of incubation at room temperature, records were made of fungal colonies developing from kernel sections. Kernel pieces from which no fungi developed were considered to be sterile. Similar samples of treated kernels from the hot water, steam, and low temperature tests also were evaluated by taste panelists at 4 and 8 months after treatment on the basis of appearance, texture, and flavor.

RESULTS.—Exposure of inshell pecans to temperature of -18°C for 1 wk or to -11°C for 2 wk gave 100% control of the pecan weevil larvae. These results compare closely with those obtained in Texas (Harris 1973). Hot water dips of infested inshell pecans at 60°C for 5 min and 77°C for 3 min gave 100% control of larvae of pecan weevil. Steam treatment for 3 min also gave 100% control. No differences in pecan weevil larval mortality were found between pecans with shucks and pecans without shucks.

Only 18% of the kernel sections from untreated pecans were sterile after incubation for 4 wk on malt-salt agar. Kernel sections from pecans treated with 60°C hot water for 5 min, 77°C hot water for 3 min, or steam for 3 min were 65, 92, and 80% sterile, respectively. Cold storage of -18°C for 2 wk produced only 52% sterile kernel sections. Taste panelists could not distinguish between steam, hot water, or low temperature treated pecans from the un-

treated check on the basis of appearance, texture, or flavor.

DISCUSSION.—The prevention of further dissemination of the pecan weevil requires a treatment that reliably provides 100% control of these insects. Fumigation treatments by J. G. Leesch and H. B. Gillenwater (personal communication) showed that relatively high dosages of methomyl (80-112 mg/liter) were required to kill the weevil larvae in infested pecans and that phosphine fumigations were ineffective. Because of the high dosage required, it is unlikely that methyl bromide fumigations provide a practical method of eradicating infestations. However, several of the treatments tested in our study are practical and effective for the eradication of pecan infestations. The treatments that will give the greatest assurance of 100% control of the insects are a 3-min treatment, a 3-min dip in 77°C water, a 5-min dip in 60°C water or a 1-wk storage at -18°C. These are minimum effective exposure times. Treatments of less duration do not provide 100% control under our experimental conditions.

The hot water, steam, and low temperature treatments for postharvest control of inshell nut pests are all compatible with present commercial practices in the industry. Hot water soaking is presently used by shellers to condition nuts before cracking and shelling. Steam treatments are being tested and experiments are being introduced into commercial practice for the same purpose. Also, low temperatures are commonly used in storing pecans before and after shelling to maintain market quality (Woodroof 1967).

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A Mosquito Egg Counter by Simple Modification of a Colorimeter¹

MICHAEL D. BENTLEY,² HAI-POONG LEE,³ IVAN N. MCDANIEL,³ BARBARA STIEHL,³ and MITSUYOSHI YATAGI³

University of Maine, Orono 04473

A need exists for a simple, reliable, and low-cost device for rapid counting of eggs. We altered an older model

Central Scientific Co. Cenco-Sheard-Sanford colorimeter and calibrated it for counting the eggs of a mosquito, *Aedes triseriatus* (Say). While the device was developed for a particular application with available materials, little modification in the technique should allow egg count-

¹ Received for publication July 16, 1974.

² Department of Chemistry.

³ Department of Entomology.

3273. WALNUT AND PECAN PESTS

State Exterior Quarantine

A quarantine is established against the following pests, their hosts, and possible carriers:

A. Pests. Walnut husk flies (*Rhagoletis suavis*), (*Rhagoletis juglandis*), and (*Rhagoletis boycei*); nut tree casebearers (*Acrobasis* spp.); butternut curculio (*Conotrachelus juglandis*); black walnut curculio (*Conotrachelus retentus*); pecan weevil (*Curculio caryae*); and hickory shuckworm (*Laspeyresia caryana*).

B. Area Under Quarantine.

On account of the walnut husk flies, nut tree casebearers, and curculios, all states and districts of the United States, except the *State of Arizona.

On account of the pecan weevil and hickory shuckworm, the states of Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia.

C. Articles and Commodities Covered. The following articles and commodities are hereby declared to be hosts and possible carriers of the pests quarantined against:

1. Unhusked nuts of walnuts and butternuts (*Juglans* spp.), and any such husks or hulls or fragments thereof moved as such, or adhering to, or moved in connection with any article or thing.

2 Husks or hulls, and fragments thereof, and nuts in the shell of pecan and hickory (*Carya* spp.).

3 Boxes, sacks, and other containers, equipment, appliances, machinery and vehicles used in connection with harvesting, hulling, dehydrating, shelling, transporting, or storing of any unhusked nuts of walnut and butternut or hulls of walnut, butternut, pecan, and hickory.

D Restrictions.

1. Certificate of Treatment Required. Restricted articles originating in or shipped from the area under quarantine shall be refused admittance into the State of California unless each lot or shipment is accompanied by a certificate issued by an authorized representative of the Department of Agriculture in the state of origin of the article or commodity evidencing treatment for the pests quarantined against approved by the Secretary and under official supervision of an authorized representative of the Department of Agriculture in the state of origin prior to arrival in this state. The certificate must show kind and amount of articles covered, except that in the case of small noncommercial quantities of unhusked nuts of walnut and butternut transported via mail, express or as personal belongings, the Secretary may permit the removal and destruction of husks or hulls, or permit treatment of the lot, under the Secretary's supervision, at the risk and expense of the owner or receiver, after which the lot may be released.

2. No restrictions are placed by this regulation on the movement of nuts in the shell of walnut and butternut from which all husks or hulls have been completely removed, or on the movement of extracted nut meats of walnut, butternut, pecan, and hickory.

APPROVED TREATMENTS FOR IN-SHELL PECANS:

APPENDIX A 05-05-87

1. Cold Treatment

-18⁰C (-0.4⁰F) for 7 days,

or

-11⁰C (+12.2⁰F) for 14 days.

Note: Timing of treatment shall begin when the desired holding temperature within the commodity layer has been reached.

2. Hot Water Dip

60⁰C (140⁰F) for 5 minutes.

To prevent spoilage due to fungal growth, the exposure period may be increased 10-15 minutes, or,

77⁰C (170.6⁰F) for 3 minutes.

Note: Water must be continually agitated throughout the dipping period. Commodity must be completely immersed. The exposure period shall begin when water has regained the desired temperature following introduction of commodity.

3. Steam Treatment

Subject the commodity inside a pressure container, to pressurized steam a 5 lb./square inch, for 3 minutes. Timing of treatment shall begin when the required pressure has been regained following commodity introduction.

*WALNUTS FROM ARIZONA

APPENDIX B 01-12-89

Arizona Department of Agriculture has informed us that the walnut husk maggot, *Rhagoletis juglandis*, is now a well-established pest in Arizona. Therefore all unhusked walnuts or butternuts or associated equipment from Arizona should be rejected under authority of Section 6461.5 of the California Food and Agricultural Code until this quarantine is amended.

Comments Received



Agnew, Rebecca

From: Levi Williamson <levi@whitesandsconstruction.com>
Sent: Wednesday, August 31, 2022 5:35 PM
To: Lewis, Brad E.
Cc: Lewis, Brad E.; A2Z Enterprises, LLC.; rick@wmsonconstr.com; Tonya WilliamSon; shyla williamson; Galassini, Gene; bill.burt@nmlegis.gov; gmatherly@co.otero.nm.us; cgriffin@co.otero.nm.us; vmarquardt@co.otero.nm.us; directorwesternpecan@gmail.com; NMDA, Comments
Subject: RE: amendment 21.17.36 pecan weevil quarantine comments
Attachments: 21.17.36_Integrated_Draft with WilliamSon family comments.pdf

WARNING: This email originated external to the NMSU email system. Do not click on links or open attachments unless you are sure the content is safe.

Brad
In regards to the pecan weevil amendment 21.17.36. Please confirm that the attached comments made it to the hands that are suppose to be reviewing these documents for consideration. If these changes are not considered then I would expect a response as to why they will not be inputted into amendment 21.17.36.

I have also included our some of our state and county representatives on this email to invite them to the additional hearing date scheduled for **Friday, September 9, 2022, at 3:00 pm NMDA will host a public hearing at the Tularosa Community Center, located at 1050 N. Bookout Rd. in Tularosa, New Mexico.**

Thanks

Levi WilliamSon
White Sands Construction, Inc.
Executive VP/ Project Manager
575-437-7816 ext. 2
levi@whitesandsconstruction.com

From: Levi Williamson
Sent: Wednesday, August 3, 2022 8:01 PM
To: 'comments@nmda.nmsu.edu' <comments@nmda.nmsu.edu>
Cc: 'Lewis, Brad E.' <BLewis@nmda.nmsu.edu>; 'A2Z Enterprises, LLC.' <a2zenterprises.llc.nm@gmail.com>; 'rick@wmsonconstr.com' <rick@wmsonconstr.com>; 'Tonya WilliamSon' <tonya@wmsonconstr.com>; shyla williamson <shylawilliamson@yahoo.com>
Subject: amendment 21.17.36 pecan weevil quarantine comments

To whom it may concern
Attached are changes that our family would like to see changed in the amendment 21.17.36 for the pecan weevil quarantine areas.

Our changes are shown in ~~blue highlighted-or blue strike throughs~~ **Yellow highlighted strike throughs** and **Red Text** in the attachment.

If you have any questions or comments in regards to the attachment please feel free to contact me on my cell 575-430-6391.

If you need hard copies of the signed attachment please let me know so I can get them mailed out to you.

Thanks

Levi WilliamSon
White Sands Construction, Inc.
Executive VP/Project Manager
575-437-7816 ext. 2
levi@whitesandsconstruction.com

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 17 PEST, DISEASE, AND WEED CONTROL
PART 36 PECAN WEEVIL INTERIOR QUARANTINE

21.17.36.1 ISSUING AGENCY: [~~New Mexico state university,~~] New Mexico department of agriculture, MSC, 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007.
[21.17.36.1 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.2 SCOPE: Part 36 of Chapter 17 applies to all person(s) transporting regulated articles from infested **groves** in New Mexico to New Mexico pecan weevil-free counties.
[21.17.36.2 NMAC - N, 11/01/2018]

21.17.36.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9 NMSA 1978 compilation and the Pecan Act, Chapter 76, Article 16, Sections 1 through 9, NMSA 1978 compilation.
[21.17.36.3 NMAC - N, 11/01/2018]

21.17.36.4 DURATION: [~~March 1, 2023~~] **Permanent**. I'm not sure how to set a duration because this would be reviewed on a case-by-case basis. I disagree with this being permanent. If the grove eradicates the pecan weevil, they should be removed off of the quarantine area and removed from having to participate in quarantine practices.
[21.17 36.4 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.5 EFFECTIVE DATE: November 1, 2018, unless a later date is listed at the end of a section.
[21.17.36.5 NMAC - N, 11/01/2018]

21.17.36.6 OBJECTIVE: The objective of Part 36 of Chapter 17 is to establish an interior quarantine to restrict the transportation of pecan weevil from quarantined areas to non-quarantined areas in New Mexico.
[21.17.36.5 NMAC - N, 11/01/2018]

21.17.36.7 DEFINITIONS:

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

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

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

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

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

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

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

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

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

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

[21.17.36.7 NMAC – N, 11/01/2018; A, xx/xx/xxxx]

K. “Grove” means a specific isolated plot of land that grows pecan trees

L. “Infested Grove” means a specific isolated plot of pecan trees that has been identified as infested by the Issuing Agency.

21.17.36.8 QUARANTINE AREAS: The following counties are quarantined areas: Eddy, Lea, Otero, and Chaves counties Any infested grove in the State of New Mexico. The director may make changes to the quarantine status of a county an area by issuing an emergency quarantine, amendment of this rule, or the promulgation of a new quarantine rule.
[21.17.36.8 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

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

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

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

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

(3) Transportation of regulated articles using alternative methods ~~[may be]~~ as approved under a compliance agreement ~~[issued by the director].~~

B. Transportation of regulated articles not identified in Subsection A of 21.17.36.9 NMAC including equipment and supplies, originating in quarantined area, to or through non-quarantined areas in New Mexico will be allowed following inspection by the department and issuance of a certificate that identifies regulated articles as not being infested.
[21.17.36.9 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.10 DISPOSITION OF VIOLATIONS: Any non-compliant regulated article ~~[transported in New Mexico that is in violation of this rule]~~ will be subject to immediate quarantine and [treatment] returned back to place of origin or destruction under parameters set forth by the department, or [otherwise disposed of as necessary to prevent the spread or establishment of pecan weevil in non-quarantined areas in New Mexico] other method of disposition as directed by the department that serves the best interest of the state. All ~~[treatment]~~ transportation or disposal of non-compliant articles will be at the expense of the owners, ~~[or]~~ agents or both and performed under the direction of the department. If necessary for the department to incur any cost associated with the disposition of non-compliant regulated articles, the owner, agents or both shall reimburse the department for all costs, including attorney’s fees and cost, incurred by the department. Reimbursement to the department is required within 30 90 days after notification via issuance of invoice requesting payment. If payment is not received within 30 90 days of notification, the department shall initiate legal action to collect or recuperate actual cost.
[21.17.36.10 NMAC - N, 11/01/2018; A xx/xx/xxxx]

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

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

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

~~**B.**~~ **C.** Immersion in at least 140 degrees fahrenheit ~~[hot]~~ water for a period of at least five minutes ~~[after reaching a temperature of 140 degrees fahrenheit]~~; or

~~**C.**~~ **D.** Other treatment methods ~~[may be]~~ approved under a compliance agreement issued by the director.

[21.17.36.11 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

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

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

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

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

21.17.36.14 ADDITIONAL LAWS AND REGULATIONS: All regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico, ~~[or the]~~ United States ~~[department of agriculture]~~ or both now in effect or which may hereafter be promulgated.

[21.17.36.14 NMAC - N, 11/01/2018; A xx/xx/xxxx]

HISTORY OF 21.17.36 NMAC: [RESERVED]

History of Repealed Material:

21.17.36 NMAC, Pecan Weevil Interior Quarantine, filed November 20, 2017 - Expired May 20, 2018.

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 17 PEST, DISEASE, AND WEED CONTROL
PART 36 PECAN WEEVIL INTERIOR QUARANTINE

21.17.36.1 ISSUING AGENCY: [~~New Mexico state university,~~] New Mexico department of agriculture, MSC, 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007.
[21.17.36.1 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.2 SCOPE: Part 36 of Chapter 17 applies to all person(s) transporting regulated articles from infested counties in New Mexico to New Mexico pecan weevil-free counties.
[21.17.36.2 NMAC - N, 11/01/2018]

21.17.36.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9 NMSA 1978 compilation and the Pecan Act, Chapter 76, Article 16, Sections 1 through 9, NMSA 1978 compilation.
[21.17.36.3 NMAC - N, 11/01/2018]

21.17.36.4 DURATION: [~~March 1, 2023~~] Permanent.
[21.17.36.4 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.5 EFFECTIVE DATE: November 1, 2018, unless a later date is listed at the end of a section.
[21.17.36.5 NMAC - N, 11/01/2018]

21.17.36.6 OBJECTIVE: The objective of Part 36 of Chapter 17 is to establish an interior quarantine to restrict the transportation of pecan weevil from quarantined areas to non-quarantined areas in New Mexico.
[21.17.36.6 NMAC - N, 11/01/2018]

21.17.36.7 DEFINITIONS:

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

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

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

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

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

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

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

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

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

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

[21.17.36.7 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

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

*575-441-8331
Chestnut
Chestnut*

[21.17.36.8 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

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

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

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

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

(3) Transportation of regulated articles using alternative methods ~~[may be]~~ as approved under a compliance agreement ~~[issued by the director].~~

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

[21.17.36.9 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

21.17.36.10 DISPOSITION OF VIOLATIONS: Any non-compliant regulated article ~~[transported in New Mexico that is in violation of this rule]~~ will be subject to immediate quarantine and ~~[treatment]~~ returned back to place of origin or destruction under parameters set forth by the department, or [otherwise disposed of as necessary to prevent the spread or establishment of pecan weevil in non-quarantined areas in New Mexico] other method of disposition as directed by the department that serves the best interest of the state. All ~~[treatment]~~ transportation or disposal of non-compliant articles will be at the expense of the owners, ~~[or]~~ agents or both and performed under the direction of the department. If necessary for the department to incur any cost associated with the disposition of non-compliant regulated articles, the owner, agents or both shall reimburse the department for all costs, including attorney's fees and cost, incurred by the department. Reimbursement to the department is required within 30 days after notification via issuance of invoice requesting payment. If payment is not received within 30 days of notification, the department shall initiate legal action to collect or recuperate actual cost.

[21.17.36.10 NMAC - N, 11/01/2018; A xx/xx/xxxx]

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

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

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

~~[B.]~~ **C.** Immersion in at least 140 degrees fahrenheit ~~[hot]~~ water for a period of at least five minutes ~~[after reaching a temperature of 140 degrees fahrenheit]; or~~

~~[C.]~~ **D.** Other treatment methods ~~[may be]~~ approved under a compliance agreement issued by the director.

[21.17.36.11 NMAC - N, 11/01/2018; A, xx/xx/xxxx]

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

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

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

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

21.17.36.14 ADDITIONAL LAWS AND REGULATIONS: All regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico, [~~or the~~] United States [~~department of agriculture~~] or both now in effect or which may hereafter be promulgated.

[21.17.36.14 NMAC - N, 11/01/2018; A xx/xx/xxxx]

HISTORY OF 21.17.36 NMAC: [RESERVED]

History of Repealed Material:

21.17.36 NMAC, Pecan Weevil Interior Quarantine, filed November 20, 2017 - Expired May 20, 2018.

Agnew, Rebecca

From: Hiles, Ryan
Sent: Monday, September 12, 2022 11:18 AM
To: NMDA, Comments
Cc: Lewis, Brad E.
Subject: FW: (Pecan Weevil Quarantine Comment)

From: Chepsongol, Roxanne <rchepsongol@nmda.nmsu.edu>
Sent: Saturday, September 10, 2022 9:11 PM
To: Lewis, Brad E. <BLewis@nmda.nmsu.edu>
Cc: Hiles, Ryan <RHiles@nmda.nmsu.edu>
Subject: Fwd:

Evening, received this email Sir.
Thank you

Sent from my iPhone

Begin forwarded message:

From: NMDA-Wordpress <donotreply@nmda.nmsu.edu>
Date: September 10, 2022 at 8:31:16 AM MDT
To: "Chepsongol, Roxanne" <rchepsongol@nmda.nmsu.edu>
Reply-To: NMDA-Wordpress <donotreply@nmda.nmsu.edu>

NAME: Richard Sharrio

EMAIL: bluesandblack@aol.com

PHONE: 603-686-1518

COMMENTS: I am against the proposed amendment to the pecan weevil quarantine and free treating etc. This would be very costly to small farms. If the crops that will be ready for harvesting this fall force us to incur additional costs such as renting freeze trailers and such we will be in the RED NO Profits. Maybe for future years but not this year.

IP: 24.49.161.158

PAGE: <http://www.nmda.nmsu.edu/comments-and-complaints/>

REFERER: <https://duckduckgo.com/>

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Agnew, Rebecca

From: Tonya WilliamSon <tonya@wmsonconstr.com>
Sent: Monday, September 12, 2022 4:48 PM
To: NMDA, Comments; Tonya WilliamSon
Subject: RE: Written Comment for Pecan Weevil Quarantine
Attachments: Comments.jpg

WARNING: This email originated external to the NMSU email system. Do not click on links or open attachments unless you are sure the content is safe.

Tonya WilliamSon
32 Ivy Lane
La Luz, New Mexico 88337
Voice and Text: (575) 437-7769
tonya@wmsonconstr.com

From: [Tonya WilliamSon](#)
Sent: Monday, September 12, 2022 3:57 PM
To: comments@nmda.nmsu.edu; [Tonya WilliamSon](#)
Subject: Written Comment for Pecan Weevil Quarantine

I'm Tonya WilliamSon, one of the owners of WilliamSon Pecan Farm in La Luz, New Mexico. **We have been farming pecans in Otero County for 43 years.**

No Pecan Weevils have been found on our farm. The NMDA has been inspecting our cleaning plant for the weevils for at least 10 years. We have a healthy and clean farm. Do not punish us for the issues on other farms.

We definitely are against having Otero County, as a whole, quarantined.

We definitely feel that the NMDA should only impose corrections on farms and cleaning plants that have been infested.

We ask that you stop the quarantine. If you are not able to stop the quarantine, at least delay your decisions until an acceptable solution is reached.

There should be an affidavit in place that will satisfy the needs of the farmers and the NMDA that will avoid the extra expense that a quarantine would cause.

You must question the constitutionality that you will be imposing if unwarranted quarantines are put into place.

There are other methods of control that will not be such a financial impact to the farms.

Have enough respect for our integrity that you will allow us to control our own crops and cleaning plants. We have successfully managed our crops in the past and will continue to do so in the future. Our livelihood is at stake. Support our industry instead of breaking it down.

We ask that the NMDA support our good farming practices as they currently do in other areas of the state.

Tonya WilliamSon
32 Ivy Lane
La Luz, New Mexico 88337
Voice and Text: (575) 437-7769
tonya@wmsonconstr.com

From: Tonya WilliamSon
Sent: Monday, September 12, 2022 3:56 PM
To: comments@nmda.nmsu.edu; Tonya WilliamSon
Subject: Written Comment for Pecan Weevil Quarantine

I'm Tonya WilliamSon, one of the owners of WilliamSon Pecan Farm in La Luz, New Mexico. **We have been farming pecans in Otero County for 43 years.**

No Pecan Weevils have been found on our farm. The NMDA has been inspecting our cleaning plant for the weevils for at least 10 years. We have a healthy and clean farm. Do not punish us for the issues on other farms.

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We definitely feel that the NMDA should only impose corrections on farms and cleaning plants that have been infested.

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We ask that the NMDA support our good farming practices as they currently do in other areas of the state


Tonya WilliamSon
32 Ivy Lane
La Luz, New Mexico 88337
Voice and Text: (575) 437-7769
tonya@wmsonconstr.com

9-12-22

New Mexico Pecan Growers
P.O. Box 189
Mesilla Park, NM 88047

September 6, 2022

RE: Comments directed at amendments to the Pecan Weevil Interior Quarantine and Repeal/Replacement of the Pecan Weevil Exterior Quarantine

Dear Secretary Witte:

On behalf of the New Mexico Pecan Growers association, we support the amendments to the Pecan Weevil Interior Quarantine, including the addition of Otero County as a quarantined county. We believe Otero County's current situation supports its listing as a pecan weevil infested county, including the regulations that contribute to slowing the movement and establishment of pecan weevil to/in the 35,000+ acres of pecans grown in Dona Ana County.

Additionally, we support the other amendments contained in the proposed rule changes including an additional cold treatment; judicial use of compliance agreements to address specific issues not covered in rule; and ability for the department to reject non-compliant loads and send them back to origin.

Regarding the repeal and replacement of the Pecan Weevil Exterior Quarantine, we are also supportive of those elements contained in the replacement rule as contributing to the slowing of pecan weevil movement into Dona Ana County.

New Mexico Pecan Producers' Association continues to support and work with New Mexico Department of Agriculture on updating regulations and mitigation efforts directed at slowing spread of pecan weevil in the state, and to other western pecan growing areas. At 35,000+ acres of pecan production, Dona Ana County has the highest concentration of pecan production in the country. Establishment of pecan weevil in Dona Ana County will result in a significant increase in pesticide use, contribute to increased production costs, reduce yield, and result in providing a "bridge" to infesting pecan production in El Paso County and the northern Chihuahua. The organization's leadership supports the proposed updates to both rules.

Please feel free to contact me regarding our support of both rule changes.

Respectfully,



Buddy Achen
President, New Mexico Pecan Growers' Association



Sign-In Sheets



PECAN WEEVIL INTERIOR QUARANTINE HEARINGS

LOCATION: LAS CRUCES August 26, 2022

	NAME	E-MAIL (OPTIONAL)
1	Brad Lewis	
2	TIM DARDEN	
3	Rebecca Agnew	
4	Brad Lewis	
5	Anthony Parra	via zoom
6	Drew Garnett	via zoom
7	Roxanne Chepsongal	via zoom
8		
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16		
17		
18		
19		
20		

PECAN WEEVIL INTERIOR QUARANTINE HEARINGS

LOCATION: Alamosa, NM August 29, 2022

	NAME	E-MAIL (OPTIONAL)
1	Tim Darden	
2	Jerry Calvani	
3	Ryan Hiles	
4	Bigd Lewis	
5	Lee Anderson	
6	Sean Tracy	
7	Dev Garnett	
8	Toni Teller	
9	Dusti Falcon	
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20		

PECAN WEEVIL INTERIOR QUARANTINE HEARINGSLOCATION: Tularosa

	NAME	E-MAIL (OPTIONAL)
1	TIM DARDEN	
2	Tiffany Johnson	
3	Monica Adams	
4	Ryan Hiles	
5	Brad Lewis	
6	Debbie Hernandez	
7	MICHAEL CHESTNUT	
8	RICHARD SHARRIO	
9	Eric Boschert	
10	Gerold Weatherly	
11	Jean Price	ramhousejean@tularosa.net
12	Bill & Hebe Orndorff	newbart817@gmail.com
13	Levi Williamson Sr	Levi@whitesandsconstruction.com
14	Tonya Williamson Sr	tonya@williamsonconstruction.com
15	Rick Williamson	rick@williamsonconstruction.com
16	Katherine Tyler	
17	William F Burt	bburt@kbivradio.net
18	Rudy Hernandez	rudemanbowhunter@gmail.com
19		
20		



Board of Regents Meeting
Meeting Date: October 17, 2022
Agenda Item Cover Page

Agenda Item # D-5

- Action Item
- Consent Item
- Informational Item

Presented By: Jeff M. Witte
Director/Secretary NMDA

Agenda Item:

Repeal and replace 21.17.28 NMAC Pecan Weevil Exterior Quarantine.

Requested Action of the Board of Regents:

Approval of the repeal and replace 21.17.28 NMAC Pecan Weevil Exterior Quarantine.

Executive Summary:

The hearings concerning New Mexico Department of Agriculture's (NMDA) proposed repeal and replace of 21.17.28 NMAC took place as follows:

1. Friday, August 26, 2022, in-person/telephonic and in-person hearing at the New Mexico Department of Agriculture, at 3190 S. Espina, Las Cruces, New Mexico, on the corner of Espina and Gregg.
2. Monday, August 29, 2022, public hearing at the Artesia Public Schools Board Room, Admin Building located at 301 Bulldog Boulevard (advertised as 1106 W. Quay) in Artesia, New Mexico.
3. Friday, September 9, 2022, public hearing at the Tularosa Community Center, located at 1050 N. Bookout Rd. in Tularosa, New Mexico.

The purpose of the repeal and replace is to clean up the rule from previous versions, update quarantined counties in other states and add additional treatment options for importing into unquarantined areas of New Mexico.

After review of the submitted written and oral comments the hearing officer suggested no additional changes to the proposed repeal and replace of 21.17.28 NMAC.

I hereby recommend adoption with the change.

References:

Prior Approvals:

21.17.28 NMAC - PECAN WEEVIL EXTERIOR QUARANTINE, filed 7/1/1997, renumbered and amended 5/29/2009.

Agenda Item Approved By:



Name, Ph.D.

October 11, 2022

Date

New Mexico Department of Agriculture

Repeal and Replace 21.17.28 NMAC

Pecan Weevil Exterior Quarantine

October 17, 2022



Pecan Weevil Exterior Quarantine 21.17.28 NMAC

Table of Contents

Director/Secretary Recommendation Memo	4
Final Replacement for Adoption.....	7
Hearing Officer Recommendation.....	11
Hearing Transcript Las Cruces	15
Hearing Transcript Artesia.....	24
Hearing Transcript Tularosa	28
Hearing Process Deviation and Resolution	37
Exhibits	40
Notice of Rulemaking Published	41
Notice of Extended Public Comment & Additional Hearing Published.....	43
Current Rule.....	45
Proposed Rule.....	47
Pest Control Act.....	50
21.1.2 NMAC, Fees for Documents and Services	55
Payne, J.A. and J.M. Wells. 1974. Postharvest control of the pecan weevil in inshell pecans. Journal of Economic Entomology (6): 789-790	57
CCR 3273 Walnut and Pecan Pests State Exterior Quarantine. Appendix A: Approved treatments for in-shell	59
Comments Received	60
Hearing Sign-In Sheets	65



New Mexico Department of Agriculture

Director/Secretary
Recommendation Memo






NEW MEXICO DEPARTMENT OF AGRICULTURE
Office of the Director/Secretary
MSC 3189
New Mexico State University
P.O. Box 30005
Las Cruces, NM 88003-8005
Phone: (575) 646-3007

October 10, 2022

MEMORANDUM

TO: New Mexico State University Board of Regents

FROM: Jeff M. Witte, Director/Secretary 

SUBJECT: Recommendation to Adopt the Hearing Officer's Recommendations
RE: New Mexico Department of Agriculture Hearing on Pecan Weevil Exterior Quarantine Repeal and Replace – Repeal and Replace Title 21, Chapter 17, Part 28 of the New Mexico Administrative Code (21.17.28 NMAC, Pecan Weevil Exterior Quarantine).

BACKGROUND INFORMATION

The hearings concerning New Mexico Department of Agriculture's (NMDA) proposed repeal and replace of 21.17.28 NMAC took place on three different occasions and locations as follows:

1. Friday, August 26, 2022, in-person/telephonic and in-person hearing at the New Mexico Department of Agriculture, at 3190 S. Espina, Las Cruces, New Mexico, on the corner of Espina and Gregg.
2. Monday, August 29, 2022, public hearing at the Artesia Public Schools Board Room, Admin Building located at 301 Bulldog Boulevard (advertised as 1106 W. Quay) in Artesia, New Mexico.
3. Friday, September 9, 2022, public hearing at the Tularosa Community Center, located at 1050 N. Bookout Rd. in Tularosa, New Mexico.

The Rulemaking Notice was published in the *New Mexico Register* on July 26, 2022. Notice was provided to the Sunshine Portal; *Albuquerque Journal*; *Las Cruces Sun-News*; *Roswell Daily Record*; *Alamogordo Daily News*; *Carlsbad Current-Argus*; and in Spanish and English in the *Santa Fe New Mexican*, and NMDA's website. A subsequent notice was published regarding an additional hearing location and extended comment period was published on August 9, 2022 in the *New Mexico Register*; Sunshine Portal; *Albuquerque Journal*; *Las Cruces Sun-News*; *Roswell Daily Record*; *Alamogordo Daily News*; *Carlsbad Current-Argus*; and in Spanish and English in the *Santa Fe New Mexican*, and NMDA's website.

The New Mexico Economic Development Department's Small Business Advisory Commission and the Legislative Council Service were notified.

New Mexico Economic Development Department's Small Business Advisory Commission reported no findings.

The purpose of the repeal and replace is to clean up the rule from previous versions, update quarantined counties in other states and add additional treatment options for importing into unquarantined areas of New Mexico.

After review of the submitted written and oral comments the hearing officer suggested no additional changes to the proposed repeal and replace of 21.17.28 NMAC.

The hearing officer provided this information for my consideration. I recommend adoption.

Attachments: Hearing Officer Recommendation
 Hearing Transcript

Final Replacement for Adoption



TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 17 PEST, DISEASE, AND WEED CONTROL
PART 28 PECAN WEEVIL EXTERIOR QUARANTINE

21.17.28.1 ISSUING AGENCY: New Mexico State University, New Mexico Department of Agriculture MSC 3189, Box 30005, Las Cruces New Mexico 88003-8005, Telephone No. (575) 646-3007.
[21.17.28.1 NMAC – Rp, 21.17.28.1 NMAC, xx/xx/xxxx]

21.17.28.2 SCOPE: Part 28 shall apply to all persons transporting regulated articles into or through New Mexico.
[21.17.28.2 NMAC – Rp, 21.17.28.2 NMAC, xx/xx/xxxx]

21.17.28.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978 Compilation.
[21.17.28.3 NMAC – Rp, 21.17.28.3 NMAC, xx/xx/xxxx]

21.17.28.4 DURATION: Permanent.
[21.17.28.4 NMAC – Rp, 21.17.28.4 NMAC, xx/xx/xxxx]

21.17.28.5 EFFECTIVE DATE: Month, day, year, unless a later date is cited at the end of a section.
[21.17.28.5 NMAC – Rp, 21.17.28.5 NMAC, xx/xx/xxxx]

21.17.28.6 OBJECTIVE: The objective of Part 28 of Chapter 17 is to establish an exterior quarantine in order to prevent the introduction of the pecan weevil into New Mexico.
[21.17.28.6 NMAC – Rp, 21.17.28.6 NMAC, xx/xx/xxxx]

21.17.28.7 DEFINITIONS:

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

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

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

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

E. “Director” means director secretary of New Mexico department of agriculture.

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

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

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

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

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

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

[21.17.28.7 NMAC – N, xx/xx/xxxx]

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

[21.17.28.8 NMAC – Rp, 21.17.28.8 NMAC, xx/xx/xxxx]

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

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

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

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

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

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

[21.17.28.9 NMAC – Rp, 21.17.28.9 NMAC, xx/xx/xxxx]

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

[21.17.28.10 NMAC – Rp, 21.17.28.10 NMAC, xx/xx/xxxx]

21.17.28.11 TREATMENT OF REGULATED ARTICLES: Articles specified in Subsection A of 21.17.28.9 shall be treated using one of the following methods:

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

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

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

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

[21.17.28.11 NMAC – Rp, 21.17.28.11 NMAC, xx/xx/xxxx]

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

[21.17.28.12 NMAC – N, xx/xx/xxxx]

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

[21.17.28.13 NMAC – Rp, 21.17.28.12 NMAC, xx/xx/xxxx]

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

[21.17.28.14 NMAC – N, xx/xx/xxxx]

HISTORY OF 21.17.28 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

NMDA Rule 69-6, Exterior Quarantine No. 3, Pecan Weevil and Pecan Nut Casebearer, filed 10/3/1969.

NMDA Rule 69-6 Amendment No. 1, Exterior Quarantine No. 3, Amended, Pecan Nut Casebearer, filed 11/20/1972.

NMDA Rule 72-6, Exterior Quarantine No. 4, Pecan Weevil, Hickory Shuckworm, Black Walnut Curculio, and Butternut Curculio, filed 11/20/1972.

NMDA Rule 72-8, Exterior Quarantine No. 4, Pecan Weevil, Hickory Shuckworm, Black Walnut Curculio, and Butternut Curculio, filed 11/29/1972.

NMDA Rule 74-6, Regulatory Order No. 1, Pecan Weevil, filed 9/18/1974.

NMDA Rule 74-7, Exterior Quarantine, Regulatory Order No. 2, Weevil-Curculio, filed 9/18/1974.

NMDA Rule 74-7, Amendment No. 1, Regulatory Order No. 2, Pecan Weevil, Hickory Shuckworm, Black Walnut Curculio, and Butternut Curculio, filed 2/28/1983.

NMDA Rule 83-3, Pecan Weevil and Hickory Shuckworm Quarantine, filed 4/7/1983.

NMDA Rule 88-15, Pecan Weevil and Hickory Shuckworm Quarantine, filed 12/22/1988.

NMDA Rule 90-2, Emergency Pecan Weevil and Hickory Shuckworm Quarantine, filed 3/14/1990.

NMDA Rule 90-4, Emergency Pecan Weevil Exterior Quarantine, filed 10/24/1990.

NMDA Rule 90-7, Pecan Weevil Exterior Quarantine, filed 12/19/1990.

History of Repealed Material:

21.17.28 NMAC - PECAN WEEVIL EXTERIOR QUARANTINE, filed 7/1/1997, renumbered and amended 5/29/2009 was repealed and replaced by 21.17.28 NMAC - PECAN WEEVIL EXTERIOR QUARANTINE, effective xx/xx/xxxx.

Hearing Officer Recommendation Memo





New Mexico Department of Agriculture

Laboratory Division
MSC 3-LD
P.O. Box 30005
Las Cruces, NM 88003-8005
575-646-1551, fax: 575-646-2361

October 7, 2022

MEMORANDUM

TO: Director/Secretary Jeff Witte
FROM: Tim Darden, Division Director - Hearing Officer
SUBJECT: Hearing Officer's Report - RE: New Mexico Department of Agriculture Hearings on Pecan Weevil Exterior Quarantine Repeal and Replacement - Repeal and Replacement Title 21, Chapter 17, Part 28 of the New Mexico Administrative Code (21.17.28 NMAC, Pecan Weevil Exterior Quarantine).

Handwritten notes: Approved to go to Regents by no changes. 10/14/22

BACKGROUND INFORMATION

The hearings concerning New Mexico Department of Agriculture's (NMDA) proposed amendments to 21.17.28 NMAC took place on three different occasions and locations as follows:

- 1. Friday, August 26, 2022, public video/telephonic and in person hearing at NMDA, 3190 S. Espina, Las Cruces, NM. This hearing included a court reporter and a Zoom component to allow participation in person or via Zoom.
2. Monday, August 29, 2022, public hearing at the Artesia Public Schools Board Room, Admin Building located at 301 Bulldog Boulevard (advertised as 1106 W. Quay) in Artesia, NM. This hearing was recorded and audio posted on the NMDA website (I have an unofficial typed written transcription with this report (Transcripts) and provided a report of the change in venue, Exhibit 1).
3. Friday, September 9, 2022, public hearing at the Tularosa Community Center, located at 1050 N. Bookout Rd., Tularosa, New Mexico. This hearing included a court reporter.

The Rulemaking Notice was published July 26, 2022 in the New Mexico Register; Albuquerque Journal; Las Cruces Sun-News; Roswell Daily Record; Alamogordo Daily News; Carlsbad Current Argus; and in Spanish and English in the Santa Fe New Mexican as well as July 28, 2022 in the Artesia Daily Press (Exhibit 2). A subsequent notice was published regarding an additional hearing location and extended comment period on August 9, 2022 in the New Mexico Register; Albuquerque Journal; Las Cruces Sun-News; Roswell

Daily Record; Alamogordo Daily News; Carlsbad Current Argus; and in Spanish and English in Santa Fe New Mexican (Exhibit 3).

Notification was sent to the New Mexico Economic Development's Small Business Regulatory Advisory Commission, and to Legislative Council Service. The New Mexico Economic Development Small Business Regulatory Advisory Commission advised there was "no findings" with respect the proposed rule amendments.

The hearing officer provides the following information for consideration by NMDA's director/secretary.

SUMMARY OF THE PROPOSED RULE REPEAL and REPLACEMENT

Primary statutory elements contained in the proposed Pecan Weevil Exterior Quarantine replacement rule includes the following (as presented by Agricultural and Environmental Services Division staff):

1. Format updating to include the relocation of specific definitions from the body of the text to the definitions section 7;
2. Section 8: Harmonized New Mexico's list of Texas pecan weevil-free counties with those listed in Texas' rule;
3. Section 9: Regulated articles required to have at least one of the following prior to entry into New Mexico: phytosanitary certificate related to treatment; valid compliance agreement issued by New Mexico Department of Agriculture; addresses inspection of regulated equipment and supplies; and certificate of origin for pecan weevil-free states of Arizona, California and areas of Texas;
4. Section 10: Clarifies authority regarding expulsion of non-compliant regulated articles and reimbursement procedures related to the department for costs incurred in disposition of non-compliant regulated articles;
5. Section 11: States acceptable treatment methods to kill pecan weevil in regulated articles prior to entry into the state. Treatment methods includes two cold storage treatments, hot water immersion, or provides for other department approved treatments;
6. Section 13: Liability disclaimer relinquishing New Mexico Department of Agriculture from liability associated with disposition of non-compliant articles;
7. Section 14 Includes statement regarding shipments may be subject to other state or federal regulations.

See Exhibit 4 for the complete text of the current rule and Exhibit 5 for the repeal and replacement rule these hearings cover.

PUBLIC COMMENT by LOCATION*Written Comments Received with Summary*

Gloria Chestnut, September 9, 2022 – Hand written comment to the rule provided to the Hearing Officer (also submitted to the record via e-mail by the Hearing Officer) – Wording changes to 21.17.28.7 G NMAC (Exhibit 6).

New Mexico Pecan Growers, September 12, 2022 – Letter of support for changes to the exterior quarantine (Exhibit 7).

Las Cruces Comments Received with Summary August 26, 2022

No comments received.

Artesia Comments Received with Summary August 29, 2022

Rick Richardson, Bug Man Weed and Pest Control, Artesia – General questions concerning treatment options and importation of wild pecans from Georgia. All questions were answered (See Transcript, Artesia).

Tularosa Comments Received with Summary September 9, 2022

No comments received.

HEARING OFFICER'S CONCLUSION

This memorandum represents the summary of the hearings held at the end of August and first part of September. The content is provided for your consideration and a decision tool for you to present a recommendation to the New State University Board of Regents for its adoption of the proposed Repeal and Replacement of Title 21, Chapter 17, Part 28 of the New Mexico Administrative Code (21.17.28 NMAC, Pecan Weevil Exterior Quarantine).

The purpose of the proposed repeal and replacement of 21.17.28 NMAC is to clean up the rule from previous additions, update quarantined counties in other states and add additional treatment steps for importation into unquarantined areas of New Mexico.

No changes are suggested based upon the hearings and submitted written and oral comments to the repeal and replacement of 21.17.28 NMAC. While the written comments presented at the Tularosa hearing have merit they follow formatting required by the State Records Center and Archives. The second requested change does not pertain to this rule as this is in fact an exterior quarantine which impacts regulated articles coming into New Mexico from out of state.

Please contact me if you have any questions.

Hearing Transcript

Las Cruces, NM

August 26, 2022



PECAN WEEVIL EXTERNAL QUARANTINE
Transcript of Proceedings

August 26, 2022
3:10 p.m. to 3:17 p.m.
3190 S. Espina
Las Cruces, NM

REPORTED BY: JAN WIMBERLY, CCR

CCR No. 13

Dama's Reporting Service, LLC

P.O. Box 2022

Alamogordo, New Mexico 88311

1 MR. DARDEN: Good afternoon. At this time
2 we will start the hearing addressing the repeal and
3 replacement of the Pecan Weevil Exterior Quarantine,
4 21.17.28 of the New Mexico Administrative Code. My
5 name is Tim Darden, and I am a Division Director for
6 New Mexico Department of Agriculture. I will be
7 officiating this, the second of two pecan-related
8 hearings scheduled for today. The previous hearing
9 addressed proposed amendments to the Pecan Weevil
10 Interior Quarantine, 21.17.36 of the New Mexico
11 Administrative Code. This hearing addresses the
12 repeal and replacement of the Pecan Weevil Exterior
13 Quarantine, 21.17.28 of the New Mexico
14 Administrative Code.

15 Please make sure that you have signed in
16 for the record and that your cell phone is either
17 off or silenced. Thank you. Copies of the proposed
18 replacement for the Pecan Weevil Exterior quarantine
19 and today's procedural steps were made available as
20 you walked in.

21 The date is Friday, August 26th, 2022, and
22 the time is approximately 3:10 p.m. This hearing is
23 being held via Zoom and in person at New Mexico
24 Department of Agriculture's main conference room
25 located at 3190 South Espina Street in Las Cruces,

1 New Mexico. This is the published date, identified
2 time period, and location for this hearing.

3 This hearing is being recorded, and either
4 a transcript of today's hearing or the recording
5 will be available from the department's web page.

6 Following a summary of the primary regulatory
7 elements contained in the proposed replacement rule,
8 the public will be provided an opportunity to
9 provide testimony regarding the proposed rule.

10 Mr. Hiles will now provide a summary of
11 the public notices and primary regulatory elements
12 contained in the proposed replacement rule as well
13 as primary differences between the current and the
14 proposed replacement to the Pecan Weevil Exterior
15 Quarantine rule.

16 MR. LEWIS: Good afternoon. I am Ryan
17 Hiles, Assistant Director with the New Mexico
18 Department of Agriculture. The proposed repeal
19 version of the Pecan Weevil Exterior Quarantine,
20 21.17.28 of the New Mexico Administrative Code, was
21 promulgated in 1997 to slow the spread of pecan
22 weevil from infested pecan growing regions in other
23 states to New Mexico by regulating the movement of
24 articles that may be infested with pecan weevil.

25 The proposed replacement Pecan Weevil Exterior

1 Quarantine Rule updates format and language as well
2 as includes other primary regulatory elements that I
3 will cover.

4 Public notices for this hearing were
5 published as follows: July 26th -- New Mexico
6 Register, Albuquerque Journal, Las Cruces Sun-News,
7 Roswell Daily Record, Alamogordo Daily News,
8 Carlsbad Current Argus, and in Spanish and English
9 in the Santa Fe New Mexican; July 28th -- Artesia
10 Daily Press.

11 Notices were posted on the New Mexico
12 Department of Agriculture website and the New Mexico
13 Sunshine Portal. A subsequent notice was published
14 regarding an additional hearing location and
15 extended comment period as follows during 2022:
16 August 9th -- New Mexico Register, Albuquerque
17 Journal, Las Cruces Sun-News, Roswell Daily Record,
18 Alamogordo Daily News, Carlsbad Current Argus, and
19 in Spanish and English in Santa Fe New Mexican.

20 Notices were posted on the New Mexico Department of
21 Agriculture Website and the New Mexico Sunshine
22 Portal.

23 Notification was sent to the New Mexico
24 Economic Development's Small Business regulatory
25 Advisory Commission and to Legislative Council

1 Service. The New Mexico Economic Development's
2 Small Business Regulatory Advisory Commission
3 advised there was "no findings" with respect to the
4 proposed rule amendments.

5 Primary statutory elements contained in
6 the proposed Pecan Weevil Exterior Quarantine
7 replacement rule include the following: one, format
8 updating to include the relocation of specific
9 definitions from the body of text to the definitions
10 Section 7; Section 8, harmonized New Mexico's list
11 of Texas pecan weevil-free counties with those
12 listed in Texas' rule; Section 9, regulated articles
13 required to have at least one of the following prior
14 to entering into New Mexico: phytosanitary
15 certificate related to treatment; valid compliance
16 agreement issued by New Mexico Department of
17 Agriculture; addresses inspection of regulated
18 equipment and supplies; and certificate of origin
19 for pecan weevil-free states of Arizona, California,
20 and areas of Texas.

21 Section 10 clarifies authority regarding
22 expulsion of noncompliant regulated articles and
23 reimbursement procedures related to the department
24 for costs incurred in disposition of noncompliant
25 regulated articles. Section 11 states acceptable

1 treatment methods to kill pecan weevil in regulated
2 articles and includes two cold storage treatments,
3 hot water immersion, and other department-approved
4 treatments.

5 Section 13, liability disclaimer
6 relinquishing New Mexico Department of Agriculture
7 from liability associated with disposition of
8 noncompliant articles. Section 14 includes a
9 statement regarding shipments that may be subject to
10 other state or federal regulations.

11 MR. DARDEN: Thank you. New Mexico
12 Department of Agriculture has received no written
13 comments prior to this hearing. We will now open
14 the floor for comments. Please begin by stating
15 your name and affiliation for the record. Your
16 comments and questions should be limited to the
17 proposed replacement rule.

18 Those of you joining by Zoom, please use
19 the "raise hand feature," and you will be unmuted.
20 Those in the room, please raise your hand and wait
21 until I call you on. Do we have any public comments
22 from those on the Zoom call? Seeing none, we will
23 close the public oral comment period for this
24 hearing.

25 Written comments will be accepted until

1 5:00 p.m., September 12th, 2022. All public
2 comments will be presented to the Secretary/Director
3 of New Mexico Department of Agriculture, Mr. Jeff
4 Witte, and will be submitted for consideration to
5 the New Mexico State University Board of Regents.
6 Submitted comments and either a transcript of
7 today's hearing and/or the recording will be
8 available from New Mexico Department of
9 Agriculture's web page. Thank you all for
10 participating. We will close the hearing at 3:17
11 p.m.

12 (The proceedings concluded at 3:17 p.m.)
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IN RE:
PECAN WEEVIL EXTERIOR QUARANTINE MEETING

REPORTER'S CERTIFICATE

I, JAN WIMBERLY, New Mexico CCR No. 13, DO
HEREBY CERTIFY that on August 26, 2022, the
Proceedings in the above-captioned matter were taken
before me, that I did report in stenographic
shorthand the Proceedings set forth herein, and that
the foregoing pages are a true and correct
transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with (unless excepted
by the rules) any of the parties or attorneys in
this case, and that I have no interest whatsoever in
the final disposition of this case in any court.



JAN WIMBERLY, CCR No. 13
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Alamogordo, NM 88311-2022

Hearing Transcript

Artesia, NM

August 29, 2022



PECAN WEEVIL EXTERIOR QUARANTINE Public hearing #2 Transcript on August 29

This document contains the transcript from the second Public Meeting held on August 29, 2022, on NMDA's request for input to repeal and replacement of the Pecan Weevil Exterior Quarantine, 21.17.28 of the New Mexico Administrative Code.

Tim Darden: Good afternoon, at this time, we will start the hearing addressing the repeal and replacement of the Pecan Weevil Exterior Quarantine 21.17.28 of the New Mexico Administrative Code. My name is Tim Darden and I am a Division Director for New Mexico Department of Agriculture. I will be officiating this, the second of two pecan-related hearings scheduled for today. The previous hearing addressed proposed amendments to the Pecan Weevil Interior Quarantine, 21.17.36 of the New Mexico Administrative Code. This hearing addresses the repeal and replacement of the Pecan Weevil Exterior Quarantine, 21.17.28 of the New Mexico Administrative Code.

Please make sure that you have signed in for the record, and that your cell phone is either off or silenced, Thank you.

Copies of the proposed replacement for the Pecan Weevil Exterior Quarantine rule and today's procedural steps were made available as you walked in.

The Date is Monday, August 29, 2022, and the time is approximately 4:24 pm. The hearing is being held in person at Artesia Public Schools Board Room, Administration Building, Artesia, New Mexico. This is the published date and time for this hearing.

The hearing is being recorded, and either a transcript of today's hearing, or the recording will be available from the department's webpage. Following a summary of the primary regulatory elements contained in the proposed replacement rule, the public will be provided an opportunity to provide testimony regarding the proposed rule.

Mr. Hiles will now provide a summary of the public notices and primary regulatory elements contained in the proposed replacement Pecan Weevil Exterior rule.

Ryan Hiles: Good afternoon. I am Ryan Hiles, Assistant Division Director with the New Mexico Department of Agriculture. The proposed repeal version of the Pecan Weevil Exterior Quarantine, 21.17.28 of the New Mexico Administrative Code, was promulgated in 1997 to slow the spread of pecan weevil from infested pecan growing regions in other states to New Mexico by regulating the movement of articles that may be infested with pecan weevil. The proposed replacement Pecan Weevil Exterior Quarantine rule updates format and language, as well as includes other primary regulatory elements that I will cover.

Public notices for this hearing were published as follows: July 26: New Mexico Register; Albuquerque Journal; Las Cruces Sun-News; Roswell Daily Record; Alamogordo Daily News; Carlsbad Current Argus; and in Spanish and English in the Santa Fe New Mexican. July 28: Artesia Daily Press. Notices were posted on the New Mexico Department of Agriculture Website and the New Mexico Sunshine Portal. A subsequent notice was published regarding an additional hearing location and extended comment period as follows during 2022: August 9: New Mexico Register; Albuquerque Journal; Las Cruces Sun-News; Roswell Daily Record; Alamogordo Daily News; Carlsbad Current Argus; and in Spanish and English in Santa Fe New Mexican. Notices were posted on the New Mexico Department of Agriculture Website and the New Mexico Sunshine Portal.

Notification was sent to the New Mexico Economic Development's Small Business Regulatory Advisory Commission, and to Legislative Council Service. The New Mexico Economic Development Small Business Regulatory Advisory Commission advised there was "no findings" with respect the proposed rule amendments.

Primary statutory elements contained in the proposed Pecan Weevil Exterior Quarantine replacement rule includes the following: Format updating to include the relocation of specific definitions from the body of the text to the definitions section 7. Section 8: Harmonized New Mexico's list of Texas pecan weevil-free counties with those listed in Texas' rule. Section 9: Regulated articles required to have at least one of the following prior to entry into New Mexico: phytosanitary certificate related to treatment; valid compliance agreement issued by New Mexico Department of Agriculture; addresses inspection of regulated equipment and supplies; and certificate of origin for pecan weevil-free states of Arizona, California and areas of Texas. Section 10: Clarifies authority regarding expulsion of non-compliant regulated articles and reimbursement procedures related to the department for costs incurred in disposition of non-compliant regulated articles. Section 11: States acceptable treatment methods to kill pecan weevil in regulated articles and includes two cold storage treatments, hot water immersion, and other department approved treatments. Section 13: Liability disclaimer relinquishing New Mexico Department of Agriculture from liability associated with disposition of non-compliant articles. Section 14 Includes statement regarding shipments may be subject to other state or federal regulations.

Tim Darden: Thank you. New Mexico Department of Agriculture has received no written comments prior to this hearing. We will now open the floor for comments. Please begin by stating your name and affiliation for the record. Your comments and questions should be limited to the proposed replacement rule. Those in the room, please raise your hand and wait until I call you. At this time, I will begin accepting comments. Seeing none we will close the public, we do have one. Yes sir.

Ryan Hiles: Can we get you to speak into the microphone?

Rick Richardson: Rick Richardson, Bug Man Weed and Pest Control, Artesia. I was just wondering, I know you said about the hot water bath would be one of the treatments they could do before they imported into New Mexico. What would be the other ones?

Ryan Hiles: The other treatments are cold storage options.

Rick Richardson: Right.

Ryan Hiles: We have amended to include both storage of approved cold storage chamber at 12.2 degrees Fahrenheit for a period of fourteen consecutive days after the entire lot reaches 12.2 degrees Fahrenheit as determined by facilities standard operating procedures approved by the department, or emersion in at least hundred forty degrees Fahrenheit water for a period of at least five minutes and then other treatment methods as approved by the department.

Rick Richardson: Right. Is Methyl Bromide still one of them? To gas them?

Ryan Hiles: No.

Rick Richardson: Okay, so essentially just the cold storage and the emersion that is pretty much it?

Ryan Hiles: Correct.

Rick Richardson: Okay, just for my own information because I have customers ask me about bringing stuff in from. Got one customer that has a farm in Georgia, and he has some wild pecans down there on his farm, and he was wanting to bring them in, and I said well I don't know if Georgia is having a problem with the Pecan Weevil. Are they?

Ryan Hiles: Georgia is known to have Pecan Weevil.

Rick Richardson: Okay, so it is one of them?

Ryan Hiles: Yes.

Rick Richardson: Alright, so if they come in New Mexico and they want to bring them in just like that, just personal use stuff, not to sell, but just personal using stuff. Do I need to tell him he needs to take and do something with them?

Ryan Hiles: That would fall under the exterior quarantine.

Rick Richardson: Okay, okay.

Ryan Hiles: Does need to be treated.

Rick Richardson: But he is the only one so far, but I probably have some more questions about that but just thought while I'm out doing my projects at least I have something I can tell people. Thank you.

Ryan Hiles: Thank you.

Tim Darden: Is there anyone else wishing to comment? Seeing none, we will close the public oral comment period for this hearing. Written comments will be accepted until 5:00 pm, September 12, 2022. All Public comments will be presented to the Secretary/Director of New Mexico Department of Agriculture, Mr. Jeff Witte, and will be submitted for consideration to New Mexico State University Board of Regents. Submitted comments, and either a transcript of today's hearing, and/or the recording will be available from New Mexico Department of Agriculture's webpage.

Thank you all for participating. We will close the hearing at 4:33 pm.

Hearing Transcript

Tularosa, NM

September 9, 2022



PECAN WEEVIL EXTERNAL QUARANTINE
Transcript of Proceedings

September 9, 2022
3:56 p.m. to 4:03 p.m.
1050 N. Bookout Road
Tularosa, NM

REPORTED BY: JAN WIMBERLY, CCR

CCR No. 13

Dama's Reporting Service, LLC

P.O. Box 2022

Alamogordo, New Mexico 88311

1 MR. DARDEN: Good afternoon. At this time
2 we will start the hearing addressing the repeal and
3 replacement of the Pecan Weevil Exterior Quarantine.
4 21.17.28 of the New Mexico Administrative Code. My
5 name is Tim Darden, and I am a Division Director for
6 New Mexico Department of Agriculture. I will be
7 initiating this second of two pecan related hearings
8 scheduled for today. The previous hearing addressed
9 proposed amendments to the Pecan Weevil Interior
10 Quarantine, 21.17.36 of the New Mexico
11 Administrative Code. This hearing addresses the
12 repeal and replacement of the Pecan Weevil Exterior
13 quarantine, 21.17.28 of the New Mexico
14 Administrative Code.

15 Please make sure you have signed in for
16 the record and that your cell phone is either off or
17 silenced. Thank you. Copies of the proposed
18 replacement for the Pecan Weevil Exterior Quarantine
19 rule and today's procedural steps were made
20 available as you walked in. The date is Friday,
21 September 9th, 2022, and the time is 3:56 p.m.

22 This hearing is being held in person at
23 the Tularosa Community Center, located at 1050 North
24 Bookout Road in Tularosa, New Mexico. This is the
25 published date, identified time period, and location

1 for this hearing. The hearing is being recorded,
2 and either a transcript of today's hearing or the
3 recording will be available from the department's
4 web page. Following a summary of the primary
5 regulatory elements contained in the proposed
6 replacement rule, the public will be provided an
7 opportunity to provide testimony regarding the
8 proposed rule.

9 Mr. Hiles will now provide a summary of
10 the public notices and primary regulatory elements
11 contained in the proposed replacement Pecan Weevil
12 Exterior rule.

13 MR. HILES: Good afternoon. I am Ryan
14 Hiles, Assistant Division Director with the New
15 Mexico Department of Agriculture. The proposed
16 repeal version of the Pecan Weevil Exterior
17 Quarantine, 21.17.28 of the New Mexico
18 Administrative Code was promulgated in 1997 to slow
19 the spread of pecan weevil from infested pecan
20 growing regions in other states to New Mexico by
21 regulating the movement of articles that may be
22 infested with pecan weevil. The proposed
23 replacement Pecan Weevil Exterior Quarantine rule
24 updates format and language as well as includes
25 other primary regulatory elements that I will cover.

1 Public notices for this hearing were
2 published as follows: July 26th -- New Mexico
3 Register, Albuquerque Journal, Las Cruces Sun-News,
4 Roswell Daily Record, Alamogordo Daily News,
5 Carlsbad Current Argus, and in Spanish and English
6 in the Santa Fe New Mexican; July 28th -- Artesia
7 Daily Press.

8 Notices were posted on the New Mexico
9 Department of Agriculture website an the New Mexico
10 Sunshine Portal. A subsequent notice was published
11 regarding an additional hearing location and
12 extended comment period as follows during 2022:
13 August 9th -- New Mexico Register, Albuquerque
14 Journal, Las Cruces Sun-News, Roswell Daily Record,
15 Alamogordo Daily News, Carlsbad Current Argus, and
16 in Spanish and English in the Santa Fe New Mexican.
17 Notices were posted on the New Mexico Department of
18 Agriculture website and the New Mexico Sunshine
19 Portal.

20 Notification was sent to the New Mexico
21 Economic Development's Small Business Regulatory
22 Advisory Commission and to Legislative Council
23 Service. The New Mexico Economic Development's
24 Small Business Regulatory Advisory Committee advised
25 there was "no findings" with respect to the proposed

1 rule amendments.

2 Primary statutory elements contained in
3 the proposed Pecan Weevil Exterior Quarantine
4 replacement rule include the following: format
5 updating to include the relocation of specific
6 definitions from the body of the text to the
7 definitions in section seven; Section 8, harmonized
8 New Mexico's list of Texas pecan weevil-free
9 counties with those listed in Texas's rule; Section
10 9, regulated articles required to have at least one
11 of the following prior to entry into New Mexico:
12 phytosanitary certificate related to treatment,
13 valid compliance agreement issued by New Mexico
14 Department of Agriculture; addresses inspection of
15 regulated equipment and supplies; and certificate of
16 origin for pecan weevil-free states of Arizona,
17 California, and areas of Texas.

18 Section 10 clarifies authority regarding
19 expulsion of noncompliant regulated articles and
20 reimbursement procedures related to the department
21 for cost incurred in disposition of noncompliant
22 regulated articles. Section 11 states acceptable
23 treatment methods to kill pecan weevil in regulated
24 articles prior to entry into the state. Treatment
25 methods include two cold storage treatments, hot

1 water immersion, or provides for other department
2 approved treatments.

3 Section 13, liability disclaimer
4 relinquishing New Mexico Department of Agriculture
5 from liability associated with disposition of
6 noncompliant articles. Section 14 includes a
7 statement regarding shipments that may be subject to
8 other state or federal regulation.

9 MR. DARDEN: Thank you. New Mexico
10 Department of Agriculture has received no written
11 comments prior to this hearing. We will now open
12 the floor for comments. Please begin by stating
13 your name and affiliation for the record. Your
14 comments and questions should be limited to the
15 proposed replacement rule.

16 Those in the room, please raise your hand
17 and wait until I call you on. At this time I will
18 begin accepting comments. Seeing none, we will
19 close the public oral comment period for this
20 hearing.

21 Written comments will be accepted until
22 5:00 p.m., September 12th, 2022. All public
23 comments will be presented to the Secretary/Director
24 of New Mexico Department of Agriculture, Mr. Jeff
25 Witte, and will be submitted for consideration to

1 the New Mexico State University Board of Regents.
2 Submitted comments and either a transcript of
3 today's hearing and/or the recording will be
4 available from New Mexico Department of
5 Agriculture's web page. Thank you all for
6 participating. We will close this hearing at 4:03
7 p.m.

8 (The proceedings concluded at 4:03 p.m.)
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1 IN RE:

2 PECAN WEEVIL EXTERIOR QUARANTINE MEETING - TULAROSA

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REPORTER'S CERTIFICATE

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I, JAN WIMBERLY, New Mexico CCR No. 13, DO

8

HEREBY CERTIFY that on September 9, 2022, the

9

Proceedings in the above-captioned matter were taken

10

before me, that I did report in stenographic

11

shorthand the Proceedings set forth herein, and that

12

the foregoing pages are a true and correct

13

transcription to the best of my ability.

14

I FURTHER CERTIFY that I am neither employed by

15

nor related to nor contracted with (unless excepted

16

by the rules) any of the parties or attorneys in

17

this case, and that I have no interest whatsoever in

18

the final disposition of this case in any court.

19

20



21

22

JAN WIMBERLY, CCR No. 13
License Expires: 12/31/22
Dama's Reporting Service, LLC
P.O. Box 2022
Alamogordo, NM 88311-2022

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Hearing Process Deviation and Resolution

NMDA
New Mexico Department of Agriculture



New Mexico Department of Agriculture

Laboratory Division
MSC 3-LD
P.O. Box 30005
Las Cruces, NM 88003-8005
575-646-1551, fax: 575-646-2361

NEW MEXICO DEPARTMENT OF AGRICULTURE HEARING PROCESS DEVIATION

HEARINGS: 1. Interior Pecan Weevil Quarantine Proposed Amendments
2. Exterior Pecan Weevil Quarantine Proposed Repeal/Replacement

DATE: August 29, 2022

LOCATION: Artesia, NM

DEVIATION: The hearing location was advertised as '1106 W. Quay Avenue, Artesia New Mexico'. The Hearing Officer found the building inadequate for a hearing and determined that an inaccurate address may have been obtained as a result of two Artesia Public Schools Administration Buildings located within .2 miles of each other.

RESOLUTION: The following steps were taken to ensure the public was aware of the change in location:

1. At least twenty minutes prior to the advertised 4:00 pm start of the hearings, signs were posted on the entry doors to the 1106 W. Quay Avenue location notifying the public the hearing will take place at 301 Bulldog Boulevard;
2. A New Mexico Department of Agriculture staff member was posted at the 1106 W. Quay Avenue location to help direct the public to the 301 Bulldog Boulevard location;
3. The start of the hearing was postponed for no less than 15 minutes to provide the public time to travel from the 1106 W. Quay Avenue location to 301 Bulldog Boulevard location; and
4. Hearing Officer and New Mexico Department of Agriculture Staff stayed at the 301 Bulldog Boulevard location 20 minutes past the close of the final hearing to address possible questions from the public regarding a change of venue.

OUTCOME: From the start to the close of the hearings, no individuals entered the hearing room. Any public input related to the change of the hearing location and received by the department will be attached to this document prior to submission to Secretary Witte.

Submitted for the Record: 31 August 2022
Date


Hearing Officer (Mr. Tim Darden)

31 August 2022
Date

September 8, 2022

MEMORANDUM

TO: Ryan Hiles


FROM: Sean Tracy

SUBJECT: Pecan Quarantine Hearing Location Artesia (August 29, 2022)

On August 29, 2022, due to change of location in regard to board room facilities for the Pecan Weevil Interior Quarantine and Pecan Weevil Exterior Quarantine rule change public hearing, I monitored the old Artesia Public Schools' Administration building located at 1106 W. Quay in Artesia, New Mexico and directed attendees to the new location at 301 Bulldog Blvd, Artesia, NM. I was on site providing directions and new location to interested parties from approximately 3:50pm to 4:15pm. Signs were left posted on both entrances of the building at 1106 W. Quay until conclusion of the hearing and removed at approximately 5:20pm.

Regards,

Sean Tracy



9/8/22

Exhibits



NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Department of Agriculture (NMDA), proposes to repeal and replace 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE and amend 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE.

PURPOSE AND SUMMARY OF THE PROPOSED RULES:

The proposed repeal and replace of 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE creates a definition section; updates the list of Texas pecan weevil quarantined counties to correspond with those identified in Texas law; clarifies disposition of non-compliant regulated articles; adds an additional cold storage treatment that provides for treatment of regulated articles at 12.2°F for a period of fourteen days as also provided in California Code of Regulations (CCR) 3273 "Walnut and Pecan Pests"; adds a Liability Disclaimer that relinquishes the board and the department from liability for costs incurred related to inspection, expulsion or disposition of non-compliant regulated articles, or compliance with other provisions of the exterior quarantine rule; and creates additional sections which state that all regulated articles are further subject to the provisions of any other laws, regulations, or regulatory order of the state of New Mexico or the United States Department of Agriculture.

The proposed amendments to 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE include: changing the duration of the rule to permanent; moving the definition for non-compliant to the definitions section; changing treatment certificate documentation requirements to include treatment dates, destination contact information, and other information as deemed relevant by the department; adding an additional cold storage treatment for regulated articles at 12.2°F for a period of fourteen days to align with cold treatments allowed under California Code of Regulations (CCR) 3273 "Walnut and Pecan Pests"; and updating formatting to comply with state requirements. Amending the Disposition of Violations section to clarify authorities related to the expulsion of non-compliant regulated articles for the purpose of addressing specific instances of non-compliance, and adding terms for reimbursement for costs incurred by the department for disposition of non-compliant regulated articles to ensure the state is not held responsible for those costs including non or delinquent payments. Adding Otero County to quarantined counties due to the detection of additional pecan weevil infested areas in the county in an effort to slow the spread of pecan weevil to uninfested pecan growing areas of the state.

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

Copies of the Notice of Proposed Rulemaking and proposed rules (including any technical information) are available by electronic download from the New Mexico Department of Agriculture website (<https://www.nmda.nmsu.edu>) and at agency district and field offices.

Friday, August 26, 2022, at 3:00 pm NMDA will host a public video/telephonic and in person hearing at the New Mexico Department of Agriculture, at 3190 S. Espina, Las Cruces, NM, on the corner of Espina and Gregg.

Join via Video for Friday, August 26, 2022, 3:00 pm hearing:

Meeting URL: <https://nmsu.zoom.us/j/95032243174>

Meeting ID: 950 3224 3174

Passcode: 538839

or

Join via Phone for Friday, August 26, 2022, 3:00 pm hearing:

+1 669 900 6833 or +1 253 215 8782

Meeting ID: 950 3224 3174

Passcode: 538839

Monday, August 29, 2022, at 4:00 pm NMDA will host a public hearing at the Artesia Public Schools Board Room, Admin Building located at 1106 W. Quay in Artesia, New Mexico.

The hearing for proposed amendment of 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE will immediately follow the hearing for the proposed repeal and replace of 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE.

Oral comments will be accepted at the hearing from members of the public and any interested parties. Written comments will be accepted through 5:00 pm on August 30, 2022. Comments may be submitted via email to comments@nmda.nmsu.edu or may be filed by sending original copies to:

New Mexico Department of Agriculture, Office of Director
MSC 3189, PO Box 30005, 3190 S. Espina, Las Cruces, NM 88003-8005

Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, NMDA reserves the right to require that original signatures be provided to verify the electronic or facsimile signature.

SPECIAL NEEDS: If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact NMDA at (575) 646-3702 at least one week prior to the meeting or as soon as possible.

The Director will consider all oral comments and will review all timely submitted written comments and responses.

NOTICE OF PROPOSED RULEMAKING EXTENDED PUBLIC COMMENT AND ADDITIONAL HEARING

NOTICE IS HEREBY GIVEN that the New Mexico Department of Agriculture (NMDA), proposes to repeal and replace 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE and amend 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE.

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Previously noticed in Issue 14, July 26, 2022, of the NM Register. **Friday, August 26, 2022**, at 3:00 pm NMDA will host a public video/telephonic and in person hearing at the New Mexico Department of Agriculture, at 3190 S. Espina, Las Cruces, NM, on the corner of Espina and Gregg.

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An additional hearing date has been scheduled for **Friday, September 9, 2022**, at 3:00 pm NMDA will host a public hearing at the Tularosa Community Center, located at 1050 N. Bookout Rd. in Tularosa, New Mexico.

The hearing for proposed amendment of 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE will immediately follow the hearing for the proposed repeal and replace of 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE.

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The Director will consider all oral comments and will review all timely submitted written comments and responses.

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 17 PEST, DISEASE, AND WEED CONTROL
PART 28 PECAN WEEVIL EXTERIOR QUARANTINE

17.28.1 ISSUING AGENCY: New Mexico State University, New Mexico Department of Agriculture
 MSC 3189, Box 30005, Las Cruces New Mexico 88003-8005, Telephone No. (575) 646-3007.
 [7/1/97; 21.17.28.1 NMAC - Rn & A, 21 NMAC 17.28.1, 05/29/09]

21.17.28.2 SCOPE: Part 28 shall apply to all persons transporting regulated articles into or through New Mexico.
 [7/1/97; 21.17.28.2 NMAC - Rn, 21 NMAC 17.28.2, 05/29/09]

21.17.28.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Pest
 Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978 Compilation.
 [7/1/97; 21.17.28.3 NMAC - Rn, 21 NMAC 17.28.3, 05/29/09]

21.17.28.4 DURATION: Permanent.
 [7/1/97; 21.17.28.4 NMAC - Rn, 21 NMAC 17.28.4, 05/29/09]

21.17.28.5 EFFECTIVE DATE: July 1, 1997
 [7/1/97; 21.17.28.5 NMAC - Rn, 21 NMAC 17.28.5, 05/29/09]

21.17.28.6 OBJECTIVE: The objective of Part 28 of Chapter 17 is to establish an exterior quarantine in order to prevent
 the introduction of the pecan weevil into New Mexico.
 [7/1/97; 21.17.28.6 NMAC - Rn, 21 NMAC 17.28.6, 05/29/09]

21.17.28.7 DEFINITIONS: [RESERVED]

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

A. Pests: pecan weevil, *Curculio caryae* (horn).

B. Areas under quarantine: All states and districts of the United States except Arizona, California, El Paso and
 Hudspeth counties, Texas and that part of Culberson county, Texas south of 31 degrees 10' north latitude and west of 104 degrees
 40' west longitude.

C. Regulated articles:

(1) Nuts of all species and varieties of pecan and hickory, and sacks used in harvesting, hulling, dehydrating,
 shelling, transporting or storing of any nuts or hulls. Extracted nut meats are not included.

(2) Boxes, containers, equipment, appliances, machinery and vehicles used in connection with harvesting, hulling,
 dehydrating, shelling, transporting or storing of any nuts or hulls.

(3) Whole, live trees or parts thereof with soil attached.

(4) Hulls, husks, shells and fragments of hulls, husks and shells of all species and varieties of pecan and hickory.

[7/1/97; 21.17.28.8 NMAC - Rn, 21 NMAC 17.28.8, 05/29/09; A, 10/30/09]

21.17.28.9 RESTRICTIONS:

A. Certificate of origin: Pecan or hickory nuts produced in Arizona, California, El Paso and Hudspeth counties,
 Texas and that part of Culberson county, Texas south of 31 degrees 10' north latitude and west of 104 degrees 40' west longitude
 and other regulated articles originating in these areas, will be admitted into the state of New Mexico if accompanied by a certificate
 of origin issued by an authorized representative of the department of agriculture of the state of origin. Certificate shall include name
 and address of grower and consignee, regulated article and amount, date of shipment and lot number. Lot number must also be
 placed on shipping container or bag to correspond with lot number on certificate of origin.

B. Certificate of treatment: Each shipment of pecan or hickory nuts and other regulated articles entering the state
 from the area under quarantine, shall be permitted entry into the state only when the shipment is accompanied by a certificate
 issued by an authorized representative of the department of agriculture of the state of origin certifying treatment under official
 supervision prior to arrival in the state by a method prescribed under 21.17.28.11 NMAC. The certificate shall specify lot number,
 regulated article and amount, date and method of treatment and the names and addresses of the shipper and consignee. Lot number
 must also be placed on shipping container or bag to correspond with lot number on certificate of treatment.

[7/1/97; 21.17.28.9 NMAC - Rn, 21 NMAC 17.28.9, 05/29/09]

21.17.28.10 DISPOSITION OF VIOLATIONS: Any regulated article arriving in New Mexico in violation of 21.17.28
 NMAC shall be subject to immediate quarantine and treated or otherwise disposed of as necessary to prevent spread or
 establishment in the state. Such treatment or disposal shall be at the expense of the owners or agents and under the direction of the
 New Mexico department of agriculture after proper notification to the owner or his agents.

[7/1/97; 21.17.28.10 NMAC - Rn, 21 NMAC 17.28.10, 05/29/09]

21.17.28.11 TREATMENT OF REGULATED ARTICLES:

- A. Articles specified in Subsection C of 21.17.28.8 NMAC shall be:
 - (1) stored in an approved cold storage chamber at or below zero (0) degrees fahrenheit for a period of seven (7) consecutive days (one hundred sixty-eight (168) hours) after the entire lot reaches zero (0) degrees fahrenheit; or
 - (2) immersed in hot water for a period of five (5) minutes after-reaching a temperature of one hundred forty (140) degrees fahrenheit.
- B. Articles specified in Subsection C of 21.17.28.8 NMAC shall be cleaned to remove debris, nuts, husks, hulls and shells, and steam treated.
- C. Articles specified in Subsection C of 21.17.28.8 NMAC shall be treated with a method approved by the director.

[7/1/97; 21.17.28.11 NMAC - Rn, 21 NMAC 17.28.11, 05/29/09; A, 10/30/09]

21.17.28.12 LIABILITY DISCLAIMER: The board disclaims liability for any costs incident to inspection or compliance with the provisions of 21.17.28 NMAC.

- A. All regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico or the United States department of agriculture now in effect or which may hereafter be promulgated.
- B. Regulated articles covered by 21.17.28 NMAC may be imported by an authorized governmental or private organization under special permit from the New Mexico department of agriculture.

[7/1/97; 21.17.28.12 NMAC - Rn, 21 NMAC 17.28.12, 05/29/09]

HISTORY OF 21.17.28 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

- NMDA Rule 69-6, Exterior Quarantine No. 3, Pecan Weevil and Pecan Nut Casebearer, filed 10/3/69.
- NMDA Rule 69-6 Amendment No. 1, Exterior Quarantine No. 3, Amended, Pecan Nut Casebearer, filed 11/20/72.
- NMDA Rule 72-6, Exterior Quarantine No. 4, Pecan Weevil, Hickory Shuckworm, Black Walnut Curculio, and Butternut Curculio, filed 11/20/72.
- NMDA Rule 72-8, Exterior Quarantine No. 4, Pecan Weevil, Hickory Shuckworm, Black Walnut Curculio, and Butternut Curculio, filed 11/29/72.
- NMDA Rule 74-6, Regulatory Order No. 1, Pecan Weevil, filed 9/18/74.
- NMDA Rule 74-7, Exterior Quarantine, Regulatory Order No. 2, Weevil-Curculio, filed 9/18/74.
- NMDA Rule 74-7, Amendment No. 1, Regulatory Order No. 2, Pecan Weevil, Hickory Shuckworm, Black Walnut Curculio, and Butternut Curculio, filed 2/28/83.
- NMDA Rule 83-3, Pecan Weevil and Hickory Shuckworm Quarantine, filed 4/7/83.
- NMDA Rule 88-15, Pecan Weevil and Hickory Shuckworm Quarantine, filed 12/22/88.
- NMDA Rule 90-2, Emergency Pecan Weevil and Hickory Shuckworm Quarantine, filed 3/14/90.
- NMDA Rule 90-4, Emergency Pecan Weevil Exterior Quarantine, filed 10/24/90.
- NMDA Rule 90-7, Pecan Weevil Exterior Quarantine, filed 12/19/90.

History of Repealed Material: [RESERVED]

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 17 PEST, DISEASE, AND WEED CONTROL
PART 28 PECAN WEEVIL EXTERIOR QUARANTINE

21.17.28.1 ISSUING AGENCY: New Mexico State University, New Mexico Department of Agriculture MSC 3189, Box 30005, Las Cruces New Mexico 88003-8005. Telephone No. (575) 646-3007.
[21.17.28.1 NMAC – Rp, 21.17.28.1 NMAC, xx/xx/xxxx]

21.17.28.2 SCOPE: Part 28 shall apply to all persons transporting regulated articles into or through New Mexico.
[21.17.28.2 NMAC – Rp, 21.17.28.2 NMAC, xx/xx/xxxx]

21.17.28.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978 Compilation.
[21.17.28.3 NMAC – Rp, 21.17.28.3 NMAC, xx/xx/xxxx]

21.17.28.4 DURATION: Permanent.
[21.17.28.4 NMAC – Rp, 21.17.28.4 NMAC, xx/xx/xxxx]

21.17.28.5 EFFECTIVE DATE: Month, day, year, unless a later date is cited at the end of a section.
[21.17.28.5 NMAC – Rp, 21.17.28.5 NMAC, xx/xx/xxxx]

21.17.28.6 OBJECTIVE: The objective of Part 28 of Chapter 17 is to establish an exterior quarantine in order to prevent the introduction of the pecan weevil into New Mexico.
[21.17.28.6 NMAC – Rp, 21.17.28.6 NMAC, xx/xx/xxxx]

21.17.28.7 DEFINITIONS:

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

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

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

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

E. “Director” means director secretary of New Mexico department of agriculture.

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

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

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

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

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

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

[21.17.28.7 NMAC – N, xx/xx/xxxx]

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

[21.17.28.8 NMAC – Rp, 21.17.28.8 NMAC, xx/xx/xxxx]

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

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

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

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

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

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

[21.17.28.9 NMAC – Rp, 21.17.28.9 NMAC, xx/xx/xxxx]

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

[21.17.28.10 NMAC – Rp, 21.17.28.10 NMAC, xx/xx/xxxx]

21.17.28.11 TREATMENT OF REGULATED ARTICLES: Articles specified in Subsection A of 21.17.28.9 shall be treated using one of the following methods:

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

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

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

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

[21.17.28.11 NMAC – Rp, 21.17.28.11 NMAC, xx/xx/xxxx]

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

[21.17.28.12 NMAC – N, xx/xx/xxxx]

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

[21.17.28.13 NMAC – Rp, 21.17.28.12 NMAC, xx/xx/xxxx]

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

[21.17.28.14 NMAC – N, xx/xx/xxxx]

HISTORY OF 21.17.28 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

NMDA Rule 69-6, Exterior Quarantine No. 3, Pecan Weevil and Pecan Nut Casebearer, filed 10/3/1969.

NMDA Rule 69-6 Amendment No. 1, Exterior Quarantine No. 3, Amended, Pecan Nut Casebearer, filed 11/20/1972.

NMDA Rule 72-6, Exterior Quarantine No. 4, Pecan Weevil, Hickory Shuckworm, Black Walnut Curculio, and Butternut Curculio, filed 11/20/1972.

NMDA Rule 72-8, Exterior Quarantine No. 4, Pecan Weevil, Hickory Shuckworm, Black Walnut Curculio, and Butternut Curculio, filed 11/29/1972.

NMDA Rule 74-6, Regulatory Order No. 1, Pecan Weevil, filed 9/18/1974.

NMDA Rule 74-7, Exterior Quarantine, Regulatory Order No. 2, Weevil-Curculio, filed 9/18/1974.

NMDA Rule 74-7, Amendment No. 1, Regulatory Order No. 2, Pecan Weevil, Hickory Shuckworm, Black Walnut Curculio, and Butternut Curculio, filed 2/28/1983.

NMDA Rule 83-3, Pecan Weevil and Hickory Shuckworm Quarantine, filed 4/7/1983.

NMDA Rule 88-15, Pecan Weevil and Hickory Shuckworm Quarantine, filed 12/22/1988.

NMDA Rule 90-2, Emergency Pecan Weevil and Hickory Shuckworm Quarantine, filed 3/14/1990.

NMDA Rule 90-4, Emergency Pecan Weevil Exterior Quarantine, filed 10/24/1990.

NMDA Rule 90-7, Pecan Weevil Exterior Quarantine, filed 12/19/1990.

History of Repealed Material:

21.17.28 NMAC - PECAN WEEVIL EXTERIOR QUARANTINE, filed 7/1/1997, renumbered and amended 5/29/2009 was repealed and replaced by 21.17.28 NMAC - PECAN WEEVIL EXTERIOR QUARANTINE, effective xx/xx/xxxx.

ARTICLE 6

Pest Control

76-6-1. Short title.

This act [76-6-1 to 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:

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. 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.

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 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, 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, 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.

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 1 AGRICULTURE AND RANCHING GENERAL PROVISIONS
PART 2 FEES FOR DOCUMENTS AND SERVICES

21.1.2.1 ISSUING AGENCY: New Mexico State University, New Mexico Department of Agriculture
[7/1/97; 21.1.2.1 NMAC - Rn & A, 21 NMAC 1.2.1, 05/29/09]
[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.1.2.2 SCOPE: Part 2 shall apply to all persons requesting special documents, or special services from the New Mexico department of agriculture, division of agricultural and environmental services or one of the division's sections.
[7/1/97; 21.1.2.2 NMAC - Rn, 21 NMAC 1.2.2, 05/29/09; A, 01/29/10]

21.1.2.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Agriculture Law, Chapter 76, Article 1, Section 2, paragraph M, NMSA 1978.
[7/1/97; 21.1.2.3 NMAC - Rn, 21 NMAC 1.2.3, 05/29/09]

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

21.1.2.5 EFFECTIVE DATE: July 1, 1997
[7/1/97; 21.1.2.5 NMAC - Rn, 21 NMAC 1.2.5, 05/29/09]

21.1.2.6 OBJECTIVE: The objective of Part 2 of Chapter 1 is to establish fees for [requested lists and] services plus certain documents issued by the New Mexico department of agriculture, division of agricultural and environmental services.
[7/1/97; 21.1.2.6 NMAC - Rn, 21 NMAC 1.2.6, 05/29/09; A, 01/29/10]

21.1.2.7 DEFINITIONS:

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

B. "Request for service" means any written or oral request by any public or private entity for services, or documents not routinely provided by the division as part of its official regulatory responsibilities or determined to be for the personal or commercial benefit of the person making the request.
[7/1/97; 21.1.2.7 NMAC - Rn, 21 NMAC 1.2.7, 05/29/09; A, 01/29/10]

21.1.2.8 DETERMINATION OF SPECIAL REQUEST: The director of the division is authorized to determine the circumstances under which fees are to be charged to recover the cost of a request for service.
[7/1/97; 21.1.2.8 NMAC - Rn, 21 NMAC 1.2.8, 05/29/09]

21.1.2.9 FEE SCHEDULE:

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

B. Per diem at standard rates, hourly wages, and mileage charges may be assessed in addition to fees charged for documents when the use of New Mexico department of agriculture personnel is required to inspect or draw samples of a particular agricultural commodity for laboratory analysis as a prerequisite to preparation of the documents. Per diem, wage, and mileage charges may be portal to portal- the time and distance traveled to perform the service and return. In addition, per diem at standard rates or other expenses for materials or shipping incurred as a result of providing special inspections or commodity sampling may be charged when applicable. These other expenses will be charged at actual cost.

C. The following fees shall apply:

- (1) Certificates of inspection - \$5 per certificate.
 - (2) Federal phytosanitary certificate - not to exceed federal charges (certificate only; inspection and laboratory fees may be charged in addition to fees charged for certificates).
 - (3) State phytosanitary certificates and state certificates of origin - \$15 per certificate (either fully or partially completed by New Mexico department of agriculture staff).
 - (4) Faxing of either state or federal certificates prepared by New Mexico department of agriculture to any destination requested by the shipper or consignee - \$5 per page.
 - (5) Special local need 24(c) registrations - \$35 each.
 - (6) Section 18 exemption from federal registration, preparation and submission - \$350 each.
 - (7) Laboratory analysis:
 - (a) pesticide formulation - \$150 per active ingredient.
 - (b) tank mix samples - \$150 per active ingredient.
 - (c) residue samples - \$300 per active ingredient.
- D. For request for service not specifically covered by this rule, the division may charge a fee not to exceed the cost of providing the service as determined by the division director.
[7/1/97; 21.1.2.9 NMAC - Rn, 21 NMAC 1.2.9, 05/29/09; A, 01/29/10]

21.1.2.10 WAIVER OF FEES: The division director may waive any or all fees if in the division director's opinion the public interest would be served by exempting the party from the fee, or the fee is incidental to the cost of providing the service.
[7/1/97; 21.1.2.10 NMAC - Rn, 21 NMAC 1.2.10, 05/29/09; A, 01/29/10]

HISTORY OF 21.1.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

NMDA Rule No. 92-6, Fees for Lists, Certificates, and Services - Division of Agricultural and Environmental Services, filed 12/29/92.

History of Repealed Material: [RESERVED]

SCIENTIFIC NOTES

Effect of a Juvenile Hormone Analogue on Mediterranean Flour Moth¹
in Stored Grains^{2,3}THOMAS HOPPE⁴

Insect pests of stored grains, which cause high economical losses in many countries of subtropical and tropical regions, have developed resistance to conventional insecticides. Therefore, a need exists for the development of alternative control methods. Synthetic materials with juvenile hormone activity may become one of the potential protective measures against stored grain insect pests. Thomas and Bhatnagar-Thomas (1968) and Bhatnagar-Thomas (1973) reported results of laboratory trials with juvenile hormone analogues (JHA) against some important coleopterous species on stored grain. Strong and Diekman (1973) reported the effects of 15 JHA against several coleopterous as well as lepidopterous pests of stored products. Reported here are the results of tests with a juvenile hormone analogue against the Mediterranean flour moth, *Anagasta kuehniella* (Zeller).

MATERIALS AND METHODS.—The test was carried out in 5-liter tin cans at room temperature, $21 \pm 1^\circ\text{C}$. A dust formulation of Ro 20-3600 (6,7-Epoxy-3,7-dimethyl,1-1 [3,4(methylenedioxy)-phenoxy]-2-nonene) containing 1% AI was used to treat 1.5 kg wheat grain/replicate. The grain was mixed thoroughly with an adequate amount of the formulated compound to get a concentration of 0.5, 3, or 5 ppm. Three replicates were used per concentration as well as per untreated control variant. Thirty young 5th instars from the laboratory strain of *A. kuehniella* were introduced into each replicate immediately after treatment.

RESULTS AND DISCUSSION.—The number of specimens for each replicate was determined 2 months after treatment. Treatments of 3 and 5 ppm showed total inhibition of adult emergence. In replicates treated with 0.5 ppm,

only 40% of the introduced larvae developed normally. The 2nd assessment was made 4 months later. In replicates treated with 3 and 5 ppm, the initial larvae remained in their cocoons and the treated grains were observed to be clean and dry. However, at 0.5 ppm a mixed population of larvae and adults had completely destroyed the grains, leaving only rotten residues. Obviously, there could be no difference observed between these replicates and untreated ones. The larvae treated with 3 and 5 ppm were removed from their cocoons and transferred to untreated wheat flour for further investigation. They all pupated within 2 wk; however, only 50% managed to develop into adults. Most of the emerging moths possessed slightly deformed wings and strongly bent abdomens. Although incapable of flight, they were capable of copulating. The progeny was observed a few days later, and the number of emerging larvae indicated no effect on fertility.

The results show that Ro 20-3600 is a highly effective compound against *A. kuehniella*. Its persistence of at least 6 months may be attributed to the lack of degradational factors such as light, UV-rays, moisture, etc. Since relatively long persistence is required in practice, these results indicate that JHA could very well be used to control a population of *A. kuehniella* by preventing the occurrence of a 2nd generation.

REFERENCES CITED

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- Thomas, P. J. and P. L. Bhatnagar-Thomas. 1968. Use of a juvenile hormone analogue as insecticide for pests of stored grain. *Nature (Lond.)* 219: 949.

¹ Lepidoptera: Pyralidae.

² Endorsed and communicated by Dr. W. Hangartner.

³ Received for publication on Mar. 18, 1974.

⁴ Dipl. Ing.-Agric., Biological Laboratory, Dr. R. Mang Ltd., 8157 Dielsdorf, Switzerland.

Postharvest Control of the Pecan Weevil¹ in Inshell Pecans²JERRY A. PAYNE and JOHN M. WELLS³

Southeastern Fruit and Tree Nut Research Station, Agric. Res. Serv., USDA, Byron, GA 31008

In 1972, the Western Pecan Insect Taskforce (WPIT) was formed to prevent or delay the westward movement of pecan insect pests into previously uninfested areas (Stahmann and Hulbert 1972). The western irrigated pecan producing states (Arizona, New Mexico, and west Texas) are currently free of a major pecan pest, the pecan weevil, *Curculio caryae* (Horn). In other pecan producing areas of

the United States, this insect reduces yield and increases production costs (Gentry et al. 1973).

Pecan weevil larvae feed on the nut kernel, and their feeding often leads to the destruction of the interior of the nut and to adherence of the shuck to the shell (Osburn et al. 1966). Infested inshell pecans may be transported into previously uninfested areas, resulting in serious economic problems if the insects become established.

In 1972, the WPIT requested that the USDA Southeastern Fruit and Tree Nut Research Station, Byron, Ga., investigate the effectiveness of hot water, steam, and low temperature treatments for postharvest control of this pest.

MATERIALS AND METHODS.—Pecan weevil-infested

¹ Coleoptera: Curculionidae.

² This paper reflects results of research only. Mention of a proprietary product does not constitute an endorsement by the USDA. Received for publication Apr. 16, 1974.

³ Research Entomologist and Research Plant Pathologist, respectively.

pecans (avg 72% infested) were harvested from experimental plots at Byron and held in storage for 2-3 wk at 4°C until treated.

Low Temperature Tests.—Infested inshell 'Schley' and 'Stuart' pecans, with and without shucks, were exposed for 1-4 wk to 5 (-18°, -11°, -5°, 0°, and 6°C) controlled cold air environment treatments. Aluma-Shield® (16 × 12-1/2 × 9 ft) walk-in coolers and Forma Scientific® (2 × 2-1/2 × 5 ft) environmental chambers were used to maintain the temperature. Check (or control) treatment was maintained at ca. 22°C. Each treatment was applied to 4 replicates of ca. 1000 pecans each. After treatment, pecans were held at ambient temperature (ca. 22°C) for 1 wk before they were shelled to determine larval mortality.

Hot Water and Steam Tests.—Infested Schley and Stuart pecans, with and without shucks, were exposed to hot water dips at 60° and 77°C for periods of 1-5 min in an immersion tank (manufactured by Durant Equipment Company, LaGrange, Ga.) containing 100 gal of circulating hot water. Also, similar infested pecans were exposed to steam treatment (ca. 5 lb/in.²) for 1-3 min in an American Sterilizer® steam retort (autoclave). Each treatment was applied to 4 replicates of ca. 500 pecans each. After treatment, pecans were held at ambient temperature (ca. 22°C) for 1 wk before they were shelled.

Quality Tests.—Samples of treated pecans exposed to each treatment were shelled, and discolored sections of kernels adjoining weevil burrows were aseptically removed and the nutmeat was placed in petri dishes containing malt-salt agar. After 4 weeks of incubation at room temperature, records were made of fungal colonies developing from kernel sections. Kernel pieces from which no fungi developed were considered to be sterile. Similar samples of treated kernels from the hot water, steam, and low temperature tests also were evaluated by taste panelists at 4 and 8 months after treatment on the basis of appearance, texture, and flavor.

RESULTS.—Exposure of inshell pecans to temperature of -18°C for 1 wk or to -11°C for 2 wk gave 100% control of the pecan weevil larvae. These results compare closely with those obtained in Texas (Harris 1973). Hot water dips of infested inshell pecans at 60°C for 5 min and 77°C for 3 min gave 100% control of larvae of pecan weevil. Steam treatment for 3 min also gave 100% control. No differences in pecan weevil larval mortality were found between pecans with shucks and pecans without shucks.

Only 18% of the kernel sections from untreated pecans were sterile after incubation for 4 wk on malt-salt agar. Kernel sections from pecans treated with 60°C hot water for 5 min, 77°C hot water for 3 min, or steam for 3 min were 65, 92, and 80% sterile, respectively. Cold storage of -18°C for 2 wk produced only 52% sterile kernel sections. Taste panelists could not distinguish between steam, hot water, or low temperature treated pecans from the un-

treated check on the basis of appearance, texture, and flavor.

DISCUSSION.—The prevention of further dissemination of the pecan weevil requires a treatment that reliably provides 100% control of these insects. Fumigation treatments by J. G. Leesch and H. B. Gillenwater (personal communication) showed that relatively high dosages of methomide (80-112 mg/liter) were required to kill the weevil larvae in infested pecans and that phosphine fumigations were ineffective. Because of the high dosage required, it is unlikely that methyl bromide fumigations provide a practical method of eradicating infestations. However, several of the treatments tested in our study are practical and effective for the eradication of pecan infestations. The treatments that will give the greatest assurance of 100% control of the insects are a 3-min treatment, a 3-min dip in 77°C water, a 5-min dip in water or a 1-wk storage at -18°C. These are minimum effective exposure times. Treatments of less duration do not provide 100% control under our experimental conditions.

The hot water, steam, and low temperature treatments for postharvest control of inshell nut pests are all compatible with present commercial practices in the industry. Hot water soaking is presently used by shellers to condition nuts before cracking and shelling. Steam treatments are being tested and experiments are being introduced into commercial practice for the same purpose. Also, low temperatures are commonly used in storing pecans before and after shelling to maintain market quality (Woodroof 1967).

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A Mosquito Egg Counter by Simple Modification of a Colorimeter¹

MICHAEL D. BENTLEY,² HAI-POONG LEE,³ IVAN N. MCDANIEL,³ BARBARA STIEHL,³ and MITSUYOSHI YATAGI³

University of Maine, Orono 04473

A need exists for a simple, reliable, and low-cost device for rapid counting of eggs. We altered an older model

Central Scientific Co. Cenco-Sheard-Sanford colorimeter and calibrated it for counting the eggs of a mosquito, *Aedes triseriatus* (Say). While the device was developed for a particular application with available materials, little modification in the technique should allow egg count-

¹ Received for publication July 16, 1974.

² Department of Chemistry.

³ Department of Entomology.

3273. WALNUT AND PECAN PESTS

State Exterior Quarantine

A quarantine is established against the following pests, their hosts, and possible carriers:

A. Pests. Walnut husk flies (*Rhagoletis suavis*), (*Rhagoletis juglandis*), and (*Rhagoletis boycei*); nut tree casebearers (*Acrobasis* spp.); butternut curculio (*Conotrachelus juglandis*); black walnut curculio (*Conotrachelus retentus*); pecan weevil (*Curculio caryae*); and hickory shuckworm (*Laspeyresia caryana*).

B. Area Under Quarantine.

On account of the walnut husk flies, nut tree casebearers, and curculios, all states and districts of the United States, except the *State of Arizona.

On account of the pecan weevil and hickory shuckworm, the states of Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia.

C. Articles and Commodities Covered. The following articles and commodities are hereby declared to be hosts and possible carriers of the pests quarantined against:

1. Unhusked nuts of walnuts and butternuts (*Juglans* spp.), and any such husks or hulls or fragments thereof moved as such, or adhering to, or moved in connection with any article or thing.

2 Husks or hulls, and fragments thereof, and nuts in the shell of pecan and hickory (*Carya* spp.).

3 Boxes, sacks, and other containers, equipment, appliances, machinery and vehicles used in connection with harvesting, hulling, dehydrating, shelling, transporting, or storing of any unhusked nuts of walnut and butternut or hulls of walnut, butternut, pecan, and hickory.

D Restrictions.

1. Certificate of Treatment Required. Restricted articles originating in or shipped from the area under quarantine shall be refused admittance into the State of California unless each lot or shipment is accompanied by a certificate issued by an authorized representative of the Department of Agriculture in the state of origin of the article or commodity evidencing treatment for the pests quarantined against approved by the Secretary and under official supervision of an authorized representative of the Department of Agriculture in the state of origin prior to arrival in this state. The certificate must show kind and amount of articles covered, except that in the case of small noncommercial quantities of unhusked nuts of walnut and butternut transported via mail, express or as personal belongings, the Secretary may permit the removal and destruction of husks or hulls, or permit treatment of the lot, under the Secretary's supervision, at the risk and expense of the owner or receiver, after which the lot may be released.

2. No restrictions are placed by this regulation on the movement of nuts in the shell of walnut and butternut from which all husks or hulls have been completely removed, or on the movement of extracted nut meats of walnut, butternut, pecan, and hickory.

APPROVED TREATMENTS FOR IN-SHELL PECANS:

APPENDIX A 05-05-87

1. Cold Treatment

-18⁰C (-0.4⁰F) for 7 days,

or

-11⁰C (+12.2⁰F) for 14 days.

Note: Timing of treatment shall begin when the desired holding temperature within the commodity layer has been reached.

2. Hot Water Dip

60⁰C (140⁰F) for 5 minutes.

To prevent spoilage due to fungal growth, the exposure period may be increased 10-15 minutes, or,

77⁰C (170.6⁰F) for 3 minutes.

Note: Water must be continually agitated throughout the dipping period. Commodity must be completely immersed. The exposure period shall begin when water has regained the desired temperature following introduction of commodity.

3. Steam Treatment

Subject the commodity inside a pressure container, to pressurized steam a 5 lb./square inch, for 3 minutes. Timing of treatment shall begin when the required pressure has been regained following commodity introduction.

*WALNUTS FROM ARIZONA

APPENDIX B 01-12-89

Arizona Department of Agriculture has informed us that the walnut husk maggot, *Rhagoletis juglandis*, is now a well-established pest in Arizona. Therefore all unhusked walnuts or butternuts or associated equipment from Arizona should be rejected under authority of Section 6461.5 of the California Food and Agricultural Code until this quarantine is amended.

Comments Received



TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 17 PEST, DISEASE, AND WEED CONTROL
PART 28 PECAN WEEVIL EXTERIOR QUARANTINE

21.17.28.1 ISSUING AGENCY: New Mexico State University, New Mexico Department of Agriculture
MSC 3189, Box 30005, Las Cruces New Mexico 88003-8005, Telephone No. (575) 646-3007.
[21.17.28.1 NMAC – Rp, 21.17.28.1 NMAC, xx/xx/xxxx]

21.17.28.2 SCOPE: Part 28 shall apply to all persons transporting regulated articles into or through New Mexico.
[21.17.28.2 NMAC – Rp, 21.17.28.2 NMAC, xx/xx/xxxx]

21.17.28.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978 Compilation.
[21.17.28.3 NMAC – Rp, 21.17.28.3 NMAC, xx/xx/xxxx]

21.17.28.4 DURATION: Permanent.
[21.17.28.4 NMAC – Rp, 21.17.28.4 NMAC, xx/xx/xxxx]

21.17.28.5 EFFECTIVE DATE: Month, day, year, unless a later date is cited at the end of a section.
[21.17.28.5 NMAC – Rp, 21.17.28.5 NMAC, xx/xx/xxxx]

21.17.28.6 OBJECTIVE: The objective of Part 28 of Chapter 17 is to establish an exterior quarantine in order to prevent the introduction of the pecan weevil into New Mexico.
[21.17.28.6 NMAC – Rp, 21.17.28.6 NMAC, xx/xx/xxxx]

21.17.28.7 DEFINITIONS:

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

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

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

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

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

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

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

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

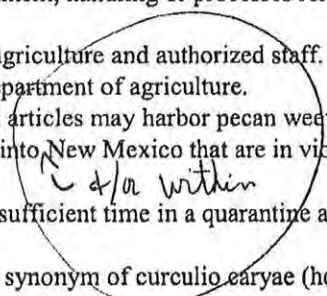
I. "Pecan weevil" means any live developmental stage or synonym of *curculio caryae* (horn) including adult, pupae, larvae, or egg.

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

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



Stacia Chestnut
5-25-446-8331



[21.17.28.7 NMAC – N, xx/xx/xxxx]

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

[21.17.28.8 NMAC – Rp, 21.17.28.8 NMAC, xx/xx/xxxx]

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

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

(1) Accompanied by a phytosanitary certificate for each shipment of regulated articles.

Acceptable treatments are prescribed under Subsections A through C of 21.17.28.11 NMAC.

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

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

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

[21.17.28.9 NMAC – Rp, 21.17.28.9 NMAC, xx/xx/xxxx]

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

[21.17.28.10 NMAC – Rp, 21.17.28.10 NMAC, xx/xx/xxxx]

21.17.28.11 TREATMENT OF REGULATED ARTICLES: Articles specified in Subsection A of 21.17.28.9 shall be treated using one of the following methods:

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

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

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

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

[21.17.28.11 NMAC – Rp, 21.17.28.11 NMAC, xx/xx/xxxx]

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

[21.17.28.12 NMAC – N, xx/xx/xxxx]

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

[21.17.28.13 NMAC – Rp, 21.17.28.12 NMAC, xx/xx/xxxx]

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

[21.17.28.14 NMAC – N, xx/xx/xxxx]

HISTORY OF 21.17.28 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

NMDA Rule 69-6, Exterior Quarantine No. 3, Pecan Weevil and Pecan Nut Casebearer, filed 10/3/1969.

NMDA Rule 69-6 Amendment No. 1, Exterior Quarantine No. 3, Amended, Pecan Nut Casebearer, filed 11/20/1972.

NMDA Rule 72-6, Exterior Quarantine No. 4, Pecan Weevil, Hickory Shuckworm, Black Walnut Curculio, and Butternut Curculio, filed 11/20/1972.

NMDA Rule 72-8, Exterior Quarantine No. 4, Pecan Weevil, Hickory Shuckworm, Black Walnut Curculio, and Butternut Curculio, filed 11/29/1972.

NMDA Rule 74-6, Regulatory Order No. 1, Pecan Weevil, filed 9/18/1974.

NMDA Rule 74-7, Exterior Quarantine, Regulatory Order No. 2, Weevil-Curculio, filed 9/18/1974.

NMDA Rule 74-7, Amendment No. 1, Regulatory Order No. 2, Pecan Weevil, Hickory Shuckworm, Black Walnut Curculio, and Butternut Curculio, filed 2/28/1983.

NMDA Rule 83-3, Pecan Weevil and Hickory Shuckworm Quarantine, filed 4/7/1983.

NMDA Rule 88-15, Pecan Weevil and Hickory Shuckworm Quarantine, filed 12/22/1988.

NMDA Rule 90-2, Emergency Pecan Weevil and Hickory Shuckworm Quarantine, filed 3/14/1990.

NMDA Rule 90-4, Emergency Pecan Weevil Exterior Quarantine, filed 10/24/1990.

NMDA Rule 90-7, Pecan Weevil Exterior Quarantine, filed 12/19/1990.

History of Repealed Material:

21.17.28 NMAC - PECAN WEEVIL EXTERIOR QUARANTINE, filed 7/1/1997, renumbered and amended 5/29/2009 was repealed and replaced by 21.17.28 NMAC - PECAN WEEVIL EXTERIOR QUARANTINE, effective xx/xx/xxxx.

New Mexico Pecan Growers
P.O. Box 189
Mesilla Park, NM 88047

September 6, 2022

RE: Comments directed at amendments to the Pecan Weevil Interior Quarantine and Repeal/Replacement of the Pecan Weevil Exterior Quarantine

Dear Secretary Witte:

On behalf of the New Mexico Pecan Growers association, we support the amendments to the Pecan Weevil Interior Quarantine, including the addition of Otero County as a quarantined county. We believe Otero County's current situation supports its listing as a pecan weevil infested county, including the regulations that contribute to slowing the movement and establishment of pecan weevil to/in the 35,000+ acres of pecans grown in Dona Ana County.

Additionally, we support the other amendments contained in the proposed rule changes including an additional cold treatment; judicial use of compliance agreements to address specific issues not covered in rule; and ability for the department to reject non-compliant loads and send them back to origin.

Regarding the repeal and replacement of the Pecan Weevil Exterior Quarantine, we are also supportive of those elements contained in the replacement rule as contributing to the slowing of pecan weevil movement into Dona Ana County.

New Mexico Pecan Producers' Association continues to support and work with New Mexico Department of Agriculture on updating regulations and mitigation efforts directed at slowing spread of pecan weevil in the state, and to other western pecan growing areas. At 35,000+ acres of pecan production, Dona Ana County has the highest concentration of pecan production in the country. Establishment of pecan weevil in Dona Ana County will result in a significant increase in pesticide use, contribute to increased production costs, reduce yield, and result in providing a "bridge" to infesting pecan production in El Paso County and the northern Chihuahua. The organization's leadership supports the proposed updates to both rules.

Please feel free to contact me regarding our support of both rule changes.

Respectfully,



Buddy Achen
President, New Mexico Pecan Growers' Association



Sign-In Sheets



PECAN WEEVIL EXTERIOR QUARANTINE HEARINGS

LOCATION: LAS Cruces, August 26, 2022

	NAME	E-MAIL (OPTIONAL)
1	Tom Darden	
2	Brad Lewis	
3	Ryan Hiles	
4	Rebecca Agnew	
5	Anthony Parra	via zoom
6	Drew Garnett	via zoom
7	Roxanne Chepsongal	via zoom
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PECAN WEEVIL EXTERIOR QUARANTINE HEARINGS

LOCATION: Altoona, NM August 29, 2022

	NAME	E-MAIL (OPTIONAL)
1	Tim Darden	
2	Ryan Hiles	
3	Brad Lyle	
4	Leik Richardson	
5	Sean Tracy	
6	Drew Cornett	
7	Ivan Teller	
8	Dusti Falcon	
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PECAN WEEVIL EXTERIOR QUARANTINE HEARINGSLOCATION: Tularosa

	NAME	E-MAIL (OPTIONAL)
1	Tim DARDEN	
2	Tiffany Johnson	
3	Monica Adams	
4	Ryan Hiles	
5	Bob Lewis	
6	George Matherly	
7	Lucky Hernandez	rudemanbowhunter@gmail.com
8	William F. Burt	
9	Joan Price	ramhousejoan@tularosa.net
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Board of Regents Meeting
Meeting Date: October 17, 2022
Agenda Item Cover Page

Agenda Item # F – 1a

Action Item

Consent Item

Informational Item

Presented By: Ammu Devasthali
Chair
NMSU Board of Regents

Agenda Item: Quantitative Performance Targets and Goals (Objective Statement) for Chancellor Dan Arvizu for Academic Year 2022 – 2023

Requested Action of the Board of Regents: Approval of the Quantitative Performance Targets and Goals (Objective Statement) for Chancellor Dan Arvizu for Academic year 2022 - 2023

Executive Summary: In fulfillment of Article 4.02 (as amended December 5, 2019) of the Employee Agreement between the Regents of New Mexico State University and Dr. Dan Arvizu, the Chancellor must propose and the Regents approve the Quantitative Performance Targets and Goals (Objective Statement) each fiscal year.

The attached Objective Statement is the proposed Objective Statement for Academic year 2022 - 2023 subject to consideration by the board for their approval.

References: See attached Objective Statement

Prior Approvals: N/A