

# CHAPTER 76 AGRICULTURE

Pamphlet 122 - Agricultural Agencies

Pamphlet 123 - Pest, Disease and Weed Control

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Pamphlet 125 - Agricultural Marketing and Processing

## ARTICLE 1 DEPARTMENT OF AGRICULTURE

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

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

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

#### ANNOTATIONS

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

**Appropriations.** - Laws 1993, ch. 366, § 3VV, effective June 18, 1993, appropriates \$250,000 from the general fund to the department of agriculture in the eighty-second fiscal year to regulate and inspect milk products and sanitation in milk producing and processing facilities. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

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

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

3 C.J.S. Agriculture § 15.

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

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

- A. administer and enforce all laws of this state over which the board of regents or its agents have been granted jurisdiction and authority;
- B. adopt rules of procedure for the adoption of regulations;
- C. adopt, and file in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], regulations as may be necessary to carry out its duties;
- D. administer or enforce, through the department of agriculture, all regulations adopted by the board of regents;
- E. cooperate and enter into contracts or agreements with local, state and federal government agencies or with any other person to assist the carrying out of the duties of the New Mexico department of agriculture;
- F. employ and fix the salaries of employees of the New Mexico department of agriculture;
- G. institute legal proceedings in any court of this state, of any other state or of the United States;
- H. certify to the appropriate district attorney or to the attorney general of New Mexico any violation of the provisions of law or any rules and regulations administered and enforced by it, when necessary to carry out its duties;
- I. accept and administer on behalf of the New Mexico department of agriculture such grants, subsidies, donations, allotments or bequests as may be offered to the state, by the federal government or any department thereof or by any public or private foundation or individuals;
- J. accept and administer funds or other assets for the New Mexico department of agriculture;
- K. make and perform or direct the performance of such inspections and analyses as are necessary to carry out its duties;
- L. issue or direct the issuance of such licenses, permits and other documents as are necessary to carry out its duties;
- M. authorize the New Mexico department of agriculture to establish and publish a schedule of fees and collect those fees to recover the cost of services performed at the

request of a person or firm. Fees imposed shall be just and equitable and shall not exceed the department's cost for performing the service; and

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

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

### **ANNOTATIONS**

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

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

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

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

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

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

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

### **ANNOTATIONS**

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

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

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

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

## ARTICLE 2

# AGRICULTURAL EXTENSION SERVICE

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

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

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

### ANNOTATIONS

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

**Acts of congress.** - The act of congress of July 2, 1862, commonly known as the "Morrill Land-Grant Act," appears as 7 U.S.C. §§ 301 to 305, 307 and 308.

The act of congress of May 8, 1914, appears as 7 U.S.C. §§ 341 to 343, 344 to 346, 347a, 348 and 349.

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

3 C.J.S. Agriculture § 57.

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

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

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

### **ANNOTATIONS**

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

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

**Act of congress.** - The act of congress referred to in this section is the act of congress of May 8, 1914, Section 4 of which appears as 7 U.S.C. § 344. See catchline, "Acts of congress" in notes to 76-2-1 NMSA 1978.

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

3 C.J.S. Agriculture § 10.

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

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

under the aforesaid act, in accordance with the terms and conditions as expressed in said act.

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

### ANNOTATIONS

**Bracketed material.** - The bracketed reference to New Mexico State University in this section was inserted by the compiler, as the name of the agricultural college of New Mexico, i.e., the New Mexico college of agriculture and mechanic arts, was changed to New Mexico state university by N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960. The bracketed material was not enacted by the legislature and is not part of the law.

**Acts of congress.** - The act of congress of July 2, 1862, commonly known as the "Morrill Land-Grant Act," appears as 7 U.S.C. §§ 301 to 305, 307 and 308.

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

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

For the purpose of extending cooperative agricultural extension work provided for by the act of congress, entitled "An act to provide for cooperative agricultural extension work between agricultural colleges in the several states receiving the benefits of an act of congress approved July 2, 1862, and all acts supplemental thereto, and the United States department of agriculture," approved May 8, 1914, in any county employing a county agent under the terms of said acts, the board of county commissioners is authorized, upon petition of at least one hundred bona fide taxpayers within the county, to provide and appropriate such funds as are necessary for maintenance of cooperative extension work in agriculture and home economics within the county.

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

### ANNOTATIONS

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

**Acts of congress.** - See same catchline in notes to 76-2-1 NMSA 1978.

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

3 C.J.S. Agriculture § 59.

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

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

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

### **ANNOTATIONS**

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

3 C.J.S. Agriculture § 57.

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

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

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

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

Every such agreement made relating to county demonstration work in agriculture and home economics shall continue in force until the board of county commissioners, or the

New Mexico college of agriculture and mechanic arts [New Mexico state university], shall terminate the agreement by notice to the other party or parties, such notice to be in writing delivered at least three months prior to the time fixed for termination of the agreement, and at the expiration of such period of three months, the cooperative relationship between said parties shall cease, unless otherwise agreed upon between the several parties.

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

#### **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 76-2-3 NMSA 1978.

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

The county agents to be appointed in pursuance of this act [76-2-4 to 76-2-9 NMSA 1978], shall be selected by the extension service of the New Mexico college of agriculture and mechanic arts [New Mexico state university] and a committee appointed by the boards of county commissioners of the respective counties from nominations made by the extension service of said college. The said county agents shall work under the direction of the extension service of said college and shall devote their entire time to the discharge of their duties under this act. It shall be their duty to demonstrate as far as possible the improved agricultural and home economics practices and systems of farming and homemaking, so far as the same may be applicable to local conditions, which have been developed by the investigations of the United States department of agriculture and the agricultural colleges and the experiment stations; to aid in the organization and direction of agricultural work and homemaking in the several counties; to cooperate with agricultural and home economics clubs and other associations and organizations having for their object the betterment of agriculture and home and rural conditions.

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

#### **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 76-2-3 NMSA 1978.

**County appropriations optional.** - Although counties are authorized to appropriate for county agricultural agents, it is optional. 1917-18 Op. Att'y Gen. 64.

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

In order to obtain the advantages or to increase the benefits to be derived from the provisions of this act [76-2-4 to 76-2-9 NMSA 1978] any two or more contiguous counties may, subject to the approval of the extension service of the New Mexico college of agriculture and mechanic arts [New Mexico state university], unite in the



employment of a county agent or agents under an agreement between the board of county commissioners of each of said counties and the extension service of said college, which agreement shall fix the amount of money to be provided by each county, in which case the funds to be provided by the state, in accordance with the provisions of Section two [76-2-5 NMSA 1978] hereof, shall be available, and shall be paid to the treasurer of said board of regents upon the certificates of said boards of county commissioners, countersigned by said extension director, stating the amounts of monies so provided by said counties, and that such agreement has been executed.

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

## **ANNOTATIONS**

**Bracketed material.** - See same catchline in notes to 76-2-3 NMSA 1978.

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

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

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

Whenever any number of bona fide farmers and stockmen comprising not less than five percent of the total number of farmers and stockmen within any county, as determined by the last United States decennial census, desire to form an organization for doing extension work in agriculture, home economics and marketing and has held a meeting at which the organization is approved by a majority of those present, application may be made to the state corporation commission for incorporation as a nonprofit corporation or association under the provisions of the Nonprofit Corporation Act [53-8-1 to 53-8-99 NMSA 1978]. When such corporation or association has been effected, it shall be recognized as the official body within the county for carrying on extension work in agriculture and home economics in cooperation with New Mexico state university. When its charter has been issued, the corporation may make regulations and bylaws for its government and the carrying on of its work, not inconsistent with the provisions of this section and Sections 76-2-11 and 76-2-12 NMSA 1978.

Any county farm and livestock bureau or other county organization that is now doing extension work in agriculture and home economics in cooperation with New Mexico state university may be incorporated by furnishing satisfactory evidence of compliance

with this section to the state corporation commission, provided that only one such corporation may be formed in any county.

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

#### **ANNOTATIONS**

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

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

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

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

#### **ANNOTATIONS**

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

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

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

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

### **ARTICLE 3 COUNTY BOARD OF HORTICULTURAL COMMISSIONERS**

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

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

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

## ANNOTATIONS

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

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

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

3 C.J.S. Agriculture §§ 15, 16.

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

A. It shall be the duty of the board of horticultural commissioners of each county, when it deems necessary, to cause an inspection to be made of any orchard, nursery, trees, shrubs, plants, seeds, vines, fruit, fruit packing house, storehouse, storeroom, salesroom or other place in its county to determine if the orchard, nursery, shrubs, plants, trees, seeds, vines, fruit, fruit packing house, storehouse, storeroom, salesroom or other place is infested with any insects, fungus, or plant or fruit disease, or the eggs or larvae thereof, which is deemed injurious to fruit or horticultural plants. If, from an inspection of the orchard, nursery, trees, shrubs, plants, seeds, vines, fruit, fruit packing house, storehouse, storeroom, salesroom or other place in the county, any insects, fungus growth or other pests, or the eggs or larvae thereof, are found to exist, the inspector appointed by the board of horticultural commissioners shall serve written notice on the owner or person in charge of the premises on which the insects, fungus growth or other insect pests, or eggs or larvae thereof, are found to exist, that the same

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

B. If after the inspector has served notice upon the owner or person in charge of any premises on which are situate any orchard, nursery, trees, shrubs, plants, seeds, vines, fruit, fruit packing house, salesroom, storeroom, storehouse or other place where fruit or plants are stored or handled that the premises are infested with insects, fungus disease or other pests which are injurious to horticultural plants or the fruit therefrom, or the eggs or larvae thereof, and the owner or person in charge of the premises neglects, fails or refuses to eradicate the insects, fungus, disease or other pests, or the eggs or larvae thereof, within the time specified in the notice, then the board of horticultural commissioners of the county in which the premises are situated shall cause the inspector to eradicate from the premises the insects, fungus disease or other pests injurious to horticultural plants or the fruit therefrom, or the eggs or larvae thereof, either by spraying or other proper treatment. In the event the pests cannot be eradicated by spraying or other proper treatment, or the spread of the insects, fungus disease or other pests, or the eggs or the larvae thereof, cannot be prevented from spreading to other premises on which are growing or situate horticultural plants or the fruit therefrom, then it shall be the duty of the board of horticultural commissioners to cause all orchards, nurseries, trees, shrubs, vines, plants, seeds, fruit, storehouses, storerooms, salesrooms, fruit packing houses or other objects or things which are infested with insects, fungus disease or pests, or the eggs or larvae thereof, to be so destroyed, either in whole or in part, as to eradicate the insects, fungus disease or other pests, or the eggs or larvae thereof. The expense of spraying or treatment for the eradication of the insects, fungus disease or other pests, or the eggs or larvae thereof, or of destroying, in whole or in part, any orchard, trees, shrubs, plants, vines, seeds, nursery, salesroom, packingroom, fruit or other thing infested with the pests, to eradicate or prevent the spread of the pests to other premises shall be a lien upon the land on which the same are situate, and foreclosed as provided in Section 76-3-5 NMSA 1978. When

it is necessary for the board of horticultural commissioners to cause spraying to be done on orchards, trees or other objects to be destroyed as provided in this section, the board of county commissioners shall pay the costs out of the general funds of the county and repay those costs to the general funds of the county from the money received from the foreclosure of the lien.

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

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

## ANNOTATIONS

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

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

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

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

3 C.J.S. Agriculture §§ 85, 91.

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

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

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

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

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

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

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

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

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

## **ANNOTATIONS**

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

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

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

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

#### **ANNOTATIONS**

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

**Meaning of "this chapter".** - The words "this chapter" refer to Chapter 54 of the 1915 Code, the provisions of which are presently compiled as 76-3-1 to 76-3-14 and 76-5-1 NMSA 1978. See also compiler's note to this section.

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

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

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

#### **ANNOTATIONS**

**Compiler's note.** - Laws 1909, ch. 69, § 6, renumbered Laws 1903, ch. 107, §§ 3 to 10 as §§ 6 to 13 of the latter act. The bracketed number in the history line of this section and the ensuing sections in this article indicate the original section number of the 1903 act.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture §§ 42, 44, 45.  
3 C.J.S. Agriculture §§ 85, 89.

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

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

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

#### **ANNOTATIONS**

**Compiler's note.** - See compiler's note to 76-3-7 NMSA 1978.

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

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

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

#### **ANNOTATIONS**

**Compiler's note.** - See compiler's note to 76-3-7 NMSA 1978.

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

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



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

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

### **ANNOTATIONS**

**Compiler's note.** - See compiler's note to 76-3-7 NMSA 1978.

**Meaning of "this chapter".** - See same catchline in notes to 76-3-9 NMSA 1978.

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

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

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

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

### **ANNOTATIONS**

**Compiler's note.** - See compiler's note to 76-3-7 NMSA 1978.

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

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

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

#### **ANNOTATIONS**

**Compiler's note.** - See compiler's note to 76-3-7 NMSA 1978.

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

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

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

#### **ANNOTATIONS**

**Compiler's note.** - See compiler's note to 76-3-7 NMSA 1978.

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

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

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

#### **ANNOTATIONS**

**Compiler's note.** - See compiler's note to 76-3-7 NMSA 1978.

## **ARTICLE 4 PESTICIDE CONTROL**

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

This act may be cited as the "Pesticide Control Act."

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

### **ANNOTATIONS**

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

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

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

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

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

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

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

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

### **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

3 C.J.S. Agriculture §§ 8 to 24.

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

As used in the Pesticide Control Act:

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

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

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

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

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

F. "environment" includes water, air, land, all plants, every living thing therein or thereon and the existing interrelationships;

G. "insect" means any of the numerous small invertebrate animals, belonging principally to the class insecta, including but not limited to beetles, bugs, bees, flies and to other allied classes of arthropods, including but not limited to spiders, mites, ticks, millipedes, centipedes and sowbugs;

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

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

J. "labeling" means all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the department, the United States environmental protection agency, United States departments of agriculture and interior, the department of health,

education and welfare, state agricultural universities and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides;

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

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

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

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

(1) preventing, destroying, repelling or mitigating any pest;

(2) causing the leaves or foliage to drop from a plant, with or without causing abscission;

(3) artificially accelerating the drying of plant tissue; or

(4) accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, through physiological action, but not including substances that are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments;

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

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

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

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

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

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

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

V. "public applicator" means a certified applicator who as an employee of a federal, state, county, [or] city agency or municipal corporation uses or supervises the use of any pesticide which is classified for restricted use only by certified applicators or person under their direct supervision; and

W. "commercial applicator" means a certified applicator, whether or not he is a private applicator with respect to some users, who for compensation uses or supervises the use of any pesticide for any purpose on any property other than as provided by Section 76-4-19 NMSA 1978 and Section 8 [76-4-20.1 NMSA 1978] of this act.

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

## **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

A pesticide or device is misbranded if:

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

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

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

D. any word, statement or other information, required by the Pesticide Control Act or regulations adopted thereunder to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements,

designs or graphic matter in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

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

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

G. the label does not bear:

(1) the name and address of the producer, registrant or person for whom produced;

(2) the name, brand or trademark under which the pesticide is distributed;

(3) an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase. However, the department may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase;

(4) directions for use and a warning or caution statement which are necessary and which, if complied with, would be adequate for the protection of health and protection against injury to plants and animals including man and protection against any unreasonable adverse effects on the environment;

(5) the net weight or measure of the contents;

(6) the registration number assigned the pesticide and the registration number of the person formulating the pesticide by the United States environmental protection agency; and

(7) a statement of the use classification under which the product is registered, if required by federal or state regulations;

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

(1) the skull and crossbones or any other symbol required for registration by the United States environmental protection agency;

(2) the word "POISON" prominently printed in red on a background of distinctly contrasting color; and

(3) a statement of an antidote or practical treatment in case of poisoning by the pesticide;

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

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

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

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

## **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

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

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

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

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

(3) any pesticide, unless it is in the unbroken immediate container of the registrant or manufacturer and there is affixed to the container, and to the outside container or



wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing information required in the Pesticide Control Act and the regulations adopted pursuant to that act;

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

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

(6) any device which is misbranded; or

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

B. It is unlawful:

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

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

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

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

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

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

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

## **ANNOTATIONS**

**Cross-references.** - As to penalties, see 76-4-34 NMSA 1978.

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

3 C.J.S. Agriculture § 87.

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

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

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

(1) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(2) the name of the pesticide or device;

(3) other necessary information required for completion of the application for registration form;

(4) a complete copy of the labeling accompanying the pesticide or device and a statement of all claims including the directions and precautions for use; and

(5) the use classification of the pesticide, if required by federal or state regulations.

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

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

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

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

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

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

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

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

## **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

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

3 C.J.S. Agriculture §§ 95, 97.

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

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

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

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

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

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

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

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

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

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

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

## **ANNOTATIONS**

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

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

3 C.J.S. Agriculture §§ 98, 100.

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

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

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

- (1) declaring as a pest any form of plant or animal life or virus, other than man and other than bacteria, viruses and other microorganisms on or in living man or other living animals, which is injurious to health or the environment;
- (2) designating certain pesticides to be highly toxic to any animal including man;
- (3) determining standards for identifying pesticides by color, taste, odor or form;
- (4) the collection and examination of devices or samples of pesticides for analysis;
- (5) requiring pesticide applicators to notify land owners of property adjoining the property to be treated, or in the immediate vicinity thereof, of a proposed application of a pesticide, if such a notice is necessary to carry out the purpose of the Pesticide Control Act; and for a hearing before the director of the department of any objecting owner of property adjoining the property to be treated before the application of the pesticide;
- (6) the safe handling, transportation, storage, display, distribution, use and disposal of pesticides and their containers;
- (7) establishing standards with respect to the package, container or wrapping in which a pesticide is distributed;
- (8) restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength and

size or any combination thereof to alleviate danger of spillage, breakage, misuse or any other hazard to the public;

(9) procedures for making pesticide recommendation;

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

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

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

(13) certification of private applicators;

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

(15) regulating the labeling of devices;

(16) procedures and techniques to be used in sampling land, including agricultural products that are to be consumed by man or animals for pesticide residues;

(17) classifying pesticides for general use, restricted use or both;

(18) prescribing methods to be used in the application of pesticides where the department finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Control Act. Such regulations may relate to the time, manner, methods, materials and amounts and concentrations in connection with the application of the pesticides and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to plants, including forage plants, or adjacent or nearby lands; wildlife in the adjoining or nearby areas; fish and other aquatic life in waters in reasonable proximity to the area to be treated; and humans, animals or beneficial insects. In issuing such regulations, the board shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government or other reliable sources;

(19) requiring any pesticide use dilution to be colored or discolored if it determines that such requirement is feasible and is necessary for the protection of health and the environment;

(20) establishing good pesticide use and handling practices for commercial pesticide applicators;

(21) establishing requirements for supervision of servicemen of structural pest control applicators; and

(22) regulating false or misleading advertisement in the sales or use of pesticides and devices.

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

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

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

### **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

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

3 C.J.S. Agriculture § 96.

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

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

**History:** Laws 1992, ch. 25, § 1.

### **ANNOTATIONS**

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

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

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

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

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

### **ANNOTATIONS**

**Bracketed material.** - The bracketed reference to the department of environment was inserted by the compiler. The environmental improvement agency was abolished by Laws 1977, ch. 253, § 5. Section 4 of that act established the health and environment department, consisting of several divisions, including the environmental improvement division. Section 14 of that act provided that all references in law to the agency shall be construed to be references to the environmental improvement division. Laws 1991, ch. 25, § 4 establishes the department of environment and provides that all references to the environmental improvement division of the health and environment department shall be construed to mean the department of environment. The bracketed material was not enacted by the legislature and is not part of the law.

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

3 C.J.S. Agriculture § 99.

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

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



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

### **ANNOTATIONS**

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

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

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

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

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

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

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

### **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

3 C.J.S. Agriculture § 100.

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

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

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

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

C. Provisions of this section shall not apply to a licensed pesticide applicator who sells pesticides only as an integral part of his pesticide application service when the pesticides are dispensed only through an apparatus used for such pesticide application, or any federal, state or county agency, or municipality which provides pesticides only for its own programs.

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

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

### **ANNOTATIONS**

**Cross-references.** - As to ground for denial, suspension or revocation of license, see 76-4-23 NMSA 1978.

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

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

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

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

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

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

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

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

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

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

A. It is unlawful for any person to engage in the business of applying pesticides at any time to land not owned or occupied by him without a commercial pesticide applicator license issued by the department. The commercial pesticide applicator shall pay an annual prescribed fee for each license issued. Should any apparatus fail to pass inspection making it necessary for an additional inspection to be made, the department

shall require a prescribed inspection fee. In addition to the required inspection, additional inspections may be made to determine if equipment is properly calibrated and maintained in conformance with the Pesticide Control Act and regulations adopted pursuant thereto.

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

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

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

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

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

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

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

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

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

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

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

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

## ANNOTATIONS

**Cross-references.** - As to inspection of apparatus, see 76-4-26 NMSA 1978.

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

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

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

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

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

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

### **ANNOTATIONS**

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

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

A. All state agencies, federal agencies and municipal corporations or any other governmental agency shall be subject to the provisions of the Pesticide Control Act and regulations adopted thereunder concerning the application of pesticides unless exempt under other sections of the Pesticide Control Act.

B. Public applicators for agencies listed in this section shall be subject to examinations as provided in the Pesticide Control Act. The department shall issue a limited license without fee to the public applicator who has qualified for such license. The public applicator license shall be valid only when the applicator is acting as an applicator applying or supervising application of restricted use pesticides used by such entities. Government research personnel shall be exempt from this licensing requirement only when applying general use pesticides to experimental plots.

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

## ANNOTATIONS

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

3 C.J.S. Agriculture § 101.

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

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

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

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

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

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

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

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

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

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

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

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

A. Any person who is not a private applicator, commercial applicator or public applicator, except a person working under their direct supervision shall not use a restricted use or state restricted use pesticide without having a valid current noncommercial applicator license issued by the department for the license use categories and subcategories in which the pesticide application is made.

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

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

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

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

**History:** Laws 1979, ch. 394, § 8.

### **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

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

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

### ANNOTATIONS

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

### 76-4-22. Fees.

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

(1) annual registration fee for each pesticide or device registered, not more than  
.....\$3  
5.00;

(2) annual pesticide dealer license, for each location or outlet within the state or, if there is no outlet in the state, for the principal out-of-state location or outlet, not more than  
.....\$50.00;

(3) annual pest management consultant license, not more than  
.....\$50.00;

(4) annual commercial pesticide applicator license, not more than ..\$75.00;

(5) annual operator license, not more than  
.....\$50.00;

(6) annual noncommercial applicator license, not more than



.....\$50.00;

(7) private applicator certification or renewal, not more than .....\$ 5.00;

(8) additional inspection required to certify each unit of aircraft, ground or manual equipment that fails to pass inspection, not more than

.....\$25.00;  
and

(9) examination fee for each examination needed to qualify the applicant as a pest management consultant, commercial pesticide applicator, noncommercial applicator or operator, or any combination thereof, not more than

.....  
.\$ 5.00.

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

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

### ANNOTATIONS

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

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

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

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

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

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

(3) apply known ineffective or improper materials;

(4) operate faulty or unsafe apparatus;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

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

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

The department shall not issue a commercial pesticide applicator license until the applicant has furnished evidence of financial responsibility with the department consisting either of a surety bond or a liability insurance policy or certification thereof, protecting persons who may suffer legal damages as a result of the operations of the applicant. However, the surety bond or liability insurance policy need not apply to damages or injury to land being worked upon by the applicant. The department shall not accept a surety bond or liability insurance policy except from authorized insurers or surplus line brokers authorized to do business in the state.

A. The amount of the surety bond or liability insurance as provided for in this section shall be set by the board. The surety bond or liability insurance shall be maintained, at a sum not less than that specified by the board, at all times during the license period. The department shall be notified ten days prior to any reduction made at the request of the applicant or cancellation of the surety bond or liability insurance by the surety or insurer. The department may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount prescribed by the board. If the applicant

has not satisfied the requirements of the deductible amount in any prior legal claim, such deductible clause shall not be accepted by the department unless the applicant furnishes the department with a surety bond or liability insurance which shall satisfy the amount of the deductible pertaining to all claims that may arise in his application of pesticides.

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

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

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

## **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

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

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

- (1) the name and address of the claimant;
- (2) the type of land alleged to be injured or damaged;
- (3) the name of the person applying the pesticide and allegedly responsible;
- (4) the name of the owner or occupant of the property for whom the pesticide application was made; and
- (5) additional information as requested by the department.

B. The report must be filed within sixty days from the time that the loss or damage becomes known to the claimant. If a growing crop is alleged to have been damaged, the

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

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

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

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

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

## **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

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

3 C.J.S. Agriculture § 86.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

#### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 394, § 15, repeals 76-4-29 NMSA 1978, relating to the exemption of landscape gardeners from the provisions of the Pesticide Control Act.

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

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

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

### **ANNOTATIONS**

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

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

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

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

B. If it appears that a pesticide apparatus or device fails to comply with the provisions of the Pesticide Control Act or regulations adopted thereunder, and if the department contemplates instituting proceedings against any person, the department shall cause notice to be given to the person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to the contemplated proceedings. If thereafter, in the opinion of the department, it appears that the provisions of the Pesticide Control Act or regulations adopted thereunder have been violated by the person, the department shall refer a copy of the results of the analysis or the examination of the pesticide apparatus or device to the district attorney for the county in which the violation occurred. It is the duty of the district attorney to whom any violation of the Pesticide Control Act is reported to cause appropriate proceedings to be instituted and prosecute in a court of competent jurisdiction without delay.

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

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

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

### **ANNOTATIONS**

**Cross-references.** - As to inspection of apparatus, see 76-4-26 NMSA 1978.

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

3 C.J.S. Agriculture § 83.

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

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

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

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

### **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.



### **76-4-33. Records.**

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

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

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

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

#### **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

### **76-4-34. Penalties.**

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

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

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

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

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

#### **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

3 C.J.S. Agriculture § 7.

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

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

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

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

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

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

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

### **ANNOTATIONS**

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

3 C.J.S. Agriculture § 53.

### **76-4-36. Pesticide advisory board; created; members; purpose; classification of persistent pesticides and determination of essential uses.**

A. There is created the "pesticide advisory board" consisting of the dean of the college of agriculture at New Mexico state university, the director of the environmental improvement division of the health and environment department [department of

environment], the secretary of natural resources, the secretary of the department of finance and administration, the director of the department or their designees and four members to be appointed by the director of the department who are residents of this state and three of whom shall be licensed under the provisions of the Pesticide Control Act. The pesticide advisory board is created to assure the continuation of the basic policy of the state to protect and improve the environment by assuring the proper registration, distribution and use of pesticides and devices.

B. The pesticide advisory board shall, at least once each year, review pesticide regulations and pesticides in use or proposed to be used in the state, and advise which pesticides should not be registered in the state, which should be designated restricted use pesticides, and the use to which restricted use pesticides may be put. In determining the use to which restricted use pesticides may be put, the pesticide advisory board shall consider the need for control of the target pest, whether the use of effective alternate materials is practicable and whether the use of alternate materials is hazardous to the environment or public health and welfare, or both.

C. The findings of the pesticide advisory board shall be submitted to the board in promulgating regulations pursuant to the Pesticide Control Act.

D. Nongovernmental members of the pesticide advisory board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for attending official meetings of the pesticide advisory board.

**History:** 1953 Comp., § 45-25-36, enacted by Laws 1973, ch. 366, § 36; 1977, ch. 253, § 49; 1978, ch. 39, § 1; 1979, ch. 394, § 14; 1983, ch. 296, § 29.

## ANNOTATIONS

**Bracketed material.** - The bracketed reference to the department of environment was inserted by the compiler, as Laws 1991, ch. 25, § 4 enacts 9-7A-4 NMSA 1978, which establishes the department of environment and provides that all references to the environmental improvement division of the health and environment department shall be construed to mean the department of environment. The bracketed material was not enacted by the legislature and is not part of the law.

**The 1983 amendment** substituted "the secretary of the department of finance and administration" for "the director of the planning division of the department of finance and administration" in the first sentence in Subsection A.

**Effective dates.** - Laws 1978, ch. 39, § 2, makes the act effective on March 31, 1978.

Laws 1983, ch. 296, contains no effective date provision applicable to this section, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

**Emergency clauses.** - Laws 1978, ch. 39, § 3, makes the act effective immediately. Approved February 24, 1978.

**Saving clauses.** - Laws 1983, ch. 296, § 6, provides that § 5 of the act, repealing 15-6-1 to 15-6-3 NMSA, shall not apply to litigation pending on the effective date of the act, nor shall it apply to contracts extending beyond the seventy-first fiscal year.

Laws 1983, ch. 296, § 32, makes the Executive Planning Act (Laws 1983, ch. 296, §§ 1 to 7) effective on July 1, 1983.

Laws 1983, ch. 296, § 31, provides that no suit, action or other proceeding lawfully commenced by or against any public officer or employee of the state in his official capacity or in relation to the discharge of his official state duties shall abate by reason of the taking effect of the act.

**Temporary provisions.** - Laws 1983, ch. 296, § 30, provides that all personnel, fund balances, records, equipment, supplies and all other property of any kind in the possession of the planning division of the department of finance and administration prior to the effective date of the act are transferred to the office of the governor, the department of finance and administration, the office of cultural affairs, the commerce and industry department and the health and environment department, and further provides that all existing contracts and agreements in effect as to the planning division of the department of finance and administration on the effective date of the act shall continue in effect.

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 97.

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

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

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

## **ANNOTATIONS**

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

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

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

A. secure uniformity of regulations;

B. enter into cooperative agreements with the United States environmental protection agency to register pesticides under the authority of the Pesticide Control Act and the federal Environmental Pesticide Control Act;

C. cooperate in the enforcement of the federal Environmental Pesticide Control Act and regulations through the use of state or federal personnel and facilities or both and to implement cooperative enforcement programs including but not limited to the registration of pesticides, collection and analysis of pesticides and devices, inspection of storage facilities and certification of applicators;

D. enter into contracts with other agencies including federal agencies for the purpose of training pesticide dealers, pesticide management consultants, pesticide applicators or operators;

E. publish information and conduct short courses on the storage, transportation, distribution, application, use, registration and disposal of pesticides and devices and environmental implications thereof;

F. enter into contracts for either monitoring pesticides, or analyzing land, including agricultural products that will be consumed by any living organism other than plants, for pesticide residues, or both;

G. prepare and submit a state plan to meet federal certification standards including issuing experimental use permits; and

H. regulate pesticide applicators and operators.

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

### **ANNOTATIONS**

**Compiler's note.** - The federal Environmental Pesticide Control Act, cited in this section, is compiled as 7 U.S.C. § 136 et seq.

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

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

3 C.J.S. Agriculture §§ 25 to 56.

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

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

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

### **ANNOTATIONS**

**Saving clauses.** - Laws 1973, ch. 366, § 40, provides that the act shall not modify existing liability, registrations or licenses until December 31, 1973.

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

**Appropriations.** - Laws 1973, ch. 366, § 41, appropriates \$75,000 to enforce the act in the sixty-second fiscal year.

**Pesticide Control Act.** - See 76-4-1 NMSA 1978 and notes thereto.

## **ARTICLE 5 INSECT PESTS AND PLANT DISEASES**

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

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

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

### **ANNOTATIONS**

**Compiler's note.** - The 1915 Code compilers substituted "chapter" for "act." The former would refer to Chapter 54 of the 1915 Code, the sections of which are now compiled as

76-3-1 to 76-3-14 NMSA 1978, and this section. This was the only operative section in the 1899 act.

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

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

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

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

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

### **ANNOTATIONS**

**Meaning of "this act".** - The words "this act" refer to Laws 1957, ch. 212, compiled herein as 76-5-2, 76-5-3, 76-5-5, 76-5-8 to 76-5-10 NMSA 1978.

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

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

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

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

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

### **ANNOTATIONS**

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

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

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

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

#### **ANNOTATIONS**

**Grasshopper and Other Range Pest Control Act.** - See 76-5-2 NMSA 1978 and notes thereto.

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

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

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

A. cooperate with all agencies of the United States, which are interested in the control of grasshoppers and other range pests;

B. coordinate and utilize the available facilities and personnel of the New Mexico college of agriculture and mechanic arts [New Mexico state university] extension service;

C. hire such additional help and facilities as may be necessary to carry out the purpose of this act;

D. buy, rent, lease or otherwise provide and dispose of equipment, materials and supplies necessary to carry out the purpose of this act;

E. adopt rules and regulations consistent with the purpose of this act including:

(1) the method and manner of rendering aid and assistance;

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

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



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

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

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

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

### ANNOTATIONS

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

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

**Meaning of "this act".** - See 76-5-2 NMSA 1978 and notes thereto.

**Grasshopper and Other Range Pest Control Act.** - See 76-5-2 NMSA 1978 and notes thereto.

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture §§ 40, 42, 50.  
3 C.J.S. Agriculture §§ 19, 20.

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

Before expending or obligating moneys from the grasshopper and other range pest control fund, except for the payment of preliminary organizational costs the board [New Mexico department of agriculture] shall consult with the land users within the infested areas proposed to be treated. When fifty-one percent of the land users who represent

eighty percent of the land within an infested area agree in writing to the extermination program proposed and further agree in writing to pay one-half of the sum expended by the state in the proposed extermination program for the infested area, a control district shall be created. The land users within a control district shall promptly establish, and shall elect three members to a local control committee. The members of the control committee shall, as nearly as possible, give equal area or geographical representation to the land users within a control district.

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

### **ANNOTATIONS**

**Department of agriculture.** - Section 76-5-4 NMSA 1978 provides that reference to the "grasshopper and other range pest control board" means the New Mexico department of agriculture.

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

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

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

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1977, ch. 383, § 3, makes the act effective immediately. Approved April 8, 1977.

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

Local control committees shall:

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

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

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

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

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

### **ANNOTATIONS**

**Department of agriculture.** - Section 76-5-4 NMSA 1978 provides that reference to the "grasshopper and other range pest control board" means the New Mexico department of agriculture.

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

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

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

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

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

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

D. the amount assessed against the land user.

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

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

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

### **ANNOTATIONS**

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

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

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

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

#### **ANNOTATIONS**

**Effective dates.** - Laws 1967, ch. 63, § 8, makes the act effective on July 1, 1967.

**Emergency clauses.** - Laws 1957, ch. 212, § 11, makes the act effective immediately. Approved March 29, 1957.

**Appropriations.** - Laws 1957, ch. 212, § 10, appropriates \$50,000 to the board to carry out provision of the act.

**Department of agriculture.** - Section 76-5-4 NMSA 1978 provides that reference to the "grasshopper and other range pest control board" means the New Mexico department of agriculture.

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

This act may be cited as the "Plant Protection Act."

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

#### **ANNOTATIONS**

**Meaning of "this act".** - The words "this act" refer to Laws 1959, ch. 195, compiled herein as 76-5-11 to 76-5-16, 76-5-19, 76-5-21 to 76-5-25, 76-5-27, 76-5-28 NMSA 1978.

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

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

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

As used in the Plant Protection Act:

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

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

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

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

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

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

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

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

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

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

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

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

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

N. "department" means the state department of agriculture;

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

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

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

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

### **ANNOTATIONS**

**Plant Protection Act.** - See 76-5-11 NMSA 1978 and notes thereto.

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

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

Inspectors may inspect any nursery or other place or vehicle which might become infested or infected with plant pests or which may contain from time to time plants so infested or infected. They may inspect or reinspect any nursery or florist stock shipped within or into the state.

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

### **ANNOTATIONS**

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

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

3 C.J.S. Agriculture § 90.

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

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

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

#### **ANNOTATIONS**

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

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

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

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

#### **ANNOTATIONS**

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

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

Every dealer or agent selling, importing into the state or storing in this state, nursery or florist stock shall, before October 1 of each year, before engaging in the business of soliciting, landscaping, taking orders, selling, storing or delivering any such stock, apply to the department for a nursery or florist dealer's, landscaper's or agent's license. Dealers or agents distributing such stock directly or on a consignment basis for more than one store or place of business or sales ground, or selling such stock from motor

vehicles or other vehicles shall secure a license for each place or each vehicle from which the stock is sold. The application for license shall designate each place of business of the person applying. The application shall be accompanied by the prescribed fee for each place or each vehicle from which the stock is sold. Upon proper application and receipt of the proper fee, the department shall issue the license which shall be valid for one license year. If any licensee is found to have violated any of the provisions of the Plant Protection Act or rules, regulations or orders of the department, the license may be revoked, and, in the discretion of the department, the person may be refused a license in the state. Those dealers who sell only vegetable plants that are sold for food production or dealers selling only cactus plants may obtain a special dealer's license for the prescribed fee. Applicants for the special dealer's license shall state that will handle only vegetable plants or cactus plants and that the plants will be from stock certified by an inspector.

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

## ANNOTATIONS

**Plant Protection Act.** - See 76-5-11 NMSA 1978 and notes thereto.

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

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

**Control necessary to make agent.** - A New Mexico state nursery could have actual agents under its complete control and such agents would not be required to secure a salesman's certificate under this proviso. The amount of control necessary to make a party an agent would be as follows: (a) the principal would have to control the price to be charged; (b) the principal would control the territory wherein the agent operated; (c) the agent would take orders in the name of the principal and hold himself out as a representative of such principal. 1955-56 Op. Att'y Gen. No. 6446 (opinion rendered under former law).

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

3 C.J.S. Agriculture § 167.

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



## ANNOTATIONS

**Repeals.** - Laws 1979, ch. 193, § 10, repeals 76-5-17 and 76-5-18 NMSA 1978, relating to the exemption of amateur gardeners from the Plant Protection Act and permits for shipping from out of state.

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

All nursery stock and collected plants sold or trafficked in the state shall be securely and correctly labeled, either as to common or botanical names as recognized by "Standardized Plant Names" prepared by the American joint committee on horticultural nomenclature or or the "Manual of Cultivated Plants" by L. H. Bailey.

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

## ANNOTATIONS

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

3 C.J.S. Agriculture § 90.

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

Only sound and healthy nursery stock, stored, offered or displayed under conditions which will maintain its vigor, shall be offered for sale or sold. The offering for sale or sale of dead nursery stock or nursery stock so seriously weakened by drying or by excessive heat or cold, or nursery stock which has been mechanically or otherwise treated to the extent of concealing its true condition, or stock which for any cause is in such a condition that it is unable to grow satisfactorily with reasonable care, is a violation of the Plant Protection Act. Florist stock offered for sale must be such that it will maintain its aesthetic value for a reasonable period of time after sale.

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

## ANNOTATIONS

**Plant Protection Act.** - See 76-5-11 NMSA 1978 and notes thereto.

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

3 C.J.S. Agriculture § 68.

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

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

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

### **76-5-22. Certificates of inspection on stock brought into the state.**

It is unlawful for any person to bring into or to transport or ship within this state any nursery or florist stock unless there is affixed to each package, in a conspicuous place, an official copy of the certificate of inspection signed by the proper official of the state from which it was brought or shipped.

**History:** 1953 Comp., § 45-8-33, enacted by Laws 1959, ch. 195, § 12; 1973, ch. 97, § 11; 1979, ch. 193, § 6.

#### **ANNOTATIONS**

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

3 C.J.S. Agriculture § 90.

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

Every person producing, selling or offering for sale, or shipping or transporting any nursery or florist stock within the state shall have affixed to or printed on each package of stock a certification statement as prescribed by the department. It is unlawful for any transportation company, public carrier, commercial truck or other agency engaged in the business of transportation to ship, transport or accept for shipment any package of nursery or florist stock until the required certification statement is attached thereto.

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

#### **ANNOTATIONS**

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

### **76-5-24. Forms.**

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

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

## **ANNOTATIONS**

**Plant Protection Act.** - See 76-5-11 NMSA 1978 and notes thereto.

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

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

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

## **ANNOTATIONS**

**Plant Protection Act.** - See 76-5-11 NMSA 1978 and notes thereto.

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

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

3 C.J.S. Agriculture §§ 19, 20.

### **76-5-26. Fees.**

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

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

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

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

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

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

B. If the application for renewal of any annual license, permit or certificate provided for in the Plant Protection Act is not filed prior to the expiration of the prior license, permit or certificate, the fee for such license, permit or certificate shall be double the amount specified in this section. However, this double fee shall not apply if the applicant has not engaged in business subsequent to the expiration of his license, permit or certificate, and furnishes an affidavit certifying to that fact.

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

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

#### **ANNOTATIONS**

**Plant Protection Act.** - See 76-5-11 NMSA 1978 and notes thereto.

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

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

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

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

#### **ANNOTATIONS**

**Plant Protection Act.** - See 76-5-11 NMSA 1978 and notes thereto.

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

Any person violating the provisions of the Plant Protection Act or, after a notice to cease and desist, violating any rule, regulation or order promulgated under the Plant Protection Act, upon conviction thereof shall be guilty of a petty misdemeanor. Each day

the person remains in violation constitutes a separate offense. The license of any such person may also be revoked.

**History:** 1953 Comp., § 45-8-38, enacted by Laws 1959, ch. 195, § 17; 1967, ch. 53, § 11; 1973, ch. 97, §§ 64, 66, 67, 70, 94, 103, 104, 127 to 130.

### ANNOTATIONS

**Severability clauses.** - Laws 1959, ch. 195, § 19, provides for the severability of the act if any part or application thereof is held invalid.

**Appropriations.** - Laws 1959, ch. 195, § 18, provides that the legislature shall appropriate from the general fund to the New Mexico college of agriculture and mechanic arts the amount necessary to carry out the provisions of the act.

**Plant Protection Act.** - See 76-5-11 NMSA 1978 and notes thereto.

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

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

3 C.J.S. Agriculture § 94.

## ARTICLE 6 PEST CONTROL

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

This act may be cited as the "Pest Control Act."

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

### ANNOTATIONS

**Meaning of "this act".** - Laws 1969, ch. 41, is presently compiled as 76-6-1 to 76-6-9 NMSA 1978.

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

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.

### **ANNOTATIONS**

**Pest Control Act.** - See 76-6-1 NMSA and notes thereto.

## **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**

**Pest Control Act.** - See 76-6-1 NMSA 1978 and notes thereto.

**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**

**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**

**Pest Control Act.** - See 76-6-1 NMSA 1978 and notes thereto.

**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.**

Whenever the board finds any article that is infested or reasonably believed to be infested, or a host or pest exists on any premise [premises] or is in transit in this state, he may, upon giving notice to the owner or his agent in possession thereof, seize, quarantine, treat or otherwise dispose of such pest, host or article in such manner as the board deems necessary to suppress, control, eradicate, or to prevent or retard the spread of a pest, or the board may order such owner or agent to so treat or otherwise dispose of the pest, host or article.

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

#### **ANNOTATIONS**

**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.

**Pest Control Act.** - See 76-6-1 NMSA 1978 and notes thereto.

**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**

**Pest Control Act.** - See 76-6-1 NMSA 1978 and notes thereto.

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

3 C.J.S. Agriculture § 87.

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

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

### **PEST CONTROL COMPACT**

#### **Article I**

#### **Findings**

The party states find that:

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

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

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

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

## **Article II**

### **Definitions**

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

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

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

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

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

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

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

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

## **Article III**

### **The Insurance Fund**

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

## **Article IV**

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

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

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

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

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

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

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

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

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

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

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

## **Article V**

### **Compact and Insurance Fund Administration**

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

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

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

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

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

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

## **Article VI**

### **Assistance and Reimbursement**

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

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.
2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state

may request the governing board to authorize expenditures from the insurance fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the insurance fund expeditiously and efficiently to assist in affording the protection requested.

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

1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.
2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.
3. A statement of the extent of the present and projected program of the requesting state and its subdivision, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.
4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.
5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the insurance fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.
6. Such other information as the governing board may require consistent with the provisions of this compact.

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

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

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

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

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

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

## **Article VII**

### **Advisory and Technical Committees**

The governing board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the governing board or executive committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance [assistance] from the insurance fund being considered by such board or committee and



the board or committee may receive and consider the same; provided that any participant in a meeting of the governing board or executive committee held pursuant to Article VI(d) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the governing board or executive committee makes its disposition of the application.

## **Article VIII**

### **Relations with Nonparty Jurisdictions**

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

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

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

## **Article IX**

### **Finance**

(a) The insurance fund shall submit to the executive head or designated officer or officers of each party state a budget for the insurance fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriation shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the insurance fund may

employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the insurance fund shall be maintained in two accounts to be designated respectively as the "operating account" and the "claims account". The operating account shall consist only of those assets necessary for the administration of the insurance fund during the next ensuing two-year period. The claims account shall contain all moneys not included in the operating account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the insurance fund for a period of three years. At any time when the claims account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the governing board shall reduce its budget request on a pro rata basis in such manner as to keep the claims account within such maximum limit. Any moneys in the claims account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.

(d) The insurance fund shall not pledge the credit of any party state. The insurance fund may meet any of its obligations in whole or in part with moneys available to it under Article IV(g) of this compact, provided that the governing board takes specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the insurance fund makes use of moneys available to it under Article IV(g) hereof, the insurance fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The insurance fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the insurance fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the insurance fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the insurance fund.

(f) The accounts of the insurance fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the insurance fund.

## **Article X**

### **Entry Into Force and Withdrawal**

(a) This compact shall enter into force when enacted into law by any five or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

## **Article XI**

### **Construction and Severability**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**History:** Laws 1981, ch. 281, § 1.

### **ANNOTATIONS**

**Effective dates.** - Laws 1981, ch. 281 contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

#### **76-6-11. Cooperation with pest control insurance fund.**

Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the insurance fund established by the Pest Control Compact [76-6-10 NMSA 1978].

**History:** Laws 1981, ch. 281, § 2.

### **ANNOTATIONS**

**Effective dates.** - Laws 1981, ch. 281, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

#### **76-6-12. Filing of compact.**

Pursuant to Article IV (h) of the compact, copies of bylaws and amendments thereto shall be filed with the state department of agriculture.

**History:** Laws 1981, ch. 281, § 3.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1981, ch. 281, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

#### **76-6-13. Compact administrator.**

The compact administrator for this state shall be the director of the state department of agriculture.

**History:** Laws 1981, ch. 281, § 4.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1981, ch. 281, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

#### **76-6-14. Applications for assistance.**

Within the meaning of Article VI (b) or VIII (a) [of the compact], a request or application for assistance from the insurance fund may be made by the compact administrator for this state, whenever in his judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request.

**History:** Laws 1981, ch. 281, § 5.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1981, ch. 281, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

#### **76-6-15. Disposition of money from compact insurance fund.**

The department, agency or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the compact shall have credited to his account in the state treasury the amount of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof.

**History:** Laws 1981, ch. 281, § 6.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1981, ch. 281, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

#### **76-6-16. "Executive head" defined.**

As used in the compact, with reference to this state, "executive head" means the governor.

**History:** Laws 1981, ch. 281, § 7.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1981, ch. 281, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

## **ARTICLE 7 NOXIOUS WEED CONTROL**

#### **76-7-1. Short title.**

This act [76-7-1 to 76-7-22 NMSA 1978] may be cited as the "Noxious Weed Control Act."

**History:** 1953 Comp., § 45-10-2, enacted by Laws 1959, ch. 243, § 1.

#### **ANNOTATIONS**

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

Liability of private landowner for vegetation obscuring view at highway or street intersection, 69 A.L.R.4th 1092.

3 C.J.S. Agriculture § 70.

#### **76-7-2. Definitions.**

As used in the Noxious Weed Control Act [76-7-1 to 76-7-22 NMSA 1978]:

A. "noxious weed" means any weed or plant which the board of county commissioners acting as the governing body of the district, and with the advice of the county agent, declares to be harmful or to possess noxious characteristics;

B. "landowner" means any natural person who holds title to lands lying within a weed control district organized under the Noxious Weed Control Act who has attained the age of twenty-one years and is a resident of a county situated entirely or in part within a weed control district;

C. "land occupier" means any person, firm or corporation holding title to or being in possession of any lands lying within a district organized under the provisions of the Noxious Weed Control Act, whether as owner, lessee, renter, tenant or otherwise;

D. "resident taxpaying voter" means a qualified voter residing and owning taxable property within a noxious weed control district and who had duly rendered all taxes assessed against his property to the assessor for the district; and

E. "district" means a noxious weed control district organized under the provisions of the Noxious Weed Control Act.

**History:** 1953 Comp., § 45-10-3, enacted by Laws 1959, ch. 243, § 2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Warranty on sale of seed against presence of weed seeds, 62 A.L.R. 453, 117 A.L.R. 470, 168 A.L.R. 581.

Constitutionality of statutes requiring destruction of noxious weeds, 70 A.L.R.2d 852.

#### **76-7-3. Noxious weed control districts; territorial limitations.**

A. Noxious weed control districts may be organized under the provisions of the Noxious Weed Control Act [76-7-1 to 76-7-22 NMSA 1978] to include the area of any county or counties, or any portion thereof; except that no district shall contain less than one thousand, two hundred and eighty acres nor consist of territory in more than three counties. A district may include any political subdivision of the state or a defined district, or any parts thereof, but no land shall be included in more than one noxious weed control district.

B. The land composing any noxious weed control district need not be in one contiguous body but may consist of separate bodies of land separated by land not embraced in the district. No district provided for in the Noxious Weed Control Act shall embrace territory situated in more than one county except by a majority vote of the resident taxpaying voters residing within the territory in each county sought to be included in the district.

**History:** 1953 Comp., § 45-10-4, enacted by Laws 1959, ch. 243, § 3.

#### **76-7-4. Petition for organization of noxious weed control district.**

Petitions for the organization of a noxious weed control district shall designate the name of the district and the proposed area and boundaries to be included in the district. If the proposed district lies wholly within one county, the petition shall be presented to the board of county commissioners of the county; if the proposed district lies in more than one county, the petition shall be presented to the board of county commissioners of the county in which the largest area of the proposed district lies.

**History:** 1953 Comp., § 45-10-5, enacted by Laws 1959, ch. 243, § 4.

#### **76-7-5. Notice of public hearing.**

Upon receipt of a petition for the organization of a noxious weed control district the board of county commissioners wherein the petition is filed shall make an order setting the date for the hearing of the petition. The petition may be considered at a regular or special session of the board of county commissioners of the county wherein the petition is filed. The board shall issue a notice of public hearing to be published in a newspaper or newspapers of general circulation in each county in which the proposed district lies at least once a week for two consecutive weeks, with the last insertion of the notice not less than thirty days prior to the public hearing.

**History:** 1953 Comp., § 45-10-6, enacted by Laws 1959, ch. 243, § 5.

#### **76-7-6. Public hearing upon petition; consideration by county commissioners.**

A. Any person whose land is included in or would be affected by the creation of a noxious weed control district, may upon the day set for the public hearing appear and contest the creation of the proposed district and may offer testimony to show whether or not the district is necessary or would be of benefit to the land included therein.

B. The board of county commissioners shall approve the petition if, after a public hearing, it finds that the creation of the district would be a public benefit and that a substantial portion of the lands within the proposed district would be benefited by its creation. If the board of county commissioners finds that any lands included within the proposed district would not be benefited by its creation it shall exclude the lands and redefine the boundaries of the district accordingly. If the board of county commissioners should find that the proposed district would not be a public benefit, or of benefit to a substantial portion of the land sought to be included therein, it shall refuse the petition.

**History:** 1953 Comp., § 45-10-7, enacted by Laws 1959, ch. 243, § 6.

#### **76-7-7. Order and notice of district election.**

A. Upon determination by the board of county commissioners that the proposed noxious weed control district is necessary for the reclamation or safeguarding of the lands specified in the original or modified petition, they shall order an election for the purpose of submitting to the resident taxpaying voters the issue of whether or not the district shall be created.

B. Notice of the election for the creation of the noxious weed control district shall be published in a newspaper or newspapers of general circulation in the county or counties in which the proposed district lies at least once a week for two consecutive weeks, the last insertion to be not less than thirty days prior to the proposed referendum election.

**History:** 1953 Comp., § 45-10-8, enacted by Laws 1959, ch. 243, § 7.

### **76-7-8. Qualified voters in district elections.**

A. At any election for the consideration of a proposed noxious weed control district, only the following persons shall be eligible voters:

(1) all persons who are owners of agricultural land within the district or have evidence of title to the lands or who are purchasers under contract of lands within the district;

(2) all resident entrymen of federal public lands and lessees of state agricultural lands within the district;

(3) any authorized officer or agent of a corporation owning land within the proposed district. He may cast the ballot of the corporation in all weed control district elections;

(4) all minors who are the owners of agricultural land within the district and who are entitled to vote under the provisions of the Noxious Weed Control Act [76-7-1 to 76-7-22 NMSA 1978]. Their vote shall be cast by their father, mother or duly appointed guardian in the order named, and if they have no father, mother or duly appointed guardian, the minor may cast his own ballot; and

(5) any owner of agricultural lands in the district voting by proxy. A landowner may have his vote cast at any election by another person entitled to vote in the election, and whom he may appoint as his proxy. Designation of a proxy for the purposes of district voting shall be in writing and signed by the person authorizing the proxy. Every proxy shall be attached to and deposited with the ballot cast by the designated voter, and the ballot shall be signed in the name of the person authorizing the proxy and the proxy himself. Each proxy shall contain an official acknowledgment duly signed by a person authorized to take acknowledgments in this state.

B. The general election laws of the state, insofar as applicable, except for the requirements for registration under Section 3-2-49 NMSA 1953 and residence in state, county and precinct under Section 3-2-51 NMSA 1953 and except as otherwise



provided in the Noxious Weed Control Act, shall govern all elections under the Noxious Weed Control Act.

**History:** 1953 Comp., § 45-10-9, enacted by Laws 1959, ch. 243, § 8.

**ANNOTATIONS**

**Compiler's note.** - Sections 3-2-49 and 3-2-51 NMSA 1953, cited above, were repealed by Laws 1969, ch. 240, § 451. For present provisions, see 1-1-4, 1-4-1 and 1-4-2 NMSA 1978.

**76-7-9. County commissioners to furnish ballots; voting by mail permitted.**

A. The board of county commissioners shall furnish sufficient printed ballots for all voters at each election in the district. The ballots for the election shall contain a place for the elector to vote for or against the formation of the proposed district. Each voter shall sign his name on a line at the bottom of the ballot before voting or casting the ballot.

B. Any qualified voter desiring to vote by mail may do so by preparing his ballot in the manner prescribed in this section, and affixing his signature thereon and mailing or delivering the ballot in a sealed envelope to the judge of the election of the voting district; provided, however, every ballot delivered or mailed to the election judges must reach the election judges not later than 6:00 p.m. on the day of the election.

**History:** 1953 Comp., § 45-10-10, enacted by Laws 1959, ch. 243, § 9.

**76-7-10. Form of ballots.**

The ballots for the creation of a weed control district shall be printed in the following form:

BALLOT

On the Question of Formation of ..... Noxious Weed Control District.

(Place "X" in one of the boxes below)

For Noxious Weed Control District	[ ]
Against Noxious Weed Control District	[ ]
Signature of voter .....	

**History:** 1953 Comp., § 45-10-11, enacted by Laws 1959, ch. 243, § 10.

**76-7-11. Conduct of election; declaration of results.**

A. The board of county commissioners having jurisdiction over the election shall create and define, by order, the voting precincts in the proposed district, and shall name the polling places within each district. The board of county commissioners shall also select and appoint the judges and other necessary officers for the conduct of the election.

B. Immediately after the election, the officers holding the election shall make returns of the results to the board of county commissioners having jurisdiction. The board of county commissioners shall canvass the vote and returns and enter an order declaring the results of the election. If it is found that a majority of the votes cast are in favor of the creation of the district, the board of county commissioners shall enter an order declaring the establishment of the district. If the proposed district embraces more than one county, the board of county commissioners having jurisdiction shall enter an order declaring the establishment of the district only in the territory included in each county in which the majority of the votes cast were in favor of its creation. A copy of the order shall be transmitted to the county clerk of each county in which a portion of the district lies and shall be filed by him as a public record.

**History:** 1953 Comp., § 45-10-12, enacted by Laws 1959, ch. 243, § 11.

### **76-7-12. District governing body.**

The governing body of the noxious weed control districts shall be governed by [sic] the board of county commissioners of the county wherein the largest area of the proposed district is situated.

**History:** 1953 Comp., § 45-0-13, enacted by Laws 1959, ch. 243, § 12.

### **76-7-13. Powers of district governing body.**

The district governing body shall have the following powers:

A. to determine, with the advice of the county agent, which noxious weeds shall be subject to control;

B. to determine the method of control, either by spraying, cutting, burning, tillage or any other appropriate method;

C. to prescribe the specific areas within the district on which the control measures are to be carried out;

D. to prescribe the period within which control measures are to be carried out; and

E. to take necessary action to effect the purposes of the Noxious Weed Control Act [76-7-1 to 76-7-22 NMSA 1978].

**History:** 1953 Comp., § 45-10-14, enacted by Laws 1959, ch. 243, § 13.

## **76-7-14. Rules and regulations of district; penalty.**

A. The district governing body is specifically authorized to promulgate rules and regulations requiring the cleaning of farm implements and machinery which are brought into the district or which are moved from one location to another within the district and to prescribe the method of disposition of materials taken from farm implements and machinery.

B. Before the rules and regulations of the district shall become effective, a copy of all the rules and regulations shall be filed with the state law librarian and published, at least once a week for four consecutive weeks, in a newspaper or newspapers of general circulation in the county or counties in which the district lies.

C. Any person who violates any provision of the rules and regulations of the district after the rules have been duly filed and published shall be, upon conviction, punished by a fine of not more than two hundred and fifty dollars (\$250).

**History:** 1953 Comp., § 45-10-15, enacted by Laws 1959, ch. 243, § 14.

### **ANNOTATIONS**

**Cross-references.** - As to filing rules and regulations under State Rules Act, see 14-4-1 NMSA 1978 et seq.

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

3 C.J.S. Agriculture § 72.

## **76-7-15. Notice to land occupiers of control measures; inspection of property; failure to comply with order.**

A. The chairman of the board of county commissioners governing the noxious weed control district, shall give written notice to each land occupier within the district, informing him of the control measures which are in effect on his land and all other necessary information to enable the land occupier to carry out the measures.

B. It shall be the duty of each land occupier to comply with the control measures prescribed by the board, and the responsibility of the appropriate county officials to comply with the control measures determined by the board in order to effectuate noxious weed control measures on rights-of-way of all public roads and other public lands within the district.

C. The governing body of the district, if it deems advisable, may appoint an inspector to serve as an officer of the board. The inspector shall have the right to enter upon any land within the district to determine whether control measures are necessary and to determine whether control measures prescribed by the board are being carried out.

D. If it is found that any landowner or occupier is not complying with the board's directions, the board shall give him written notice ordering him to comply within a stated time. If he fails to comply with the order, the board may file a suit for a mandatory injunction in the district court of the county in which the land is situated to compel him to comply with the order. Any landowner or occupier against whom an injunction is issued shall, upon a finding of the court that the landowner or occupier unreasonably refused to comply with the board's order, and that the control measures are appropriate, be liable for all costs of the suit and for a reasonable attorney's fee to be fixed by the court. The court shall upon a proper determination, issue an injunction, ordering compliance with the board's directions.

E. Any adjoining landowner to a county or state road, situated within the noxious weed control district, may petition the governing body of the district to spray or take weed control measures of noxious weeds growing upon adjoining rights-of-ways [rights-of-way]. Upon determination by the board that the control measures requested are necessary, the board shall order appropriate action be taken to control noxious weeds. If the lands or rights-of-way are under the control of the state highway department, the board shall first make formal application to the state highway commission requesting the highway department to perform the necessary control measures. If the state highway department fails or refuses to take appropriate action, the governing body of the district shall perform the necessary work with district facilities. In the event sufficient funds are not available to finance the control measures by the district, upon the rights-of-ways [rights-of-way], the adjoining landowner or occupier shall be authorized by the board to take appropriate action, and he shall be reimbursed from funds of the district as soon as sufficient funds become available. The board shall petition the state highway department for reimbursement of necessary and actual expenses of the noxious weed control measures taken upon the state highway right-of-ways [rights-of-way] or lands.

**History:** 1953 Comp., § 45-10-16, enacted by Laws 1959, ch. 243, § 15.

## **ANNOTATIONS**

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

3 C.J.S. Agriculture § 70.

### **76-7-16. Levy of uniform assessments; assessor; collector; annual financial report.**

A. The governing body of the district may levy an annual uniform assessment against the land within the district not to exceed five cents (\$.05) an acre for the purpose of paying the expenses of the district. The county treasurer of each county wherein a weed control district is located shall assess and collect the levy at the same time he collects the ad valorem taxes within the county.

B. The moneys collected for the district shall be deposited in the district depository selected by the board.

C. The chairman of the governing body of the district shall file an annual report with the county clerk of each county in which any part of the district lies, before July 1 of each year, showing the total amount received, and an itemized statement of the amounts expended during the preceding year, together with the balance remaining on hand.

**History:** 1953 Comp., § 45-10-17, enacted by Laws 1959, ch. 243, § 16.

### **ANNOTATIONS**

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

### **76-7-17. Enforcement of assessments.**

Assessments by local district assessors shall be subject to the same delinquency period, discounts, penalties and interest as are applied to the collection of ad valorem taxes. The district governing body shall refer a delinquent assessment to a district attorney in the county of the land occupier's residence. It shall be the duty of the district attorney to sue and obtain judgment and to enforce and satisfy the judgment so obtained. All levies assessed under the provisions of the Noxious Weed Control Act [76-7-1 to 76-7-22 NMSA 1978] shall be deemed special levies on specific property and shall not be subject to the limitations of Section 72-4-11 New Mexico Statutes Annotated, 1953 Compilation or other statutory limitations.

**History:** 1953 Comp., § 45-10-18, enacted by Laws 1959, ch. 243, § 17.

### **ANNOTATIONS**

**Compiler's note.** - Section 72-41-11, 1953 Comp., referred to in this section, was repealed by laws 1974, ch. 92, § 34 (amending Laws 1973, ch. 258, § 156), effective January 1, 1975.

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

### **76-7-18. District expenses; employees.**

The governing body of the district may incur all necessary expenses, within the limitations of the district assessment collections, which are in keeping with the purposes of the Noxious Weed Control Act [76-7-1 to 76-7-22 NMSA 1978]. The board may employ one or more inspectors, if it deems necessary, for the purpose of inspecting the lands within the district to determine in what areas control measures are being carried out. The board may also employ clerical help as may be necessary in the discretion of the board.

**History:** 1953 Comp., § 45-10-19, enacted by Laws 1959, ch. 243, § 18.

## **ANNOTATIONS**

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

### **76-7-19. Addition or exclusion of lands of district.**

A. Upon petition to the district governing body, by one or more landowners residing outside the district, asking for inclusion into the district of specified lands, the governing body of the district shall examine the petition, and after appropriate public hearings make a determination upon whether the petition shall be granted. The district governing body shall have the authority to declare the extension of the boundaries of the district to include the area designated in the petition or to accept any portion of the area included in the petition, for inclusion in the district. All lands added to any existing district shall at the next assessment date automatically be subject to any special levy on taxable property approved for the district for the purposes of the Noxious Weed Control Act [76-7-1 to 76-7-22 NMSA 1978].

B. Upon petition to the district governing body by ten or more landowners residing within the district and asking for the detaching of a specified area from inclusion in the district, the governing body of the district shall examine the petition, and after appropriate public hearing make a determination upon whether the petition shall be granted. The governing body of the district may order the lands included in the petition to be excluded from the area of the district, provided all current assessments have been paid, and the detaching of the lands will not result in the total area of the district containing less than the prescribed minimum acreage of one thousand, two hundred and eighty acres.

**History:** 1953 Comp., § 45-10-20, enacted by Laws 1959, ch. 243, § 19.

### **76-7-20. Petition to dissolve district; notice of election; conduct of election.**

A. Upon petition, presented to the governing body of the noxious weed control district, signed by one-quarter of the landowners or land occupier's [occupiers] residing within the district and asking for an election upon a proposal to dissolve the district, the board of directors shall order an election thereon to be held not more than ninety days from the date the petition is received.

B. Notice by publication of the election shall be given by the chairman of the governing body of the district at least twice, with at least seven days between the two publications, in a newspaper or newspapers of general circulation published in each county in which the district lies. Notice of publication shall contain a statement of the purpose of the election and the time and place of holding the election.

C. The board shall designate the polling place or places within the district, taking into consideration the convenience of the voters, and shall also select and appoint the judges and other necessary officers of the election. None but resident taxpaying voters of the district shall be entitled to vote at the election.

**History:** 1953 Comp., § 45-10-21, enacted by Laws 1959, ch. 243, § 20.

### **76-7-21. Results of election to dissolve noxious weed control district.**

Returns of the election shall be made to the board of county commissioners acting as governing body of the district, which shall canvass the returns and enter an order declaring the results of the election. If a majority of the votes cast at the election are against dissolution of the district, no further election on the proposition shall be held for a period of two years thereafter. If a majority of the votes cast are in favor of the dissolution of the district, the board shall enter an order declaring the district to be dissolved, and thereafter the board shall not exercise any further powers except to terminate the affairs of the district.

**History:** 1953 Comp., § 45-10-22, enacted by Laws 1959, ch. 243, § 21.

### **76-7-22. Termination of the affairs of the district.**

If the results of the election require the dissolution of the district and there is not on hand sufficient money to pay off all claims against the district and if the annual assessments already levied will not provide sufficient funds for the payment of claims, the board shall have the authority to levy and cause to be collected further annual assessments but only in an amount as may be necessary to settle the claims against the district. Any money remaining on hand after all claims have been settled shall be paid over rateably to the county treasurer of each county in which the district lies in the proportion which the territory in each county bears to the total area of the district, and shall be placed by the treasurer in the general fund of the county.

**History:** 1953 Comp., § 45-10-23, enacted by Laws 1959, ch. 243, § 22.

### **76-7-23. Short title.**

This act [76-7-23 to 76-7-30 NMSA 1978] may be cited as the "Noxious Weed Act of 1963."

**History:** 1953 Comp., § 45-10-24, enacted by Laws 1963, ch. 203, § 1.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 70.

## **76-7-24. Definitions.**

As used in the Noxious Weed Act of 1963 [76-7-23 to 76-7-30 NMSA 1978]:

- A. "board" means the board of regents of New Mexico state university;
- B. "noxious weed" means any species of plant which is liable to be detrimental or destructive, and difficult to control or eradicate;
- C. "seed" means any part of a noxious weed that will propagate; and
- D. "agent" means any person employed by the board to carry out the provisions of the Noxious Weed Act of 1963.

**History:** 1953 Comp., § 45-10-25, enacted by Laws 1963, ch. 203, § 2.

## **76-7-25. Administration and enforcement.**

The Noxious Weed Act of 1963 [76-7-23 to 76-7-30 NMSA 1978] shall be administered and enforced by the board through the state department of agriculture.

**History:** 1953 Comp., § 45-10-26, enacted by Laws 1963, ch. 203, § 3.

### **ANNOTATIONS**

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

3 C.J.S. Agriculture §§ 19, 20.

## **76-7-26. Inspections.**

The board or its agent may inspect any facility or ground where noxious weed seeds are sold, stored, transported or planted.

**History:** 1953 Comp., § 45-10-27, enacted by Laws 1963, ch. 203, § 4.

### **ANNOTATIONS**

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

3 C.J.S. Agriculture § 5.

## **76-7-27. Declaration of certain weed seeds as noxious.**



Whenever the board receives a petition signed by twenty-five New Mexico landowners requesting that certain weeds be declared noxious, it shall hold a public hearing. At least ten days prior to the hearing, notice shall be published in at least one newspaper of general circulation in the state listing all the weeds alleged to be noxious which will be considered at the hearing. If the board, as a result of the hearing, determines a weed to be noxious, it shall declare that finding by rule or regulation.

**History:** 1953 Comp., § 45-10-28, enacted by Laws 1963, ch. 203, § 5.

### **76-7-28. Unlawful actions.**

After any weed is declared to be noxious by the board, it shall be unlawful to sell, give away or plant any noxious weed seed in this state or in that part of the state designated by the rules and regulations of the board. This section shall not apply to materials not sold as seed, in which noxious weed seed may incidentally be found.

**History:** 1953 Comp., § 45-10-29, enacted by Laws 1963, ch. 203, § 6.

#### **ANNOTATIONS**

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

3 C.J.S. Agriculture § 71.

### **76-7-29. Rules and regulations.**

The board may prescribe and enforce rules and regulations, pertaining to the sale, transportation or distribution of noxious weed seeds, necessary to carry out the provisions of the Noxious Weed Act of 1963 [76-7-23 to 76-7-30 NMSA 1978].

**History:** 1953 Comp., § 45-10-30, enacted by Laws 1963, ch. 203, § 7.

#### **ANNOTATIONS**

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

3 C.J.S. Agriculture §§ 19, 20.

### **76-7-30. Penalty.**

Any person, firm or corporation violating the Noxious Weed Act of 1963 [76-7-23 to 76-7-30 NMSA 1978] is guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars (\$25.00), nor more than three hundred dollars (\$300).

**History:** 1953 Comp., § 45-10-31, enacted by Laws 1963, ch. 203, § 8.

## ANNOTATIONS

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

3 C.J.S. Agriculture § 72.

## ARTICLE 7A HARMFUL PLANTS

### 76-7A-1. [Short title.]

This act [76-7A-1 to 76-7A-11 NMSA 1978] may be cited as the "Harmful Plant Act."

**History:** 1978 Comp., § 76-7A-1, enacted by Laws 1978, ch. 125, § 1.

### 76-7A-2. Definitions.

As used in the Harmful Plant Act [76-7A-1 to 76-7A-11 NMSA 1978]:

A. "article" means soil, seeds, unprocessed feeds, packaging materials, nursery stock, machinery or anything capable of transporting or harboring a harmful plant;

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

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

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

E. "harmful plant" means any plant, seeds or other parts of a plant the board declares by regulation to be a harmful plant;

F. "permit" means a document issued by the department to provide for the movement of a harmful plant in accordance with regulations adopted by the board;

G. "person" means any individual, firm, association or corporation; and

H. "plant" means any living stage of a plant, including but not limited to seeds and reproductive parts of a plant.

**History:** 1978 Comp., § 76-7A-2, enacted by Laws 1978, ch. 125, § 2.

### 76-7A-3. General powers and duties of the board.

A. The board, through the department, shall administer and enforce the provisions of the Harmful Plant Act [76-7A-1 to 76-7A-11 NMSA 1978].

B. The board may:

(1) adopt such regulations as it deems necessary to administer and enforce the provisions of the Harmful Plant Act;

(2) accept grants of money from any state or federal agency, producer [,] organization or private individual for the purposes of administering and enforcing the provisions of the Harmful Plant Act; and

(3) cooperate with the authorities of another state or the federal government in carrying out the purposes of the Harmful Plant Act.

**History:** 1978 Comp., § 76-7A-3, enacted by Laws 1978, ch. 125, § 3.

#### **76-7A-4. Quarantine powers of the board.**

The board may quarantine the state or any portion thereof whenever the department determines that a harmful plant exists therein and that such action is necessary to prevent the introduction of a harmful plant into the state or to retard the spread or dissemination of a harmful plant that has become established in the state. Before establishing a quarantine, the board shall hold a public hearing. Notice of the hearing shall be given to all interested parties and shall be published at least once in a newspaper of general circulation in the state. At the hearing all interested parties may appear and be heard.

**History:** 1978 Comp., § 76-7A-4, enacted by Laws 1978, ch. 125, § 4.

#### **76-7A-5. Temporary quarantine powers of the department.**

If it has reasonable cause to believe that a harmful plant exists and there is an immediate need to prevent its introduction, spread or dissemination in New Mexico, the department may impose a temporary quarantine on the state or any portion of the state to prevent the introduction, spread or dissemination of the harmful plant. The period for such temporary quarantine shall not exceed ninety days during which time a public hearing shall be held by the board as provided in Section 4 [76-7A-4 NMSA 1978] of the Harmful Plant Act. If the board finds after such hearing that it appears the quarantine should be extended for more than the temporary ninety-day period, it may enter an order for such extension as provided in Section 4 of the Harmful Plant Act.

**History:** 1978 Comp., § 76-7A-5, enacted by Laws 1978, ch. 125, § 5.

## **76-7A-6. Temporary quarantine powers of the department with respect to livestock.**

The department may quarantine any domestic livestock, captive wildlife or captive estray animals suspected [of exposure] or knowingly [known to be] exposed to a harmful plant. The quarantine shall not exceed a period of ninety-six hours or for such lesser period when the animal's digestive system can reasonably be expected to be purged of carrying any reproductive part of the harmful plant. The department's inspector shall examine each exposed animal's hide or wool for the presence of a harmful plant. At the end of the ninety-six hour period or at the end of such lesser period as provided in this section, the quarantined animals shall be released under conditions established by the department.

**History:** 1978 Comp., § 76-7A-6, enacted by Laws 1978, ch. 125, § 6.

## **76-7A-7. Effect of a quarantine.**

When a quarantine is in effect, no person shall move any harmful plant described in the order from the quarantined area in this state into or through other parts of this state or from the quarantined area in other states into or through this state contrary to the provisions of the Harmful Plant Act [76-7A-1 to 76-7A-11 NMSA 1978] or the regulations made pursuant thereto.

**History:** 1978 Comp., § 76-7A-7, enacted by Laws 1978, ch. 125, § 7.

## **76-7A-8. Harmful plants; designation.**

A. After a hearing the board may, by regulation, designate a plant to be a harmful plant when it finds that the plant is not known to occur in or is new to or not widely distributed in the state and may:

- (1) directly or indirectly injure crops or other useful plants;
- (2) be poisonous or detrimental to domestic or wild animals, birds or fish;
- (3) cause adverse effects to other interests of agriculture, such as irrigation; or
- (4) cause adverse effects to streams, ponds, lakes or aquatic fauna.

B. Notice of the hearing shall be published at least once in a newspaper of general circulation in the state and shall be given to interested parties. The notice shall state the plants alleged to be harmful which will be considered at the hearing. At the hearing, all interested parties may appear and be heard.

C. The department may designate a plant to be a harmful plant if it finds that the plant is not known to occur in, is new to or not widely distributed in the state, without a public hearing, for a period not to exceed ninety days, if it appears that such emergency action is necessary to prevent or control the introduction, spread or dissemination of the harmful plant. Within that ninety-day period the board shall hold a public hearing, after reasonable notice, to determine whether the designated plant is a harmful plant as provided in the Harmful Plant Act [76-7A-1 to 76-7A-11 NMSA 1978].

**History:** 1978 Comp., § 76-7A-8, enacted by Laws 1978, ch. 125, § 8.

### **76-7A-9. Prohibited acts; permits.**

No person shall knowingly move a harmful plant or article that is capable of harboring a harmful plant into or within New Mexico unless such person is granted a permit for such purpose by the department in accordance with regulations of the board. The department may refuse to issue a permit for the movement of harmful plants when in the opinion of the department such movement would involve a danger of dissemination of the harmful plant within the state. No person, unless granted a permit for such purpose by the department, shall sell, purchase, barter, exchange, give or receive a plant that has been declared to be a harmful plant by the board.

**History:** 1978 Comp., § 76-7A-9, enacted by Laws 1978, ch. 125, § 9.

### **76-7A-10. Inspections authorized.**

In order to prevent the introduction, spread or dissemination of a harmful plant, the department, after written notice to the owner or his agent, may detect, take possession [of], stop movement [of], eradicate, suppress, control, treat, prevent or retard the spread of or destroy any harmful plant, or stop movement [of] or treat any article that is capable of harboring or moving a harmful plant. The department may, with the consent of the owner or by order of the district court, inspect any premises in this state for the presence of a harmful plant.

**History:** 1978 Comp., § 76-7A-10, enacted by Laws 1978, ch. 125, § 10.

### **76-7A-11. Penalties.**

A. Any person who knowingly violates any provision of the Harmful Plant Act [76-7A-1 to 76-7A-11 NMSA 1978] or any regulation adopted by the board pursuant thereto is guilty of a petty misdemeanor and, upon conviction, shall be punished by a fine of one hundred dollar (\$100). Each day of violation shall constitute a separate and punishable offense.

B. The department shall not be required to give bond or security in any legal proceeding brought under the provisions of the Harmful Plant Act in which the department is a party.

**History:** 1978 Comp., § 76-7A-11, enacted by Laws 1978, ch. 125, § 11.

#### **ANNOTATIONS**

**Severability clauses.** - Laws 1978, ch. 125, § 12, provides for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 7B RANGELAND PROTECTION**

### **76-7B-1. Short title.**

This act [76-7B-1 to 76-7B-7 NMSA 1978] may be cited as the "Rangeland Protection Act".

**History:** Laws 1985, ch. 53, § 1.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1985, ch. 53, § 8 makes the act effective immediately. Approved March 30, 1985.

### **76-7B-2. Purpose of act.**

The legislature finds and declares that:

A. vast rangeland areas are producing less than their potential for the grazing of livestock, wildlife habitat, forage and water and soil conservation benefits; and

B. it is essential to the general welfare of this state to apply methods to enhance the multiple-use management, development and conservation of rangeland in New Mexico so as to restore rangeland capacity to carry livestock and wildlife, conserve valuable soil and water resources and restore environmental quality.

**History:** Laws 1985, ch. 53, § 2.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1985, ch. 53, § 8 makes the act effective immediately. Approved March 30, 1985.

### **76-7B-3. Definitions.**

As used in the Rangeland Protection Act [76-7B-1 to 76-7B-7 NMSA 1978]

A. "committee" means the rangeland protection advisory committee;

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

C. "protection" means the control or management of undesirable brush or other weed species and any associated management program or activity necessary to enhance successful restoration of the treated rangeland intended to restore production of forage, change vegetative composition, conserve the soil by stabilizing soil and water conditions or provide habitat for livestock and wildlife. The term shall be so interpreted as to emphasize an integrated management approach to rangeland protection; and

D. "rangeland" means land that is not cultivated and is used primarily for grazing of domestic livestock and wildlife in addition to being a source of wood products and water.

**History:** Laws 1985, ch. 53, § 3.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1985, ch. 53, § 8 makes the act effective immediately. Approved March 30, 1985.

#### **76-7B-4. Department; powers and duties.**

The department shall coordinate rangeland protection projects developed under the Rangeland Protection Act [76-7B-1 to 76-7B-7 NMSA 1978]. In the performance of its function, the department shall:

A. establish contact with ranchers, Indian tribes and pueblos, local soil and water conservation district boards and appropriate state and federal agencies to determine desire for participation in brush and weed management programs;

B. coordinate field inspections on participating ranches with ranchers, local soil and water conservation district boards, appropriate state and federal agencies and other persons with needed expertise to evaluate the extent of the problem;

C. obtain a written recommendation from persons participating in the field inspections relative to need for and feasibility of control;

D. closely coordinate project activities with local soil and water conservation district boards;

E. under guidelines established by the committee, prepare and implement a plan for each project to receive brush and weed control. Each plan shall include such information as extent of the problem, number of acres by species and land status, recommended method and season of control, estimated cost of control for each

participating individual or agency and necessary follow-up management practices required to enhance successful restoration and conservation of the treated area;

F. conduct the contract process to obtain services for control;

G. supervise and administer the actual contracted control or management projects in the field to assure compliance with the contract;

H. maintain an information repository on current technology for brush and weed control; and

I. cooperate and coordinate with any individual or county, state or federal governmental agency or its subdivisions to carry out its duties under this section.

**History:** Laws 1985, ch. 53, § 4.

## **ANNOTATIONS**

**Emergency clauses.** - Laws 1985, ch. 53, § 8 makes the act effective immediately. Approved March 30, 1985.

### **76-7B-5. Committee created.**

A. There is created the "rangeland protection advisory committee". The following persons or their designees shall be members: the director of the New Mexico department of agriculture, the chairman of the range improvement task force, college of agriculture of New Mexico state university, the commissioner of public lands, the director of the department of game and fish, the secretary of natural resources, the dean of the college of agriculture at New Mexico state university and the director of the environmental improvement division of the health and environment department [department of environment]. The committee shall coordinate its activities and insofar as possible involve the state director of the United States bureau of land management, the regional forester of the United States forest service, the bureau of Indian affairs and the state conservationist of the United States soil conservation service. The chairman will appoint one additional member for a one-year term to be selected from the ranching industry. The director of the New Mexico department of agriculture shall serve as chairman.

B. The chairman shall call meetings of the committee and prescribe the time and place of each meeting.

C. To facilitate cooperation and coordination, the committee shall:

(1) meet upon the call of the chairman to develop mutually acceptable general guidelines to be followed for all rangeland protection projects conducted by the department under the Rangeland Protection Act [76-7B-1 to 76-7B-7 NMSA 1978]; and



(2) be convened at least once annually to discuss rangeland protection projects conducted during the preceding year and to provide updated recommendations and guidance for future projects as necessitated by, but not limited to, changes in available funding, laws or technology.

D. The department shall provide the administrative staff and facilities needed by the rangeland protection advisory committee.

**History:** Laws 1985, ch. 53, § 5.

## ANNOTATIONS

**Bracketed material.** - The bracketed reference in Subsection A to the department of environment was inserted by the compiler, as Laws 1991, ch. 25, § 4 enacts 9-7A-4 NMSA 1978, which establishes the department of environment and provides that all references to the environmental improvement division of the health and environment department shall be construed to mean the department of environment. The bracketed material was not enacted by the legislature and is not part of the law.

**Emergency clauses.** - Laws 1985, ch. 53, § 8 makes the act effective immediately. Approved March 30, 1985.

### **76-7B-6. Funding of projects.**

Rangeland protection projects covering federal, state, Indian-owned and privately owned rangeland shall be funded as follows:

A. the appropriate federal department, bureau, agency or committee with authority for allocating funds, in cases where they participate, shall provide funding for projects embracing federal and Indian land;

B. owners and operators of deeded lands, in cases where they participate, shall provide funding for projects embracing privately owned land;

C. the state, in cases where it participates, shall provide funding for projects embracing state trust rangeland; and

D. project funding by each type of rangeland ownership shall be upon a proportional acreage participation basis.

**History:** Laws 1985, ch. 53, § 6.

## ANNOTATIONS

**Emergency clauses.** - Laws 1985, ch. 53, § 8 makes the act effective immediately. Approved March 30, 1985.

## **76-7B-7. Rangeland information collection and dissemination.**

The department shall insure the implementation of programs to collect and disseminate information relating to the purposes of the Rangeland Protection Act [76-7B-1 to 76-7B-7 NMSA 1978]. Such programs shall include but not be limited to:

- A. collecting results from all possible sources on research about rangeland protection methods;
- B. assembling and correlating information on rangeland protection research and other applicable data so as to make it easily accessible to all;
- C. cataloging those methods, techniques and tools for rangeland protection projects which may have application for New Mexico; and
- D. preparing and publishing in a timely fashion a complete report of each rangeland protection project carried out under the Rangeland Protection Act to include the amount and ownership of lands treated, target plant species, methods used and an assessment of the results and furnishing a copy of the complete report to the first session of the thirty-eighth legislature prior to that session.

**History:** Laws 1985, ch. 53, § 7.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1985, ch. 53, § 8 makes the act effective immediately. Approved March 30, 1985.

## **ARTICLE 7C RANGE MANAGEMENT PLANS**

### **76-7C-1. Grazing permits; management plans.**

A. In all areas of New Mexico where the production of livestock is managed upon intermingled private, state and federal land, landowners, lessees and permittees may provide for the development and implementation of a management plan. If a landowner, permittee or lessee elects to develop a management plan for any given area, he shall do so in consultation, cooperation and coordination with other lessees, permittees and landowners involved. In addition, the permittee, lessee or landowner shall consult with the range improvement task force located at New Mexico state university and the New Mexico department of agriculture.

B. Management plans shall be tailored to the specific range condition of the area to be covered by these plans and shall be reviewed on a periodic basis to determine whether they have been effective in improving the range condition of the lands involved. The

management plans may be revised or terminated or new plans developed from time to time after such review and careful and considered consultation, cooperation and coordination with all permittees, lessees and landowners involved and, if appropriate, with the New Mexico department of agriculture and the range improvement task force staff of New Mexico state university.

**History:** Laws 1991, ch. 42, § 1.

## ANNOTATIONS

**Effective dates.** - Laws 1991, ch. 42 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

# ARTICLE 8 PROTECTION OF NATIVE NEW MEXICO PLANTS

## 76-8-1. [Enumeration of protected plants.]

The following plants shall constitute the protected group in New Mexico and the botanical names shall govern in all cases:

A. fern family (Polypodiaceae):

gymnogramme (*Gymnopteris hispida*)

common maidenhair fern (*Adiantum capillus-veneris*)

chain fern (*Woodwardia plummerae*)

spleenwort (*Asplenium septentrionalis*)

spleenwort (*Asplenium resiliens*)

spleenwort (*Asplenium trichomanes*)

B. lily family (Liliaceae):

two-flowered milla (*Milla byflora*)

purplish-brown fritillary (*Fritillaria atropurpurea*)

uvularia, twisted stalk (*Uvularia amplexifolia*)

white mountain lily (*Leucocrinum montanum*)

wood lily (*Lilium montanum*)

mariposa lily (*Calochortus* - all species)

C. iris family (*Iridaceae*):

wild iris (*Oreolirion arizonicum*). This is not the common blue iris of our mountains, but is yellow in color.

D. amaryllis family (*Amaryllidaceae*):

century plant (*Agave schottii*)

lechuguilla (*Agave lechuguilla*)

century plant (*Agave palmeri*)

century plant (*Agave parryi*)

century plant (*Agave neomexicana*)

atamosco lily (*Atamosco longifolia*)

E. crowfoot family (*Ranunculaceae*):

red, yellow, and blue columbine (*Aguilegia* - all species)

monkshood (*Aconitum* - all species)

pasque flower (*Pulsatilla hirsutissima*)

leather flower (*Viorna* - all species)

virgin's bower (*Clematis pseudoalpina*)

F. lobelia family (*Lobeliaceae*):

cardinal flower or red lobelia (*Lobelia splendens*)

blue lobelia (*Lobelia gruina*)

G. primrose family (*Primulaceae*):

shooting star (*Dodecatheon* - all species)

primrose (*Primula* - all species)

H. heath family (Ericaceae):

bearberry, kinnickinick [kinnikinick] (*Artostaphylos uva-urse*)

I. gentian family (Gentianaceae):

fringed gentian (*Gentiana elegans*)

fringed gentian (*Gentiana barbellata*)

closed gentian (*Gentiana affinis*)

J. violet family (Violaceae):

blue violet (*Viola adunca*)

blue violet (*Viola nephrophylla*)

blue violet (*Viola pedatifida*)

yellow violet (*Viola pinetorum*)

blue violet (*Viola missouriensis*)

K. purslane family (Portulacaceae):

spring beauty (*Claytonia lanceolata*)

L. apple family (Malaceae):

mountain ash (*Sorbus scopulina*)

M. phlox family (Polemoniaceae):

jilly flower (*Gilia aggregata*)

N. orchid family (Orchidaceae):

orchids - all species

O. orpine family (Crassulaceae):

sedum - all species (commonly known as stonecrop)

P. saxifrage family (Saxifragaceae):

all species

Q. evening primrose family (Epilobiaceae):

firewood (*Chamaenerion anugstifolium*)

R. dogwood family (Cornaceae):

cornel (*Cornus instolonea*)

S. ivy family (Hederaceae):

aralia (*Aralia bicrenata*)

T. butterfly weed (*Asclepias tuberosa*)

U. figwort family (Scrophulariaceae):

Indian paint brush, painted cup (*Castilleja integra*)

V. cactus family (Cactaceae):

night blooming cereus (*Peniocereus greggii*)

porcupine cactus (*Echinocereus* - all species)

barrel, niggerhead, bisnaga or visnage cactus (*Ferocactus* - all species)

hedgehog cactus (*Echinocactus* - all species)

hedgehog cactus (*Scherocactus* - all species)

pincushion cactus (*Coryphantha* or *Mammillaria* - all species)

fishhook cactus (*Phellosperma* or *Mammillaria* - all species)

fishhook cactus (*Neomammillaria* or *Mammillaria* - all species)

stanly's cholla (*Opuntia stanlyi*)

W. all plants growing within four hundred yards of any highway, except noxious weeds.

**History:** Laws 1933, ch. 116, § 1; 1941 Comp., § 48-1001; 1953 Comp., § 45-11-1.

## ANNOTATIONS

**Cross-references.** - As to defacing protected plant within 400 yards of highway as petty misdemeanor, see 30-15-2 NMSA 1978.

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

### **76-8-2. [Removal of plants from state or private lands without permission prohibited.]**

No person shall destroy, mutilate or remove any living plant, except seeds, of the protected group from any state or private [privately] owned lands without a written permit from the owner, provided that nothing in this act [76-8-1 to 76-8-4 NMSA 1978] shall be construed to prevent the cleaning, clearing or removal of plants from any canal, lateral, ditch, survey line, public road or railroad right-of-way or highway, when necessary to the full and proper use thereof, and provided further that the provisions of this act shall not apply when plants enumerated herein are more than four hundred yards from any public highway.

**History:** Laws 1933, ch. 116, § 2; 1941 Comp., § 48-1002; 1953 Comp., § 45-11-2.

### **76-8-3. [Exception.]**

Nothing herein shall prevent the use of down or dead cacti for business or other purposes.

**History:** Laws 1933, ch. 116, § 3; 1941 Comp., § 48-1003; 1953 Comp., § 45-11-3.

### **76-8-4. [Penalty for violation.]**

Any person violating the provisions of this act [76-8-1 to 76-8-4 NMSA 1978] shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty [(\$50.00)] nor more than three hundred dollars [(\$300)], and each violation shall constitute a separate offense.

**History:** Laws 1933, ch. 116, § 4; 1941 Comp., § 48-1004; 1953 Comp., § 45-11-4.

## **ARTICLE 9 BEES**

### **76-9-1. Short title.**

This act [76-9-1 to 76-9-13 NMSA 1978] may be cited as the "Bee Act."

**History:** 1953 Comp., § 47-24-1, enacted by Laws 1975, ch. 122, § 1.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Law of bees, 39 A.L.R. 352.

Liability for injury or damage caused by bees, 86 A.L.R.3d 829.

Keeping bees as nuisance, 88 A.L.R.3d 992.

### **76-9-2. Definitions.**

As used in the Bee Act [76-9-1 to 76-9-13 NMSA 1978]:

A. "abandoned colony" means a colony that is abandoned or neglected by a beekeeper according to criteria adopted by the board;

B. "apiary" means a location where one or more colonies or nuclei of bees are managed by a beekeeper;

C. "bee" means all races of the honeybee, *Apis mellifera* L., and other species of the genus *Apis*, that are capable of being managed for the production of honey, wax or pollen, or that are capable of being managed to pollinate plants;

D. "beekeeper" means a person who owns, leases or manages bees;

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

F. "colony" means a family unit of bees composed of a queen and workers;

G. "commercial apiary" means a location where a beekeeper is required to maintain the minimum number of colonies designated by the board;

H. "contagious disease" means any disease, parasite or anything adversely affecting adult bees or their brood that may be spread from one bee to another bee or from one colony to another colony;

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

J. "equipment" means equipment used in managing bees, including but not limited to, brood chambers, surplus honey chambers, bottom boards, tops, frames, drawn comb, queen excluders and feeders;

K. "hive" means a container made or prepared that is used as a home by a colony of bees; and

L. "inspector" means a qualified person designated by the department to enforce the Bee Act and regulations adopted by the board.



**History:** 1953 Comp., § 47-24-2, enacted by Laws 1975, ch. 122, § 2.

### **76-9-3. Powers of board and department.**

A. The board shall adopt regulations necessary for the administration and enforcement of the Bee Act [76-9-1 to 76-9-13 NMSA 1978] and through the department shall administer and enforce the Bee Act and regulations adopted by the board.

B. The department has full power to deal with any contagious disease of bees which, in the opinion of the department, may be prevented, controlled or eradicated and shall perform such acts as, in the judgment of the department, may be necessary to control, eradicate or prevent the introduction, spread or dissemination of contagious diseases of bees.

C. The department has authority to prohibit the shipment or bringing into the state [of] colonies or equipment capable of transmitting contagious disease from any state, territory or foreign country.

**History:** 1953 Comp., § 47-24-3, enacted by Laws 1975, ch. 122, § 3.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture §§ 19, 20.

### **76-9-4. Contagious disease; duty to prevent.**

Any beekeeper who has been notified in writing by the department that his bees or equipment are infected with a contagious disease and who willfully and knowingly permits the bees or equipment to remain in such condition shall be in violation of the Bee Act [76-9-1 to 76-9-13 NMSA 1978].

**History:** 1953 Comp., § 47-24-4, enacted by Laws 1975, ch. 122, § 4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 37, 38.

3A C.J.S. Animals § 94.

### **76-9-5. Inspection; access; interference.**

A. The department shall notify each beekeeper prior to the initial annual inspection of his apiary and, if requested by the beekeeper, an inspector shall make the apiary inspection in the presence of the beekeeper or his representative and at a time that conforms to the efficient management of bees. Subsequent inspections may be made by an inspector, as needed, to locate and control contagious disease and regulate the

location of any apiary. The inspector shall have access to all apiaries. Any person who shall hinder, resist or impede in any way an inspector in the discharge of his duties shall be in violation of the Bee Act [76-9-1 to 76-9-13 NMSA 1978].

B. In order to permit the inspector to readily examine a colony for contagious disease, beekeepers shall manage bees only in those types of hives approved by the board.

**History:** 1953 Comp., § 47-24-5, enacted by Laws 1975, ch. 122, § 5.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 32 to 34.

3A C.J.S. Animals § 91.

### **76-9-6. Inspection certificates.**

Each beekeeper that manages bees shall apply to the department for an annual inspection certificate. The inspection certificate shall be issued by the department upon completion of the apiary inspection and shall state the colonies and apiaries that are apparently free of contagious disease and the colonies and apiaries that are infected with contagious disease. No honey shall be offered for sale unless the beekeeper has a current inspection certificate.

**History:** 1953 Comp., § 47-24-6, enacted by Laws 1975, ch. 122, § 6.

### **76-9-7. Diseased colonies.**

If an inspector finds a contagious disease in a colony, he shall direct the beekeeper to destroy the diseased colony and equipment, or to treat the colony according to a schedule approved by the department; providing the inspector shall upon request by the beekeeper obtain a sample of brood that is representative of the apiary as determined by the inspector for submission to an approved state or federal laboratory for verification of the disease. All diseased colonies that are treated by a beekeeper shall be reinspected by an inspector within the period designated by the board. The board may require the beekeeper to pay an amount set by the board not to exceed fifty dollars (\$50.00) for each inspection, excluding the initial annual inspection, required to certify that the colonies are apparently free of contagious disease. Colonies that do not respond to treatment within a period specified by the board following the initial inspection shall be destroyed by the beekeeper or an inspector in a manner approved by the department and the contaminated equipment shall be disinfected or burned by the beekeeper or an inspector.

**History:** 1953 Comp., § 47-24-7, enacted by Laws 1975, ch. 122, § 7.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 35, 36.

3A C.J.S. Animals § 76.

### **76-9-8. Abandoned colonies.**

Abandoned colonies and contaminated equipment shall be destroyed under the supervision of the inspector when the colony is found to be infected with a contagious disease. Abandoned live colonies or abandoned equipment that is apparently free of contagious disease may be sold in a manner designated by the board or destroyed as specified by the board.

**History:** 1953 Comp., § 47-24-8, enacted by Laws 1975, ch. 122, § 8.

### **76-9-9. Location of apiaries.**

A. In order to control contagious disease, no apiary shall be moved or established closer than one and one-half miles straight airline distance from an existing registered commercial apiary, unless the apiary owner is also the owner of the apiary location.

B. Any beekeeper found in violation of Subsection A of this section shall remove the apiary within ten days. After the ten days, each day the beekeeper remains in violation shall constitute a separate violation of the Bee Act [76-9-1 to 76-9-13 NMSA 1978].

C. If a beekeeper uses his colonies for the pollination of an agricultural crop and desires to locate the colonies within the distance specified by the board of an existing commercial apiary, he shall apply for a special pollination permit from the department. The department shall grant a pollination permit only if the colonies are apparently free of contagious disease. The department shall issue the pollination permit only for the period of time the bees are effectively pollinating the designated crop.

**History:** 1953 Comp., § 47-24-9, enacted by Laws 1975, ch. 122, § 9.

## **ANNOTATIONS**

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

### **76-9-10. Registration of commercial apiaries.**

Each commercial beekeeper shall register the location of each commercial apiary under his control with the department and shall give an accurate description of the location of each commercial apiary. The registration fee shall be set by the board at not more than five dollars (\$5.00) for each commercial apiary, provided that no beekeeper shall be required to pay registration fees totaling more than two hundred dollars (\$200) in any one year. The regulations of the board shall determine the time and method of registration.

**History:** 1953 Comp., § 47-24-10, enacted by Laws 1975, ch. 122, § 10.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals §§ 24, 30.

#### **76-9-11. Importation of bees.**

A. No colonies or equipment shall be moved into the state, unless accompanied by a certificate of inspection signed by an authorized apiary inspector of the state from which the bees originated. The certificate of inspection shall state that the colonies are apparently free of contagious disease, and shall meet other requirements as designated by the board. The person in this state receiving colonies or equipment shall file with the department a statement of the proposed location in the state where the colonies will be managed and a notice that the bees have arrived. The statement and notice shall be filed by the beekeeper in accordance with the regulations of the board. The department shall, as soon as practicable after arrival, inspect the colonies for contagious disease. The beekeeper shall pay the actual cost of the initial inspection and all subsequent inspections required because of the presence of any contagious disease.

B. This section shall not apply to the movement into the state of packaged bees or queen bees if moved into the state in mailing cages free of honey.

C. In order to prevent the dissemination of any bees that would adversely affect the beekeeping industry in the state, the department may prohibit their entrance into the state and may seize, stop movement, destroy or otherwise dispose of the bees, as the department deems appropriate.

**History:** 1953 Comp., § 47-24-11, enacted by Laws 1975, ch. 122, § 11.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Animals § 33.

#### **76-9-12. Disposition of funds.**

All money collected under the provisions of the Bee Act [76-9-1 to 76-9-13 NMSA 1978] shall be expended to administer and enforce the Bee Act.

**History:** 1953 Comp., § 47-24-12, enacted by Laws 1975, ch. 122, § 12.

#### **76-9-13. Penalties; bond.**

A. Any person who violates any provision of the Bee Act [76-9-1 to 76-9-13 NMSA 1978] or any regulation adopted by the board pursuant thereto is guilty of a

misdemeanor. Each day a person remains in violation shall constitute a separate offense.

B. The department shall not be required to give bond or security in any legal proceeding brought under the Bee Act which the department may institute or defend in any court of the state.

**History:** 1953 Comp., § 47-24-13, enacted by Laws 1975, ch. 122, § 13.

### **ANNOTATIONS**

**Effective dates.** - Laws 1975, ch. 122, § 16, makes the act effective on January 1, 1976.

**Severability clauses.** - Laws 1975, ch. 122, § 15, provides for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3A C.J.S. Animals §§ 93, 94, 97.

## **ARTICLE 10 SEEDS**

### **76-10-1. [Purpose of pure seed strain provisions.]**

The legislature hereby declares that the purposes of this act [76-10-1 to 76-10-10 NMSA 1978] are to promote, encourage, aid and protect the planting and growing of pure strains of sugar beet seed, vegetable seed, melon seed and seed for other crops, through providing statutory regulations to protect such pure strains of seeds from either natural, accidental or willful cross-fertilization, mixing or other contamination which would result in rendering otherwise pure strains impure, and thereby render the product valueless for seed purposes and result in economic loss to the grower.

In order that crops designed and intended for the production of pure strains of seed may be grown under proper conditions for the protection of the purity of such seeds, the legislature further declares that it is the purpose of this act to make legal provision for the protection of such pure strains by insuring that they may be planted at such distances from other varieties, plots or smaller plantings of other varieties or strains of the same or nearly related species as to prevent cross-pollination, or mixing, or crossing, or otherwise rendering the seed impure by any other natural or accidental means; that it believes this purpose best can be accomplished by restricting within certain areas to be defined and delimited by the regents of the agricultural college of New Mexico [New Mexico state university], the planting and growing of but one variety or strain of a given species or nearly related species of plants or crops; that by this means alone is it possible to bring the industry of sugar beet seed production in this state to its highest possible development and to insure the growing of pure strains of

seed of superior and economically profitable varieties of other species of plants; that such protection to the growers of pure strains of seed is essential to the economical development and advancement of the agriculture of this state; that to permit the natural, accidental or willful interference with the production of pure strains of seed would result in economic loss to the state and to the prospective grower and that the state and the prospective grower should be properly protected by legislative enactment; that the purpose of this act shall be construed to be for the proper development of the agriculture of this state through promoting and providing for the protection of the grower of pure strains of seed.

**History:** Laws 1933, ch. 174, § 1; 1941 Comp., § 48-1101; 1953 Comp., § 45-12-1.

### **ANNOTATIONS**

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

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

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

Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection, 70 A.L.R.2d 852.

3 C.J.S. Agriculture § 3.

#### **76-10-2. [Construction of act.]**

This act [76-10-1 to 76-10-10 NMSA 1978] shall be so interpreted and construed as not to be considered the taking of private property or the control of private property without due process of law; nor disturbing the owner in control or use of his land for lawful purposes; nor restricting his right to dispose thereof; but as a declaration by the legislature that its use for the purpose herein forbidden by rules and regulations promulgated hereunder, is prejudicial to the public interest and an economic loss to the state and an irreparable loss or injury to the producers of pure strains of seeds.

**History:** Laws 1933, ch. 174, § 2; 1941 Comp., § 48-1102; 1953 Comp., § 45-12-2.

#### **76-10-3. [One-variety zones.]**

The regents of the agricultural college of New Mexico [New Mexico state university] are hereby authorized and empowered upon application and hearing as hereinafter provided to designate, outline and specifically delimit areas or zones of agricultural lands within which only one variety or strain of any designated plant or crop, species or

nearly related species of plant or crop for the purpose of seed production may be planted, grown or allowed to grow to maturity, or within which any specimen or specimens, beds, plots or fields of another variety or varieties of plants of the same or nearly related species may be allowed to grow to the stage in which buds are developed.

**History:** Laws 1933, ch. 174, § 3; 1941 Comp., § 48-1103; 1953 Comp., § 45-12-3.

### **ANNOTATIONS**

**New Mexico state university.** - See same catchline in notes to 76-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 83 Am. Jur. 2d Zoning and Planning §§ 389 to 406.

Zoning: construction and application of terms "agricultural," "farm," "farming" or the like, 97 A.L.R.2d 702.

101 C.J.S. Zoning § 1.

### **76-10-4. [Neutral zones.]**

The regents of the agricultural college of New Mexico [New Mexico state university] are further authorized and empowered after proper application and hearing to define such zone or zones and to further define neutral zones between such above-mentioned zones, and to provide that within the neutral zones no plant or plants, fields or plots of plants of a given strain, species or variety, may be grown to maturity or to the state in which buds of the said plants are produced. The purpose of such said neutral zone being to avoid the possibility of cross-pollination or mixing and thereby rendering valueless what would otherwise be pure strains of seed, provided that the said regents may at their discretion permit that within such neutral zones varieties, strains or species not related to crops permitted to be grown within prescribed zones may be planted for the purpose of seed production; provided that such varieties or species are of the kind which will not cross-pollinate or otherwise render impure, pure strains grown in adjoining zones as defined by the said regents.

**History:** Laws 1933, ch. 174, § 4; 1941 Comp., § 48-1104; 1953 Comp., § 45-12-4.

### **ANNOTATIONS**

**New Mexico state university.** - See same catchline in notes to 76-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 83 Am. Jur. 2d Zoning and Planning §§ 389 to 406.

101 C.J.S. Zoning § 1.

## **76-10-5. [Pure strain zones and neutral zones.]**

The regents of the agricultural college of New Mexico [New Mexico state university] shall upon petition of farmers or growers or those who intend to plant or grow crops for the purpose of producing pure strains of seeds and after public hearing of said petition designate, outline and delimit zones within which only one strain, variety or species of such crop may be grown, and to [sic] give public notice thereof. The said regents are also hereby authorized and empowered to designate and delimit neutral zones on either side of said plant production zones within which neutral zones no plant or plants, plots or fields of the same or nearly related strains, varieties or species of the said crop shall be permitted to be grown to the stage in which buds are produced.

**History:** Laws 1933, ch. 174, § 5; 1941 Comp., § 48-1105; 1953 Comp., § 45-12-5.

### **ANNOTATIONS**

**New Mexico state university.** - See same catchline in notes to 76-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 83 Am. Jur. 2d Zoning and Planning §§ 389 to 406.

101 C.J.S. Zoning § 1.

## **76-10-6. [Production of plants other than one strain or variety designated.]**

It shall be unlawful for any person or persons, firm, corporation or agency to plant within any zone designated and delimited by the said regents or in any neutral zone designated and delimited by the said regents, any strain, variety or species of plants forbidden to be grown in the said neutral zone and allow the same to grow to the stage in which buds are produced; provided that the regents shall prescribe the one strain or variety which may be grown within a designated zone or neutral zone and which may be allowed to grow to maturity for the purpose of the production of pure strains of seed.

**History:** Laws 1933, ch. 174, § 6; 1941 Comp., § 48-1106; 1953 Comp., § 45-12-6.

## **76-10-7. [Production of plants other than pure strain designated.]**

It shall be unlawful for any person, individual, copartnership, association, firm or corporation or agent or employee thereof to permit to grow within a neutral zone or within a prescribed zone any variety or strain or species of plant forbidden by the regulations of the said regents to that stage of maturity in which buds are produced, whether the said plants are planted or have been allowed to grow as volunteer plants or plants escaped from cultivation. It shall be the duty of such persons, individuals, copartnerships, association, firm or corporation or agent or employee thereof to destroy



any plants whether planted or volunteer the growing of which is forbidden within any zone or neutral zone before the said plants have grown to that stage of maturity at which buds may be produced.

**History:** Laws 1933, ch. 174, § 7; 1941 Comp., § 48-1107; 1953 Comp., § 45-12-7.

### **76-10-8. [Petitions; orders; effect.]**

The regents of the agricultural college of New Mexico [New Mexico state university] are hereby authorized, empowered and directed when petitioned by one or more growers or prospective growers of any crop intended for the production of pure strains of seed and which crop is subject to contamination by cross-pollination or otherwise mixing so as to cause the seed produced by the crop to be impure, to designate, define and delimit a zone or area within which only the one strain, variety or species may be grown, and if deemed advisable and necessary to protect the grower or growers of such pure strains of seed, the said regents are further authorized, empowered and directed to establish such neutral zones on both sides of the aforesaid designated zone as in the judgment of the said regents may be necessary for the protection of the growers of pure strains of seed; the said regents shall have authority to promulgate orders which shall have the effect of law preventing the growing of any strain, variety or species of seed within the designated zone or within neutral zones which in the judgment of the said regents may be necessary for the protection of said growers of pure seeds and for the protection of said pure strains of seed, and such rules and regulation [regulations] when enacted by the said regents and promulgated or given publicity shall have the full force and effect of the provisions of this act [76-10-1 to 76-10-10 NMSA 1978]; provided that the petition of growers or prospective growers when presented to the regents shall request protection for the growing of a specific strain or variety and that the zone or neutral zones established under authority of this act by the said regents shall in no way interfere with the growing of any crop, or crops, or plants which do not in any way endanger the growing of the pure strains of seeds which petitioners propose to grow and for the growing of which petitioners seek protection.

**History:** Laws 1933, ch. 174, § 8; 1941 Comp., § 48-1108; 1953 Comp., § 45-12-8.

### **ANNOTATIONS**

**New Mexico state university.** - See same catchline in notes to 76-10-1 NMSA 1978.

### **76-10-9. [Penalty for violating act or regulations.]**

Any person, individual, copartnership, association, firm, corporation, agent or employee who or which shall violate any of the provisions of this act [76-10-1 to 76-10-10 NMSA 1978] or any of the regulations or restrictions promulgated by the regents of the agricultural college of New Mexico [New Mexico state university] under authority of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$50.00 nor more than \$500.00 and in addition thereto shall be liable in a

civil action for all damage that may be occasioned or caused by a violation of this act or of any of the provisions or regulations or restrictions promulgated by the regents of the agricultural college of New Mexico [New Mexico state university] under authority of this act.

**History:** Laws 1933, ch. 174, § 9; 1941 Comp., § 48-1109; 1953 Comp., § 45-12-9.

#### **ANNOTATIONS**

**New Mexico state university.** - See same catchline in notes to 76-10-1 NMSA 1978.

#### **76-10-10. [Exemptions.]**

That this act [76-10-1 to 76-10-10 NMSA 1978] shall not apply to the planting or growing of crops or plants in the experimental stations or farms conducted by the United States government or the state of New Mexico.

**History:** Laws 1933, ch. 174, § 11; 1941 Comp., § 48-1110; 1953 Comp., § 45-12-10.

#### **ANNOTATIONS**

**Severability clauses.** - Laws 1933, ch. 174, § 10, provides for the severability of the act if any part or application thereof is held invalid.

#### **76-10-11. Short title.**

This act [76-10-11 to 76-10-22 NMSA 1978] may be cited as the "New Mexico Seed Law."

**History:** 1953 Comp., § 45-12-20, enacted by Laws 1967, ch. 68, § 1.

#### **76-10-12. Definitions.**

As used in the New Mexico Seed Law [76-10-11 to 76-10-22 NMSA 1978]:

A. "person" includes any individual, partnership, corporation, company, society or association;

B. "agricultural seed" includes the seeds of grass, forage, cereal and fiber crops. It shall include any other kinds of seeds commonly recognized within this state as agricultural seeds, lawn seeds and mixtures of such seeds, and may include noxious weed seeds when the board of regents of New Mexico state university determines that such seed is being used as agricultural seed;

C. "vegetable seeds" includes the seeds of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable seeds in this state;

D. "weed seeds" includes the seeds, bulblets and sporocarps of all plants generally recognized as weeds within this state;

E. "noxious weed seeds" includes prohibited noxious weed seeds and restricted noxious weed seeds;

F. "prohibited noxious weed seeds" are seeds of weeds which, when established, are highly destructive and are not controlled in this state by the cultural practices commonly used. Such weeds are to be specified by rules and regulations as provided for in this act [76-10-11 to 76-10-22 NMSA 1978];

G. "restricted noxious weed seeds" are the seeds of weeds which are very objectionable in fields, lawns and gardens in this state and are difficult to control by cultural practices commonly used. Such seeds are to be specified by rules and regulations as provided in this act;

H. "labeling" includes all labels, and other written, printed or graphic representations, in any form whatsoever, accompanying or pertaining to any seed whether in bulk or in containers, and includes representations on invoices;

I. "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this act;

J. "record" includes all information relating to the shipment or shipments involved and includes a file sample of each lot of seed;

K. "stop sale" means an administrative order provided by law, restraining the sale, use, disposition and movement of a definite amount of seed;

L. "seizure" means a legal process carried out by court order against a definite amount of seed;

M. "kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, oats, alfalfa and timothy;

N. "variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed or other characteristics, by which it can be differentiated from other plants of the same kind;

O. "lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling;

P. "hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:

(1) two or more inbred lines;

(2) one inbred or a single cross with an open-pollinated variety; or

(3) two varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation and subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names;

Q. "pure seed," "germination" and other seed labeling and testing terms in common usage shall be defined as in the rules for seed testing published by the association of official seed analysts, effective July 1, 1955, and as subsequently amended;

R. "type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions;

S. "treated" means that the seed has received an application of a substance, or that the seed has been subjected to a process for which a claim is made;

T. a "private hearing" may consist of a discussion of facts between the person charged and the enforcement officer; and

U. "board" means the board of regents of New Mexico state university.

**History:** 1953 Comp., § 45-12-21, enacted by Laws 1967, ch. 68, § 2.

### **76-10-13. Label requirements.**

Each container of agricultural and vegetable seed which is sold, offered for sale, or exposed for sale, or transported within this state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information, which statement shall not be modified or denied in the labeling or on another label attached to the container.

A. For all seeds named and treated as defined in this act [76-10-11 to 76-10-22 NMSA 1978], for which a separate label may be used:

(1) a word or statement indicating that the seed has been treated;

(2) the commonly accepted coined, chemical or abbreviated chemical name of the applied substance or description of the process used;

(3) if the substance in the amount present with the seed is harmful to human or other vertebrate animals a caution statement such as "Do not use for food or feed or oil purposes." The caution for mercurials and similarly toxic substances shall be a poison statement or symbol;

(4) if the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective, the date of expiration.

B. For agricultural seeds, except for grass seed mixtures as provided in Subsection C:

(1) commonly accepted name of the kind and the variety, or kind and the phrase "variety not stated" for each agricultural seed component in excess of 5 percent of the whole and the percentage by weight of each in order of its predominance. When more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label;

(2) lot number or other lot identification;

(3) origin, state or foreign country, if known, of alfalfa, red clover, range grass seed and field corn, except hybrid corn. If the origin is unknown, the fact shall be stated;

(4) percentage by weight of all weed seeds;

(5) the name and rate of occurrence per pound of each kind of restricted noxious weed seed present;

(6) percentage by weight of agricultural seeds, which may be designated as "crop seeds," other than those required to be named on the label;

(7) percentage by weight of inert matter; and

(8) for each named agricultural seed:

(a) percentage of germination, exclusive of hard seed;

(b) percentage of hard seeds, if present; and

(c) the calendar month and year the test was completed to determine such percentages.

Following Subparagraphs (a) and (b) the "total germination" and "hard seed" may be stated as such, if desired; and

(9) name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state.

C. For seed mixtures for lawn and turf purposes in containers of fifty pounds or less:

(1) the word "Mixed" or "Mixture";

(2) the headings "Fine-Textured Grasses" and "Coarse Kinds" and thereunder in tabular form in type no larger than the heading:

(a) commonly accepted name, in order of its predominance, of the kind, or kind and variety of each agricultural seed present in excess of five percent of the whole and determined to be a "fine-textured grass" or a "coarse kind" in accordance with the rules and regulations under this act;

(b) percentage by weight of pure seed of each agricultural seed named;

(c) for each agricultural seed named under Subparagraph (a) above, (1) percentage of germination, exclusive of hard seed, (2) percentage of hard seed, if present, (3) calendar month and year the test was completed to determine such percentage;

(3) the heading "Other Ingredients" and thereunder in type no larger than the heading:

(a) percentage by weight of all weed seeds;

(b) percentage by weight of all agricultural seeds other than those stated under Paragraph (2) (a);

(c) percentage by weight of inert matter;

(4) lot number or other lot identification;

(5) name and rate of occurrence per pound of each kind of restricted noxious weed seed present;

(6) name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state; and

(7) net weight.

D. For vegetable seeds in containers of one pound or less:

(1) name of kind and variety of seed;

(2) for seeds which germinate less than the standard last established by the board under this act:

- (a) percentage of germination, exclusive of hard seed;
  - (b) percentage of hard seed, if present;
  - (c) the calendar month and year the test was completed to determine such percentages;  
and
  - (d) the words "Below Standard" in not less than 8-point type; and
- (3) name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state.

E. For vegetable seeds in containers of more than one pound:

- (1) the name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance;
- (2) lot number or other lot identification;
- (3) for each named vegetable seed:
  - (a) the percentage of germination, exclusive of hard seed;
  - (b) the percentage of hard seed, if present;
  - (c) the calendar month and year the test was completed to determine such percentages.

Following Subparagraphs (a) and (b) the "total germination and hard seed" may be stated as such, if desired;

(4) name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state; and

(5) the labeling requirements for vegetable seeds in containers of more than one pound shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

**History:** 1953 Comp., § 45-12-22, enacted by Laws 1967, ch. 68, § 3.

## **ANNOTATIONS**

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

3 C.J.S. Agriculture §§ 65, 66.

**76-10-14. Prohibitions.**

A. It is unlawful for any person to sell, offer for sale, expose for sale or to transport for sale any agricultural or vegetable seed within this state:

(1) unless the test to determine the percentage of germination required by Section 2 [76-10-12 NMSA 1978] shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale or offering for sale or transportation; provided, the board may set a different period if after hearing it is found advisable to do so;

(2) not labeled in accordance with the provisions of this act [76-10-11 to 76-10-22 NMSA 1978], or having a false or misleading labeling;

(3) pertaining to which there has been a false or misleading advertisement;

(4) consisting of or containing prohibited noxious weed seeds, subject to recognized tolerances;

(5) consisting of or containing restricted noxious weed seeds per pound in excess of the number prescribed by rules and regulations promulgated under this act, or in excess of the number declared on the label attached to the container of the seed or associated with the seed;

(6) containing more than two and one-half percent by weight of all weed seeds; and

(7) if any labeling, advertising or other representations subject to this act represents the seed to be certified or registered seed unless:

(a) it has been determined by a seed certifying agency that such seed was produced, processed and packaged, and conforms to standards of purity as to kind or variety, in compliance with rules and regulations of such agency pertaining to such seed; and

(b) the seed bears an official label issued for such seed by a seed certifying agency stating that the seed is certified or registered.

B. It is unlawful for any person within this state:

(1) to detach, alter, deface or destroy any label provided for in this act or the rules and regulations made and promulgated thereunder, or to alter or substitute seed in a manner that may defeat the purpose of this act;

(2) to disseminate any false or misleading advertisements concerning agricultural or vegetable seeds in any manner or by any means;

(3) to hinder or obstruct in any way, any authorized person in the performance of his duties under this act;



(4) to fail to comply with a "stop sale" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale" order, except with express permission of the enforcing officer, and for the purpose specified thereby;

(5) to use the word "trace" as substitute for any statement which is required; and

(6) to use the word "type" in any labeling in connection with the name of any agricultural seed variety.

**History:** 1953 Comp., § 45-12-23, enacted by Laws 1967, ch. 68, § 4.

### **ANNOTATIONS**

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

3 C.J.S. Agriculture §§ 65, 66.

### **76-10-15. Records.**

Each person whose name appears on the label as handling agricultural or vegetable seed subject to this act [76-10-11 to 76-10-22 NMSA 1978] shall keep for a period of two years complete records of each lot of agricultural or vegetable seed handled and keep for one year a file sample of each lot of seed after final disposition of said lot. All such records and samples pertaining to the shipment or shipments involved shall be accessible for inspection by the board or its agents during customary business hours.

**History:** 1953 Comp., § 45-12-24, enacted by Laws 1967, ch. 68, § 5.

### **ANNOTATIONS**

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

3 C.J.S. Agriculture §§ 65 to 67.

### **76-10-16. Exemptions.**

A. The provisions of Sections 3 and 4 [76-10-13, 76-10-14 NMSA 1978] do not apply:

(1) to seed or grain not intended for sowing purposes;

(2) to seed in storage in, or being transported or consigned to, a cleaning or processing establishment for cleaning or processing; provided, that the invoice or labeling accompanying any shipment of said seed bears the statement "seed for processing" and provided that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this act [76-10-11 to 76-10-22 NMSA 1978]; and

(3) to any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier; provided, that such carrier is not engaged in producing, processing or marketing agricultural or vegetable seeds subject to the provisions of this act; and

(4) to seed or grain sold by the grower on his farm as uncleaned, untested and unprocessed.

B. No person shall be subject to the penalties of this act for having sold or offered or exposed for sale agricultural or vegetable seed, which were incorrectly labeled or represented as to kind, variety, type or origin which seeds cannot be identified by examination thereof, unless he has failed to obtain an invoice, genuine grower's declaration or other labeling information and to take such other precautions as may be reasonable to insure the identity to be that stated.

**History:** 1953 Comp., § 45-12-25, enacted by Laws 1967, ch. 68, § 6.

### **ANNOTATIONS**

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

3 C.J.S. Agriculture § 65.

### **76-10-17. Seed certification.**

A. The certification agency for New Mexico shall be named by a committee consisting of the director or associate director of the agricultural extension service, the director or associate director of the agricultural experiment station, the extension agronomist, the experiment station agronomist and the director of the New Mexico department of agriculture of the New Mexico state university; provided that the committee shall have the authority to designate any other competent or qualified individual or individuals to serve as members of the committee. The certifying agency so named shall have the authority to establish standards and rules and regulations for certification; such standards, rules and regulations to be subject to the approval of the above committee. The certifying agency so named shall also have the authority to fix and charge fees for certification services, and may retain fees collected as payment for its services.

B. Any labeling, advertisement or other representation, either orally or in writing, subject to this act [76-10-11 to 76-10-22 NMSA 1978] which represents any seed, tubers or plants to be used for seeding purposes as certified, registered or foundation shall be deemed to be false unless such seeds, tubers or plants:

(1) if produced in New Mexico, have been produced, processed and packaged and conform to the standards of purity as to kind or variety, in compliance with the rules and regulations set forth by the New Mexico certifying agency and bear the official label of

this agency, stating that the seed, tubers or plants are certified, registered or foundation;  
or

(2) if produced in another state or country, bear the official label of the certifying agency of that state or country stating that the seed, tubers or plants are certified, registered or foundation.

C. All requirements of this act shall be understood to apply to certified seed in the same force as they apply to other agricultural or vegetable seeds. In addition, compliance with the standards of the certification agency may be considered in determining whether seed bearing a certified, registered or foundation label is falsely labeled.

**History:** 1953 Comp., § 45-12-26, enacted by Laws 1967, ch. 68, § 7.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 65.

#### **76-10-18. Duties and authority of board or its agents.**

A. The duty of enforcing this act [76-10-11 to 76-10-22 NMSA 1978] and carrying out its provision and requirements is vested in the board of regents of New Mexico state university. It is the duty of the board or its authorized agents:

(1) to sample, inspect, make analysis of and test agricultural and vegetable seeds transported, sold or offered or exposed for sale within the state for sowing purposes, at such time and place and to such extent as may be deemed necessary to determine whether said agricultural or vegetable seeds are in compliance with provisions of this act, and to notify promptly the person who transported, sold, offered or exposed the seed for sale, of any violation;

(2) to prescribe and adopt rules and regulations governing the method of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and the tolerances to be followed in the administration of this act, which shall be in general accord with officially prescribed practice in interstate commerce, and such other rules and regulations as may be necessary to secure the efficient enforcement of this act;

(3) to prescribe and, after public hearing following due public notice, establish, add to or subtract therefrom by regulations a prohibited or restricted noxious weed list; and

(4) to prescribe and, after public hearing following due public notice, to adopt rules and regulations establishing reasonable standards of germination for vegetable seeds.

B. Further, for the purpose of carrying out the provisions of this act, the board or its authorized agent is authorized:

(1) to enter upon any public or private premises during regular business hours in order to have access to seeds and the records connected therewith subject to the act and the rules and regulations thereunder, and any truck or other conveyer by land, water or air at any time when the conveyer is accessible, for the same purpose;

(2) to issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural or vegetable seed which the board or its agents finds is in violation of any of the provisions of this act or rules and regulations promulgated thereunder, which order shall prohibit further sale, processing and movement of such seed, except on approval of [the] enforcing officer, until such officer has evidence that the law has been complied with, and he has issued a release from the "stop sale" order of such seed, provided that in respect to seed which has been denied sale, processing and movement as provided in this paragraph, the owner or custodian of such seed shall have the right to appeal from said order to a court of competent jurisdiction in the locality in which the seeds are found, praying for a judgment as to the justification of such order and for the discharge of such seed from the order prohibiting the sale, processing and movement in accordance with the findings of the court; and provided further, that the provisions of this paragraph shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this act;

(3) to establish and maintain or make provisions for seed testing facilities, to employ qualified persons and to incur such expense as may be necessary to comply with these provisions;

(4) to make or provide for making purity and germination tests of seed for farmers and dealers on request; to prescribe rules and regulations governing such testing; and to fix and collect charges for the test made. Fees collected will be deposited in the comptroller's office at New Mexico state university, to be expended in enforcing this act, at the discretion of the board; and

(5) to cooperate with the United States department of agriculture and other agencies in seed law enforcement.

**History:** 1953 Comp., § 45-12-27, enacted by Laws 1967, ch. 68, § 8.

### **ANNOTATIONS**

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 5, 10, 11.

14A C.J.S. Colleges and Universities § 17.

**76-10-19. Seizure.**

Any lot of agricultural or vegetable seed not in compliance with the provisions of this act [76-10-11 to 76-10-22 NMSA 1978] shall be subject to seizure on complaint of the board or its agents to a court of competent jurisdiction in the locality in which the seed is located. In the event the court finds the seed to be in violation of this act and orders the condemnation of said seed, it shall be denatured, processed, destroyed, relabeled or otherwise disposed of in compliance with the laws of this state; provided, that in no instance shall the court order such disposition of said seed without first having given the claimant an opportunity to apply to the court for the release of said seed or permission to process or relabel it to bring it into compliance with this act.

**History:** 1953 Comp., § 45-12-28, enacted by Laws 1967, ch. 68, § 9.

### **ANNOTATIONS**

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

3 C.J.S. Agriculture § 66.

### **76-10-20. Injunction.**

When in the performance of his [its] duties the board or its agent applies to any court for a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act [76-10-11 to 76-10-22 NMSA 1978] or any rules and regulations under this act, said injunction is to be issued without bond.

**History:** 1953 Comp., § 45-12-29, enacted by Laws 1967, ch. 68, § 10.

### **ANNOTATIONS**

**Cross-references.** - As to injunctions, see Rules 1-065 and 1-066.

### **76-10-21. Violations and prosecutions.**

Every violation of the provisions of this act [76-10-11 to 76-10-22 NMSA 1978], and every violation of any rules and regulations promulgated under this act, after a notice to cease and desist, shall be deemed a misdemeanor punishable by a fine not exceeding one hundred dollars (\$100) for the first offense and not exceeding two hundred fifty dollars (\$250) for each subsequent similar offense.

When the board or its agent shall find that any person has violated any of the provisions of this act, they or their duly authorized agent or agents may institute proceedings in a court of competent jurisdiction in the county in which the violation occurred, to have such person convicted therefor. The board or its agents may file with the district attorney in each district, with a view of [toward] prosecution, such evidence as may be deemed necessary; provided, however, that no prosecution under this act shall be instituted without the defendant first having been given an opportunity to appear before

the board or its agents to introduce evidence either in person or by agent or attorney at a private hearing. If, after hearing, or without such hearing in case the defendant or his agent or attorney fails or refuses to appear, the board or its agents is of the opinion that the evidence warrants prosecution, he shall proceed as herein provided.

It is the duty of the district attorney in each district to institute proceedings at once against any person charged with a violation of this act, if, in the judgment of such officer the information submitted warrants such action.

After judgment by the court in any case arising under this act, the board or its agent shall publish any information pertinent to the issuance of the judgment by the court in such media as he [it] may designate from time to time.

**History:** 1953 Comp., § 45-12-30, enacted by Laws 1967, ch. 68, § 11.

### **ANNOTATIONS**

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

#### **76-10-22. Appropriation.**

The legislature shall appropriate to the New Mexico state university annually the amount necessary, out of the moneys of the state, except moneys reserved for the payment of the public debt, for the purpose of complying with this act [76-10-11 to 76-10-22 NMSA 1978] and to fulfill and carry out its purposes.

**History:** 1953 Comp., § 45-12-31, enacted by Laws 1967, ch. 68, § 12.

## **ARTICLE 11 FERTILIZERS**

#### **76-11-1. Short title.**

Article 11 of Chapter 76, NMSA 1978 may be cited as the "New Mexico Fertilizer Act."

**History:** 1953 Comp., § 45-13-11, enacted by Laws 1963, ch. 184, § 1; 1975, ch. 181, § 1.

#### **76-11-2. Administration of act.**

The New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978] shall be administered by the board of regents of the New Mexico state university through the New Mexico department of agriculture.

**History:** 1953 Comp., § 45-13-12, enacted by Laws 1963, ch. 184, § 2; 1975, ch. 181, § 2.

## ANNOTATIONS

**Cross-references.** - As to department of agriculture under control of board of regents, see 76-1-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Colleges and Universities §§ 5, 10, 11.

14A C.J.S. Colleges and Universities § 17.

### 76-11-3. Definitions.

As used in the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978]:

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

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

C. "commercial fertilizer" means any substance which contains one or more recognized plant nutrients and which is used for its plant nutrient content, and which is designed for use or claimed to have value in promoting plant growth (except unmanipulated animal and vegetable manures, marl limes, limestone, wood ashes, gypsum and other products exempt by regulation of the board);

D. "fertilizer material" means a commercial fertilizer which either:

(1) contains important quantities of no more than one of the primary plant nutrients: nitrogen, phosphoric acid and potash; or

(2) has approximately eighty-five percent of its plant nutrient content present in the form of a single chemical compound; or

(3) is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration;

E. "specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and may include commercial fertilizers used for research or experimental purposes;

F. "bulk fertilizers" means commercial fertilizers distributed in a nonpackaged form;

G. "brand" means a term, design or trademark under which one or more commercial fertilizers or soil conditioners are distributed in New Mexico;

H. "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the order and form as prescribed by the board;

I. "grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis; provided, however, that fertilizer materials, bone meal, manures and similar raw materials may be guaranteed in fractional units;

J. "official sample" means any sample of commercial fertilizer or soil conditioner taken by the department, unless designated otherwise;

K. "ton" means a net weight of two thousand pounds avoirdupois;

L. "percent" or "percentage" means the percentage by weight;

M. "person" includes individual, partnership, association, firm and corporation;

N. "distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes or blends commercial fertilizer or soil conditioner, or who offers for sale, sells, barter or otherwise supplies commercial fertilizer or soil conditioner in this state;

O. "registrant" means the person who registers a commercial fertilizer or soil conditioner under the provisions of the New Mexico Fertilizer Act;

P. "label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a commercial fertilizer or soil conditioner;

Q. "labeling" means all written, printed or graphic matter, upon or accompanying any commercial fertilizer or soil conditioner; and

R. "soil conditioner" means any substance or mixture of substances intended for sale, offered for sale or sold for manurial, soil enriching or soil corrective purposes or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops or producing any chemical or physical change in the soil, except commercial fertilizer as defined in this section, unmanipulated animal and vegetable manures and other products exempted by regulations of the board.

**History:** 1953 Comp., § 45-13-13, enacted by Laws 1963, ch. 184, § 3; 1975, ch. 181, § 3.



## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 74.

### **76-11-4. Registration.**

A. Each brand and grade of commercial fertilizer and each soil conditioner product shall be registered before being distributed in this state. The application for registration shall be submitted to the department on a form furnished by the department and shall be accompanied by a fee of five dollars (\$5.00) per brand or grade, except that those brands or grades sold in packages of five pounds or less shall be registered at a fee of fifteen dollars (\$15.00) each. Upon approval by the department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year.

B. A distributor shall not be required to register any brand of commercial fertilizer or soil conditioner which is already registered under the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978] by another person.

C. A distributor shall not be required to register a commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing; but shall be required to label the fertilizer as provided in Subsection C of Section 76-11-5 NMSA 1978.

**History:** 1953 Comp., § 45-13-14, enacted by Laws 1963, ch. 184, § 4; 1975, ch. 181, § 4.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 57.

Constitutionality, construction, and application of statutes relating to testing or sampling of agricultural fertilizers, 147 A.L.R. 765.

3 C.J.S. Agriculture § 77.

### **76-11-5. Labeling.**

A. Any commercial fertilizer distributed in this state in containers shall have placed on, or affixed to, the container a label setting forth in clearly legible and conspicuous form the following information:

- (1) the net weight or other measure prescribed as satisfactory to the board;
- (2) brand and grade;

(3) guaranteed analysis; and

(4) name and address of the registrant.

B. If a commercial fertilizer is distributed in bulk, a written or printed statement of the information required by Paragraphs (1), (2), (3) and (4) of Subsection A of this section shall accompany delivery and be supplied to the purchaser at time of delivery.

C. A commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis and the name and address of the distributor.

D. Each brand of soil conditioner distributed in this state shall be accompanied by a legible label bearing the following information:

(1) net weight or other measure prescribed as satisfactory by the board;

(2) the brand name under which the soil conditioner is distributed;

(3) an accurate statement of composition and purpose; and

(4) the name and address of the registrant.

**History:** 1953 Comp., § 45-13-15, enacted by Laws 1963, ch. 184, § 5; 1975, ch. 181, § 5.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture § 78.

### **76-11-6. Inspection fees.**

A. There shall be paid to the department for all commercial fertilizer and soil conditioner distributed in this state an inspection fee set by the board at a rate not to exceed thirty-five cents (\$.35) a ton; provided, that sales to manufacturers or exchanges between them are exempted. Fees so collected shall be used for the payment of the costs of inspection, sampling and analysis and other expenses necessary for the administration of the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978].

B. On individual packages of commercial fertilizer or soil conditioner containing five pounds or less, there shall be paid in lieu of the annual registration fee of five dollars (\$5.00) per brand and grade of commercial fertilizer and each soil conditioner product and the required inspection fee, an annual registration fee and inspection fee of fifteen dollars (\$15.00). Where a person sells commercial fertilizer or soil conditioner in

packages of five pounds or less and in packages over five pounds, the annual registration and inspection fee of fifteen dollars (\$15.00) shall apply only to that portion sold in packages of five pounds or less, and that portion sold in packages over five pounds shall be subject to the inspection fee.

C. Every person who distributes a commercial fertilizer or soil conditioner in this state shall file with the department, on forms furnished by the department, a quarterly statement for the periods ending March 31, June 30, September 30 and December 31, setting forth the number of net tons of each commercial fertilizer or soil conditioner distributed in this state during the quarter. The report shall be due on or before the last day of the month following the close of each quarter. The inspection fee shall be paid at the time of filing of the statement. If the tonnage report is not filed, and the payment of inspection fee is not made within thirty days after the end of the quarter, a collection fee amounting to ten percent, but not less than ten dollars (\$10.00), of the amount shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

D. When more than one person is involved in the distribution of a commercial fertilizer or soil conditioner, the last person who has the fertilizer or soil conditioner registered and who distributes to a nonregistrant dealer or consumer is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment has been previously made by a prior distributor.

**History:** 1953 Comp., § 45-13-16, enacted by Laws 1963, ch. 184, § 6; 1975, ch. 181, § 6.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture § 76.

### **76-11-7. Inspection; sampling; analysis.**

A. The department, shall sample, inspect, make analyses of and test commercial fertilizers and soil conditioners distributed within this state at a time and place and to the extent as it may be deemed necessary to determine whether the commercial fertilizer or soil conditioner is in compliance with the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978]. The department may enter upon any public or private premises or carriers during the regular business hours in order to have access to commercial fertilizer or soil conditioners subject to the provisions of the New Mexico Fertilizer Act and the regulations pertaining thereto.

B. The methods of analysis and sampling shall be those adopted by the department from sources such as the association of official agricultural chemists.

C. The department in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined by Section 76-11-3 NMSA 1978 of the New Mexico Fertilizer Act, obtained and analyzed as provided for in Subsection B of this section.

D. Upon request, the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

**History:** 1953 Comp., § 45-13-17, enacted by Laws 1963, ch. 184, § 7; 1975, ch. 181, § 7.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 57.

Constitutionality of statute making certificate of result of chemical analysis evidence, 29 A.L.R. 290.

Constitutionality, construction and application of statutes relating to testing or sampling of agricultural fertilizers, 105 A.L.R. 348, 147 A.L.R. 765.

3 C.J.S. Agriculture § 76.

### **76-11-8. Plant food deficiency.**

A. If the analysis shows that any commercial fertilizer falls short of the guaranteed analysis in any one ingredient, penalty shall be assessed in accordance with the following:

(1) total nitrogen: a penalty of three times the value of the deficiency, if the deficiency is in excess of 0.20 of one percent on goods that are guaranteed two percent; 0.25 of one percent on goods that are guaranteed three percent; 0.35 of one percent on goods that are guaranteed four percent; 0.40 of one percent on goods that are guaranteed five percent up to and including eight percent; 0.50 of one percent on goods guaranteed above eight percent up to and including thirty percent; and 0.75 of one percent on goods guaranteed over thirty percent;

(2) available phosphoric acid or available phosphorus: a penalty of three times the value of the deficiency, if the deficiency exceeds 0.40 of one percent of available phosphoric acid ( $P_2O_5$ ) on goods that are guaranteed up to and including ten percent; 0.50 of one percent of available phosphoric acid ( $P_2O_5$ ) on goods that are guaranteed above ten percent up to and including twenty-five percent; and 0.75 of one percent of available phosphoric acid ( $P_2O_5$ ) on goods guaranteed over twenty-five percent. If guarantees are for available phosphorus, the deficiencies shall be calculated for the appropriate percentage of elemental phosphorus;

(3) soluble potash or soluble potassium: a penalty of three times the value of the deficiency, if the deficiency is in excess of 0.20 of one percent of soluble potash (K<sub>2</sub>O) on goods that are guaranteed two percent; 0.30 of one percent of soluble potash (K<sub>2</sub>O) on goods that are guaranteed three percent; 0.40 of one percent of soluble potash (K<sub>2</sub>O) on goods guaranteed four percent; 0.50 of one percent of soluble potash (K<sub>2</sub>O) on goods guaranteed above four percent up to and including eight percent; 0.60 of one percent of soluble potash (K<sub>2</sub>O) on goods guaranteed above eight percent up to and including twenty percent; and 1.00 of one percent of soluble potash (K<sub>2</sub>O) on goods guaranteed over twenty percent. If guarantees are for soluble potassium, the deficiencies shall be calculated for the appropriate percentage of elemental potassium;

(4) deficiencies in any other constituent or constituents shall be evaluated by the department and penalties therefor prescribed by the board.

B. Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction praying for judgment as to the justification of the penalties.

C. All penalties assessed under this section shall be paid to the consumer of the lot of commercial fertilizer represented by the sample analyzed within three months after the date of notice from the department to the registrant, receipts taken therefor and found, and promptly forwarded to the department. If the consumer cannot be found, the amount of the penalty shall be paid to the common school fund.

**History:** 1953 Comp., § 45-13-18, enacted by Laws 1963, ch. 184, § 8; 1975, ch. 181, § 8.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 81.

#### **76-11-9. Commercial value.**

For the purpose of determining the commercial values to be applied under the provisions of Section 76-11-8 NMSA 1978, the department shall determine and publish annually the values per pound of nitrogen, available phosphoric acid and soluble potash in commercial fertilizers in this state. If guarantees are provided, the values shall be per pound of nitrogen, phosphorus and potassium. The values so determined and published shall be used in determining and assessing penalties.

**History:** 1953 Comp., § 45-13-19, enacted by Laws 1963, ch. 184, § 9; 1975, ch. 181, § 9.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 81.

### **76-11-10. Misbranding.**

No person shall distribute misbranded fertilizer or soil conditioner. A commercial fertilizer or soil conditioner shall be deemed to be misbranded if:

A. its labeling is false or misleading in any particular;

B. it is distributed under the name of another fertilizer or soil conditioner product;

C. it is not labeled as required in Section 76-11-5 NMSA 1978 and in accordance with regulations prescribed under the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978]; or

D. it purports to be, or is represented as, a commercial fertilizer or soil conditioner, or is represented as containing a plant nutrient, commercial fertilizer or soil conditioner unless such plant nutrient, commercial fertilizer or soil conditioner conforms to the definition of identity, if any, prescribed by regulation of the board; in adopting such regulations, the board shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials.

**History:** 1953 Comp., § 45-13-20, enacted by Laws 1975, ch. 181, § 10.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1975, ch. 181, § 10, repeals 45-13-20, 1953 Comp., relating to false or misleading statements, and enacts the above section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture § 78.

### **76-11-11. Tonnage reports.**

The person transacting, distributing or selling commercial fertilizer or soil conditioner to a nonregistrant shall mail the department a report showing the county of the consignee, the amounts in tons of each grade of commercial fertilizer and each soil conditioner product and the form in which the fertilizer or soil conditioner was distributed, such as bags, liquid, bulk or other forms. This information shall be reported by one of the following methods:

A. submitting a summary report approved by the department on or before the fifteenth day of each month covering shipments made during the preceding month; or

B. submitting a copy of the invoice within five business days after shipment. No information furnished the department under this section shall be disclosed in such a way as to divulge the operation of any person.

**History:** 1953 Comp., § 45-13-21, enacted by Laws 1963, ch. 184, § 11; 1971, ch. 203, § 1; 1975, ch. 181, § 11.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 79.

### **76-11-12. Publications.**

The board shall publish at least annually and in a form as it deems proper:

A. information concerning the distribution of commercial fertilizers and soil conditioners; and

B. results of analysis based on official samples of commercial fertilizers and soil conditioners distributed within the state as compared with the analysis guaranteed in the registration and the label.

**History:** 1953 Comp., § 45-13-22, enacted by Laws 1963, ch. 184, § 12; 1975, ch. 181, § 12.

### **76-11-13. Regulations.**

For the enforcement of the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978], the board may prescribe and, after public hearing following due public notice, adopt the regulations relating to the distribution of commercial fertilizers and soil conditioners as it may find necessary to carry into effect the full intent and meaning of the New Mexico Fertilizer Act. Under this section the board is empowered to promulgate regulations for the storing, hauling and handling of anhydrous ammonia and other gaseous or liquid fertilizers, and they shall have the same effect as law.

**History:** 1953 Comp., § 45-13-23, enacted by Laws 1963, ch. 184, § 13; 1967, ch. 69, § 1; 1975, ch. 181, § 13.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture § 76.

### **76-11-14. Short weight.**

If any commercial fertilizer or soil conditioner in the possession of the consumer is found by the department to be short in weight, or other measure prescribed by the board, the registrant of the commercial fertilizer or soil conditioner shall, within thirty days after official notice from the department pay to the consumer a penalty equal to four times the value of the actual shortage.

**History:** 1953 Comp., § 45-13-24, enacted by Laws 1963, ch. 184, § 14; 1975, ch. 181, § 14.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 80.

### **76-11-15. Cancellation of registrations.**

The department may cancel the registration of any brand of commercial fertilizer or soil conditioner or refuse to register any brand of commercial fertilizer or soil conditioner, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978], or any regulations promulgated thereunder; provided, that no registration shall be revoked or refused until the registrant is given an opportunity to appear for a hearing by the department.

**History:** 1953 Comp., § 45-13-25, enacted by Laws 1963, ch. 184, § 15; 1975, ch. 181, § 15.

#### **ANNOTATIONS**

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

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 57.

3 C.J.S. Agriculture §§ 75 to 76.

### **76-11-16. Stop sale orders.**

The department may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of commercial fertilizer or soil conditioner and



to be held at a designated place when the department finds the commercial fertilizer or soil conditioner is being offered or exposed for sale in violation of any of the provisions of the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978] until the law has been complied with and the commercial fertilizer or soil conditioner is released, in writing, by the department, or the violation has been otherwise legally disposed of by written authority. The department shall release the commercial fertilizer or soil conditioner so withdrawn when the requirements of the provisions of the New Mexico Fertilizer Act have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

**History:** 1953 Comp., § 45-13-26, enacted by Laws 1963, ch. 184, § 16; 1975, ch. 181, § 16.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 80.

### **76-11-17. Seizure; condemnation; sale.**

A. Any lot of commercial fertilizer or soil conditioner not in compliance with the provisions of the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978] is subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the commercial fertilizer or soil conditioner is located.

B. In the event the court finds the commercial fertilizer or soil conditioner to be in violation of the New Mexico Fertilizer Act and orders the condemnation of the commercial fertilizer or soil conditioner it shall be disposed of in any manner consistent with the quality of the commercial fertilizer or soil conditioner and the laws of the state.

C. In no instance shall the disposition of the commercial fertilizer or soil conditioner be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial fertilizer or soil conditioner or for permission to process or relabel the commercial fertilizer or soil conditioner to bring it into compliance with the New Mexico Fertilizer Act.

**History:** 1953 Comp., § 45-13-27, enacted by Laws 1963, ch. 184, § 17; 1975, ch. 181, § 17.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture §§ 70, 71.

3 C.J.S. Agriculture § 80.

## **76-11-18. Violations.**

A. If it appears from the examination of any commercial fertilizer or soil conditioner that any of the provisions of the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978] or the regulations issued thereunder have been violated, the department shall cause notice of the violations to be given to the registrant, distributor or possessor from whom the sample was taken; any person so notified shall be given opportunity to be heard under the regulations as is prescribed by the board. If it appears after the hearing, either in the presence or the absence of the person so notified, that any of the provisions of the New Mexico Fertilizer Act, or regulations issued thereunder, have been violated, the department may certify the facts to the proper district attorney.

B. Any person convicted of violating any provision of the New Mexico Fertilizer Act or the regulations issued thereunder shall be guilty of a misdemeanor.

C. Nothing in the New Mexico Fertilizer Act shall require the department or its representative to report for prosecution, or for the institution of seizure proceedings, as a result of minor violations of the New Mexico Fertilizer Act when it believes that the public interests will be best served by a suitable notice of warning in writing.

D. The department may apply for, and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate, any of the provisions of the New Mexico Fertilizer Act, or any regulation promulgated under that act, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

**History:** 1953 Comp., § 45-13-28, enacted by Laws 1963, ch. 184, § 18; 1975, ch. 181, § 18.

### **ANNOTATIONS**

**Cross-references.** - As to injunctions, see Rules 1-065 and 1-066.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 80.

## **76-11-19. Exchanges between manufacturers.**

Nothing in the New Mexico Fertilizer Act [76-11-1 to 76-11-19 NMSA 1978] shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil conditioners to each other by importers, manufacturers or manipulators who mix those materials for sale, or as preventing the free and unrestricted shipments of commercial fertilizer or soil conditioners to manufacturers or manipulators who have registered their brands as required by the provisions of the New Mexico Fertilizer Act.

**History:** 1953 Comp., § 45-13-29, enacted by Laws 1963, ch. 184, § 19; 1975, ch. 181, § 19.

## ANNOTATIONS

**Effective dates.** - Laws 1963, ch. 184, § 22, makes the act effective on January 1, 1964.

Laws 1975, ch. 181, § 20, makes the act effective on August 15, 1975.

**Severability clauses.** - Laws 1963, ch. 184, § 20, provides for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 74.

## ARTICLE 12 COOPERATIVE MARKETING ASSOCIATIONS

### 76-12-1. Short title.

This act [76-12-1 to 76-12-23 NMSA 1978] may be cited as the "Cooperative Marketing Association Act".

**History:** Laws 1937, ch. 152, § 1; 1941 Comp., § 48-1301; 1953 Comp., § 45-14-1.

## ANNOTATIONS

**Cross-references.** - As to cooperative associations, see 53-4-1 NMSA 1978 et seq.

For exemption of certain warehousemen from law regulating warehousing of agricultural products, see 56-6-11 NMSA 1978.

**Compiler's note.** - This act is deemed to supersede Laws 1925, ch. 99, and Laws 1915, ch. 64, relating to the incorporation of agricultural marketing associations. See also, Laws 1923, ch. 36, § 1.

While this act contains much of the substance of the Model Agricultural Cooperative Association Act, it is not considered as an adoption thereof.

**Modification of monopoly legislation.** - Cooperative Marketing Act (Laws 1915, ch. 64, superseded by Laws 1937, ch. 152), being later than the general antimonopoly statutes, was to be considered as modifying such general statutes, and legalizing organization, management and cooperation of agricultural, nonprofit cooperative associations, in light of trend of recent legislation and judicial construction in other states, and enactment of 57-1-4 NMSA 1978. See also, 76-12-18 NMSA 1978. *Elephant Butte Alfalfa Ass'n v. Rouault*, 33 N.M. 136, 262 P. 185 (1926).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 1 et seq.

Cooperative marketing of farm or dairy products by producer associations, 25 A.L.R. 1113, 33 A.L.R. 247, 47 A.L.R. 936, 77 A.L.R. 405, 98 A.L.R. 1406, 12 A.L.R.2d 130.

3 C.J.S. Agriculture §§ 138 to 158.

## **76-12-2. Declaration of policy.**

In order to promote, foster and encourage the intelligent handling, processing and orderly marketing of agricultural products and the organization and incorporation of cooperative marketing associations of agricultural producers, this act [76-12-1 to 76-12-23 NMSA 1978] is passed. It is the declared policy of this state that this act be liberally construed.

**History:** Laws 1937, ch. 152, § 2; 1941 Comp., § 48-1302; 1953 Comp., § 45-14-2.

## **76-12-3. Definitions.**

As used in this act [76-12-1 to 76-12-23 NMSA 1978], unless the context or subject matter requires otherwise:

A. the term, "agricultural products" shall include horticultural, viticultural, nut, dairy, livestock, poultry, bee and any other farm products;

B. the term "member" means in addition to those admitted to membership in an association without capital stock, holders of common stock in associations organized with capital stock;

C. the term "association" means any corporation organized under this act or any similar corporation organized under any general or special act of this or any other state as a cooperative association, for the mutual benefit of its members, as agricultural producers, in which the return on the stock or membership capital is limited to an amount not to exceed eight per centum (8%) per annum, and which during any fiscal year does not deal with nonmembers' products to an amount greater in value than members' products;

D. the term "person" shall include: individuals, partnerships, firms, corporations and associations;

E. associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profit for themselves as such, nor for their members, as such, but only for their members as producers or users of products purchased.

**History:** Laws 1937, ch. 152, § 3; 1941 Comp., § 48-1303; 1953 Comp., § 45-14-3.

## ANNOTATIONS

**Compiler's note.** - For similar provisions in earlier acts, see Laws 1925, ch. 99, §§ 1 and 10, and Laws 1923, ch. 36, § 1.

**Agency relationship.** - Agreement between nonprofit agricultural cooperative marketing association and members thereof, making association sole marketing agency for members' onions and requiring association to gather, harvest and haul same at individual members' expense, created relationship of principal and agent; association was bargaining agent, not independent enterprise, and was not liable for losses due to delay in making sales, absent unreasonable exercise of discretion. *Santo Tomas Produce Ass'n v. Smith*, 68 N.M. 436, 362 P.2d 977 (1961).

### **76-12-4. Who may organize.**

Five or more natural persons of full age, engaged in the production of agricultural products either as tenants or landlords, who are residents of this state or any other, or two or more cooperative associations, organized under the laws of this state or any other, may form a nonprofit cooperative association with or without capital stock, under the provisions of this act [76-12-1 to 76-12-23 NMSA 1978].

**History:** Laws 1937, ch. 152, § 4; 1941 Comp., § 48-1304; 1953 Comp., § 45-14-4.

## ANNOTATIONS

**Cross-references.** - For age of majority, see 28-6-1 NMSA 1978.

**Compiler's note.** - For similar provisions in earlier acts, see Laws 1925, ch. 99, § 2, Laws 1923, ch. 36, § 1 and Laws 1915, ch. 64, § 1.

### **76-12-5. Purposes.**

An association may be organized under this act [76-12-1 to 76-12-23 NMSA 1978] to engage in any activity in connection with the marketing or selling of agricultural products, or with the harvesting, preserving, drying, processing, blending, canning, packing, grading, storing, warehousing, handling, shipping or utilizing such products; or in connection with the manufacturing, marketing, selling or supplying of the byproducts thereof or the manufacturing, selling or supplying of machinery, equipment, feed, fertilizer, seeds, oil, gasoline or other supplies; or in the financing of any of the above-enumerated activities or in performing or furnishing business or educational services on a cooperative basis for those engaged in agriculture as bona fide producers of agricultural products or in any one or more of the activities specified herein.

**History:** Laws 1937, ch. 152, § 5; 1941 Comp., § 48-1305; 1953 Comp., § 45-14-5.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 4.

3 C.J.S. Agriculture § 138.

### **76-12-6. Powers.**

Each association incorporated under this act [76-12-1 to 76-12-23 NMSA 1978] shall have the following powers:

A. to act as an agency for or subsidiary of or to assist cooperative associations formed under this act or similar acts in any one or more of the above-mentioned activities; to act as a holding corporation of the properties of such associations;

B. to make all necessary and proper contracts and agreements with any other association formed in this or any other state, or in connection with any other association in this or any other state to unite in employing and using, or separately to employ and use the same methods, means and agencies which may be used by another association for carrying on and conducting the respective businesses of such associations;

C. to act as the agent or representative of any member or members in any lawful activity;

D. to make loans or advances to members or producer patrons or to the members of an association which is itself a member; to accept any kind, form or type of obligation or security, therefore to purchase, endorse, discount or sell any note, draft, bill of exchange, debenture, bill of sale, mortgage or other obligations acquired by it, the proceeds of which have been advanced or used in the first instance for any of the purposes provided for herein; to discount for or purchase from any association, organized under the laws of any state with or without its endorsement, any note, draft, bill of exchange, debenture, bill of sale, mortgage or other obligation the proceeds of which are advanced or used in the first instance for carrying on any cooperative activity authorized under this act and to dispose of same with or without endorsement. An association organized under this act and exercising any of the powers provided in this paragraph shall not engage in the business of banking;

E. to establish and accumulate reserves including a permanent surplus fund as an addition to capital; to invest the reserves either directly or by means of subsidiary or affiliated associations or other corporations in real estate or other property for carrying out the purpose of the association; or the reserves may be deposited or invested in such securities as the bylaws may provide;

F. to purchase or otherwise acquire, hold, own and exercise all rights of ownership in, and to sell, transfer, pledge or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of capital stock, bonds or other obligations of any

corporation or association, engaged in any directly or indirectly related activity, or in the production, warehousing, handling or marketing of any of the products handled by the association;

G. to buy, hold and exercise all privileges of ownership over such real or personal property, as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto;

H. to borrow money from any source without limitation as to amount of corporate indebtedness or liability, with authority to give any form of obligation or security therefor;

I. to establish and secure, own and develop patents, trademarks and copyrights;

J. to deal in products, handle machinery, equipment or supplies or perform services for or on behalf of nonmembers to an amount not greater in value during any fiscal year than such as are dealt in, handled or performed by it for, or on behalf of its members during the same period;

K. to do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes, or the attainment of any one or more of the subjects herein enumerated, or conducive to or expedient for the interest or benefit of the association, and to contract accordingly; and in addition, to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized, or the activities in which it is engaged; and in addition [to exercise] any other rights, powers and privileges granted by the laws of this state to ordinary business corporations, except such as are inconsistent with the express provisions of this act; and to do any such thing anywhere.

**History:** Laws 1937, ch. 152, § 6; 1941 Comp., § 48-1306; 1953 Comp., § 45-14-6.

## ANNOTATIONS

**Cross-references.** - For provision authorizing creation of capital stock by mutual associations, see 53-2-5 NMSA 1978.

For Business Corporation Act, see 53-11-1 NMSA 1978.

**Compiler's note.** - For similar provisions in earlier acts, see Laws 1925, ch. 99, §§ 6 and 15, Laws 1923, ch. 36, § 1 and Laws 1915, ch. 64, § 5.

**Agency relationship.** - Agreement between members and nonprofit agricultural cooperative marketing association making association sole marketing agency for members' onions and requiring association to gather, harvest and haul same at expense of individual members created relationship of principal and agent; association was bargaining agent, not independent enterprise, and was not liable for losses due to

delay in making sales in absence of unreasonable exercise of discretion. Santo Tomas Produce Ass'n v. Smith, 68 N.M. 436, 362 P.2d 977 (1961).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 30.

3 C.J.S. Agriculture § 145.

## **76-12-7. Articles of incorporation.**

The incorporators of an association to be formed under this act [76-12-1 to 76-12-23 NMSA 1978] must prepare and file articles of incorporation setting forth:

- A. the name of the association which may or may not include the word "cooperative";
- B. its purposes;
- C. its duration;
- D. its principal place of business in the state;
- E. the name and post-office address of each of the incorporators;
- F. the names and addresses of those who are to serve as incorporating directors for the first term, or until the election and qualifications of their successors;
- G. if organized without capital stock whether the property rights and interests of each member are to be equal or unequal; if unequal, the general rule applicable to all members by which the property rights and interests respectively of each member shall be determined; and provision for the admission of new members who shall share in the property of the association in accordance with such general rule;
- H. if organized with capital stock, the amount of such stock and the number of shares into which the capital stock is to be divided; whether all or part of the capital stock shall have par value, and if so, the par value thereof; and if there is to be more than one class of stock created, a description of the different classes, the number of shares in each class, the relative rights, interests and preferences each class shall represent and the dividends, which may be cumulative, not exceeding eight per centum per annum, to which each share shall be entitled;
- I. in addition to the foregoing, the articles of incorporation may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock, or any provision relative to the way or manner in which it



shall operate with respect to its members, officers or directors, and any other provisions relating to its affairs.

The articles of incorporation must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances and shall be filed with the state corporation commission of this state. When so filed, said articles of incorporation, or certified copies thereof, shall be received in all courts of this state as prima facie evidence of the facts contained therein and of the due incorporation of such association.

**History:** Laws 1937, ch. 152, § 7; 1941 Comp., § 48-1307; 1953 Comp., § 45-14-7.

### ANNOTATIONS

**Cross-references.** - For penalty for unauthorized use of name "cooperative," see 53-4-37 NMSA 1978.

**Compiler's note.** - For similar provisions in earlier acts, see Laws 1925, ch. 99, §§ 3, 5 and 16 and Laws 1915, ch. 64, § 3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 14.

3 C.J.S. Agriculture §§ 140, 144.

### **76-12-8. Filing and recording articles of incorporation.**

The articles of incorporation shall be filed with the state corporation commission, and a copy thereof, duly certified by the commission, shall be recorded in the office of the county clerk of the county where the principal office of the association is to be located in this state. For filing the articles of incorporation, an association shall pay to the state corporation commission fifty dollars (\$50.00) together with the proportionate part of the annual license fee which may be due for the succeeding fraction of the fiscal year, and for filing an amendment to the articles, twenty-five dollars (\$25.00). For filing the certified copy of the articles of association with the county clerk, the association shall pay a fee of one dollar (\$1.00).

**History:** Laws 1937, ch. 152, § 8; 1941 Comp., § 48-1308; 1953 Comp., § 45-14-8; 1993, ch. 311, § 12.

### ANNOTATIONS

**Cross-references.** - For annual license fee, see 76-12-20 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, substituted "fifty dollars (\$50.00)" for "one dollar (\$1.00)" and "twenty-five dollars (\$25.00)" for "one dollar (\$1.00)" in the second sentence, and made several minor stylistic changes.

**Compiler's note.** - For similar provisions in earlier act, see Laws 1925, ch. 99, §§ 5 and 18.

**Recording fees.** - This section, setting filing fees but silent upon fees for recording articles of incorporation by county clerk, is not in conflict with 14-8-12 NMSA 1978, specifying recording fees. 1966 Op. Att'y Gen. No. 66-132.

### **76-12-9. Amendments to articles of incorporation.**

The articles of incorporation may be altered or amended at any regular meeting or any special meeting called for that purpose. An amendment must first be approved by two-thirds of [the] directors, and then adopted by a vote representing two-thirds of all members present at such meeting. Amendments to the articles of incorporation when adopted shall be filed in the same manner as provided for the filing of the original articles.

**History:** Laws 1937, ch. 152, § 9; 1941 Comp., § 48-1309; 1953 Comp., § 45-14-9.

### **ANNOTATIONS**

**Cross-references.** - As to filing of original articles, see 76-12-8 NMSA 1978.

**Compiler's note.** - For similar provision in earlier act, see Laws 1925, ch. 99, § 4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 13.

Benefits: validity and enforceability of bylaws amendment reducing benefits available to members, 61 A.L.R.3d 976.

3 C.J.S. Agriculture § 140.

### **76-12-10. Bylaws.**

Each association incorporated under this act [76-12-1 to 76-12-23 NMSA 1978] shall adopt bylaws consistent with this act, within thirty days after its incorporation. A majority of the members voting thereon is necessary to adopt such bylaws, or if the association permits its members to vote on the basis of patronage, a majority in numbers which is also a majority of the patronage. The bylaws shall provide for their amendment by the members and the method by which amendments may be adopted. The following matters among others may be covered in the bylaws:

- A. the time, place and manner of calling and conducting its meetings, which meetings, and the meetings of its directors, may be held either within or without the state;
- B. the number of members constituting a quorum;
- C. the right of members to vote except by proxy, at general or special meetings and by mail; and the conditions, manner, form and effects of such votes;
- D. the number of directors constituting a quorum;
- E. the number, qualifications, compensation, duties and term of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;
- F. penalties for violations of bylaws;
- G. the amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used;
- H. the amount which each member shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members which every member may be required to sign;
- I. the number, qualification and voting rights of members of the association and the conditions precedent to membership; the method, time and manner of permitting members to withdraw or to transfer their stock; the manner of assignment and transfer of the interest of members; the mode, manner and effect of the expulsion of a member; the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or upon the expulsion of a member or forfeiture of his membership.

**History:** Laws 1937, ch. 152, § 10; 1941 Comp., § 48-1310; 1953 Comp., § 45-14-10.

### **ANNOTATIONS**

**Compiler's note.** - For similar provisions in earlier acts, see Laws 1925, ch. 99, §§ 6 and 11 and Laws 1915, ch. 64, § 4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 14.

Liability of member or former member of marketing or purchasing cooperative for its debts or losses, 96 A.L.R.3d 1243.

3 C.J.S. Agriculture § 140.

## **76-12-11. Members.**

A. Under the terms and conditions prescribed in the bylaws adopted by it, an association may admit as members, or issue common stock to only cooperative associations and/or persons engaged in the production of agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent all or part of the crop raised on the leased premises. An association organized hereunder may become a member or stockholder of any other cooperative association organized in this or any other state.

B. A member shall lose his membership and voting rights if he ceases to belong to the class of persons eligible for membership under this section, but he shall remain subject to any liability already incurred by him as a member of the association and shall be entitled to receive from the association within three years after his ceasing to be a member the value of his membership interest in the association subject to the conclusive appraisal by the board of directors. If the association shall approve the member's designation of a transferee of his membership interest the association shall be under no obligation to pay the transferrer [transferor] the value of this interest.

C. Except for debts lawfully contracted between him and the association no member shall be liable for the debts of the association to any amount exceeding the sum remaining unpaid on his subscription to membership.

D. Under the provisions of its bylaws an association may provide that no members shall have more than one vote, or it may provide that members may vote according to actual patronage. However, in no case shall a member be allowed to have more than five (5) votes, and a member shall not be allowed more than one vote because of the amount of stock or membership capital he may own.

**History:** Laws 1937, ch. 152, § 11; 1941 Comp., § 48-1311; 1953 Comp., § 45-14-11.

### **ANNOTATIONS**

**Compiler's note.** - For similar provisions in earlier acts, see Laws 1925, ch. 99, § 8 (as amended by Laws 1931, ch. 27, § 1) and § 9, Laws 1923, ch. 36, § 1 and Laws 1915, ch. 64, § 2.

**Intent of legislature in establishing required reserve** in Subsection C was to assure protection of the association's creditors by establishing an adequate reserve fund and to establish a means for maintaining capital in the association. 1963-64 Op. Att'y Gen. No. 63-149.

**Only common stock to be included in reserve fund requirement.** - Because, in a stock association, the holders of common stock are the members of the association, but the preferred stockholders are not members and do not have a voice in the control of

the corporation, the intention of the legislature was to include only common stock in the reserve fund requirement of Subsection C for stock associations. 1963-64 Op. Att'y Gen. No. 63-149.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations §§ 14, 21.

Legality of combination among farmers, 25 A.L.R. 1113, 33 A.L.R. 247, 47 A.L.R. 936, 77 A.L.R. 405, 98 A.L.R. 1406, 12 A.L.R.2d 130.

Benefits: validity and enforceability of by-law amendment reducing benefits available to members, 61 A.L.R.3d 976.

Membership: competency of juror as affected by his membership in cooperative association interested in the case, 69 A.L.R.3d 1296.

Liability of member or former member of marketing or purchasing cooperative for its debts or losses, 96 A.L.R.3d 1243.

3 C.J.S. Agriculture §§ 141, 142.

## **76-12-12. Issuance of membership certificates and stock.**

A. When a member of an association has paid his membership fee or stock subscription in full he shall receive, as the case may be, a certificate of membership or a stock certificate.

B. No association shall issue membership certificates or stock until they have been fully paid for, but an association in its bylaws may admit a member and allow him to vote and hold office as soon as twenty per centum (20%) of his membership fee or his stock certificate has been paid.

C. An association shall limit the interest it pays on membership capital or stock to an amount not greater than eight percent (8%) per annum. Such apportionment shall not be made until not less than ten (10%) percent of any undistributed balance accruing since the last apportionment, has been set aside in a surplus or reserve fund unless such surplus or reserve fund equal [equals] at least one hundred (100%) percent of the paid up membership fees or capital stock.

D. Undistributed balances from any source, in excess of additions to reserves and surplus, shall be distributed on the basis of patronage, that is according to the amount or value, as the association may decide, of the products sold to or through, and/or purchased from or through, the association by its patrons. The distribution of such balances may be restricted to members or be made at the same or a different rate for members and nonmembers. The bylaws may provide that any distribution to a nonmember, eligible for membership may be credited to such nonmember until the

amount thereof equals the value of a membership certificate or a share of the association's common stock. Such a distribution credited to the account of a nonmember shall revert to the reserve fund to be used for educational purposes if, after two years, the amount is less than the value of a membership certificate or a share of common stock, or in case said person does not accept and exercise his membership privileges.

E. Ownership of common stock and/or membership certificates may be transferred by a member only to other associations or to persons engaged in the production of agricultural products, and who are eligible to hold same. Such transfer must be approved by the board of directors before it is binding on the association.

F. An association may issue and sell preferred stock to members or nonmembers. Preferred stock may be redeemable or retirable by the association on such terms and conditions as may be provided by the bylaws and printed on the stock certificate. Preferred stockholders shall not be entitled to vote. Whenever an association organized hereunder with preferred stock shall purchase the stock or any interest in any property of any person it may discharge the obligation so incurred wholly or in part by exchanging for the acquired interest shares of its preferred stock to an amount which would equal the fair market value of the stock or interest so purchased as determined by the board of directors.

**History:** Laws 1937, ch. 152, § 12; 1941 Comp., § 48-1312; 1953 Comp., § 45-14-12.

## **ANNOTATIONS**

**Intent of legislature in establishing required reserve** in Subsection C was to assure protection of the association's creditors by establishing an adequate reserve fund and to establish a means for maintaining capital in the association. 1963-64 Op. Att'y Gen. No. 63-149.

**Only common stock to be included in reserve fund requirement.** - Because, in a stock association, the holders of common stock are the members of the association, but the preferred stockholders are not members and do not have a voice in the control of the corporation, the intention of the legislature was to include only common stock in the reserve fund requirement of Subsection C for stock associations. 1963-64 Op. Att'y Gen. No. 63-149.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 22.

3 C.J.S. Agriculture § 142.

**76-12-13. General and special meeting; how called.**

One or more regular meetings shall be held annually in such places, as the bylaws may stipulate. The board of directors shall have the right to call a special meeting at any time; and ten (10%) percent of the members may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting, or if provided by the bylaws, all notices may be given by publication in a house organ of general circulation among the members.

**History:** Laws 1937, ch. 152, § 13; 1941 Comp., § 48-1313; 1953 Comp., § 45-14-13.

### **ANNOTATIONS**

**Compiler's note.** - For similar provision in earlier act, see Laws 1925, ch. 99, § 12.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 142.

### **76-12-14. Directors; election.**

The affairs of the association shall be managed by a board of not less than five or [nor] more than twenty-one directors to be elected by the members with such qualifications as may be provided for in the articles of incorporation or bylaws. All of the directors shall be members of the association or officers, directors or members of member associations.

When a vacancy on the board of directors occurs other than by expiration of term or removal, the remaining members of the board, shall fill the vacancy either by a majority vote of the board, or by calling a special election of the members in the district affected.

There shall be no personal liability to a director or member of an association in his official action or omission except for wilful negligence or malfeasance in office.

**History:** Laws 1937, ch. 152, § 14; 1941 Comp., § 48-1314; 1953 Comp., § 45-14-14.

### **ANNOTATIONS**

**Compiler's note.** - For similar provision in earlier act, see Laws 1925, ch. 99, § 7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 18.

3 C.J.S. Agriculture § 144.

### **76-12-15. Officers.**

The officers of every such association shall be a president, one or more vice presidents, a secretary and a treasurer and such other officers as may be authorized in the bylaws. The president and at least one of the vice presidents must be members and directors of the association. The office of secretary and treasurer may be combined. The treasurer may be other than a member of the association and as such shall not be considered as an officer, but as a function [functionary] of the board of directors. Officers shall be elected by the directors in the manner and for such terms as the bylaws provide.

**History:** Laws 1937, ch. 152, § 15; 1941 Comp., § 48-1315; 1953 Comp., § 45-14-15.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 18.

3 C.J.S. Agriculture § 143.

### **76-12-16. Contracts between associations and members.**

A. Members may be required to execute contracts as a condition of admission to the association, whereby the members agree to patronize the facilities created by the associations, to sell all or a specified part of their products to or through, or to buy all or a specified part of their supplies from or through, the association or any facilities created by it. If the members in the association contract a sale to or through the association the fact that for certain purposes the relation between the association and its members may be one of agency shall not prevent the passage from the member to the association of absolute and exclusive title to the products which are the subject matter of the contract. Such title shall pass to the association upon delivery of the product or at any other specified time which may be expressly and distinctly agreed upon in the contract subject to previously existing liens. In the case of contracts with members who are natural persons, if the period of the contract exceeds three years, the contracts executed thereunder shall specify a reasonable period in each year during which the member by giving to the association such reasonable notice as may be prescribed in the contract may withdraw and be released from his obligations, subject to liability already incurred by him as a member of the association. In the absence of a provision for notice of withdrawal in the contract a member who is a natural person may withdraw at any time after three years subject to liabilities already incurred.

B. The contract may fix, as liquidated damages, which shall not be regarded as penalties, specific sums to be paid by the member to the association upon the breach of any provision of the contract regarding the use of any facilities of the association or the sale or delivery or withholding of products and may further provide that the member who breaks his contract shall pay all costs, premiums for bonds, expenses and fees, in case any action is brought upon the contract by the association.



C. In the event of any breach or threatened breach of such a contract by a member, the association shall be entitled to an injunction to prevent the breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

D. The association may cause the original of a contract or an authenticated copy thereof to be filed in the office of the county clerk of the county in which the products described in the contract, or any part thereof, are or will at some future time be situated. Such contracts shall describe the property or services affected, the manner in which they are affected and the time for which they are affected and shall state the names and residences of the parties to the contract.

The filing of a contract in conformity to the provisions of this section shall operate as notice thereof to all subsequent purchasers and incumbrancers of so much of said property as is at the time mentioned in the contract located in the county or counties wherein such contract or authenticated copy thereof is filed; provided that when property subject to such a contract is moved into this state, or from one county to another, any previous filing of the contract shall not operate as notice as against subsequent creditors, purchasers, mortgagees or encumbrancers for a longer period than one hundred twenty days after such removal, but such contract must be refiled in the county to which the chattel is removed and in which it is permanently located. The fees for filing such contracts shall be twenty-five cents (25¢) for each contract.

E. Whenever such contract shall have terminated, the association shall on demand give to the member a certificate to that effect, which may be filed with the county clerk. The county clerk shall be entitled to the same filing fees under this subsection as in the case of chattel mortgages.

**History:** Laws 1937, ch. 152, § 16; 1941 Comp., § 48-1316; 1953 Comp., § 45-14-16.

## ANNOTATIONS

**Cross-references.** - For recording fees, see 14-8-12 NMSA 1978.

As to injunctions, see Rule 1-066.

**Compiler's note.** - For similar provisions in earlier act, see Laws 1925, ch. 99, §§ 13, 20 and 21.

**Contract enforceable.** - Cooperative marketing association without capital stock and operated for mutually beneficial purpose could enforce performance of grower's contract to sell alfalfa to it exclusively, in suit for specific performance or for injunction against contract breach; rule that contract for delivery of ordinary article of commerce would not be compelled by specific performance was not applicable, as action for damages would

not afford adequate remedy. *Elephant Butte Alfalfa Ass'n v. Rouault*, 33 N.M. 136, 262 P. 185 (1926).

Right of cooperative marketing association to compel specific performance of member's contract to sell alfalfa to it exclusively would not be denied on grounds that it would require constant court supervision for long period of time and possibly involve pursuit of member from place to place; such rule was one of decision, and not limitation on jurisdiction of court of equity. *Elephant Butte Alfalfa Ass'n v. Rouault*, 33 N.M. 136, 262 P. 185 (1926).

**Association not liable for losses.** - Agreement between members and nonprofit agricultural cooperative marketing association, making association sole marketing agency for members' onions and requiring association to gather, harvest and haul same at expense of individual members, created relationship of principal and agent; association was bargaining agent, not independent enterprise, did not take title to onion crop and was not liable for losses due to delay in making sales absent unreasonable exercise of discretion. *Santo Tomas Produce Ass'n v. Smith*, 68 N.M. 436, 362 P.2d 977 (1961).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 14.

Validity and construction of provision for liquidated damages in contract with cooperative marketing association, 12 A.L.R.2d 130.

3 C.J.S. Agriculture § 145.

## **76-12-17. Associations heretofore organized may adopt the provisions of this act.**

Any association organized under previously existing statutes may elect, by vote of its members as provided in its articles of incorporation and bylaws of [for] the amendment of its articles of incorporation and bylaws to be brought under the provisions of this act [76-12-1 to 76-12-23 NMSA 1978] by complying with the restrictions provided herein. A statement signed and sworn to by its directors to the effect that the corporation or association has decided to adopt the benefits and be bound by the provisions of this act and has duly authorized all changes accordingly shall be filed as required for the filing of an amendment to the articles of incorporation. The same fee shall be paid for such filing as for the filing of an amendment to the articles of incorporation.

**History:** Laws 1937, ch. 152, § 17; 1941 Comp., § 48-1317; 1953 Comp., § 45-14-17.

### **ANNOTATIONS**

**Cross-references.** - As to amendment of articles of incorporation, see 76-12-9 NMSA 1978.

**Compiler's note.** - For similar provision in earlier act, see Laws 1925, ch. 99, § 19.

## **76-12-18. Associations are not in restraint of trade.**

A. Any association organized hereunder and complying with the terms hereof shall be deemed not to be a conspiracy nor a combination in restraint of trade nor an illegal monopoly; nor an attempt to lessen competition or to fix prices arbitrarily or to create a combination or pool in violation of any law of this state; and the contracts and agreements between the association and its members and any agreements authorized in this act [76-12-1 to 76-12-23 NMSA 1978] shall be considered not to be illegal nor in restraint of trade nor a part of conspiracy or combination to accomplish an improper or illegal purpose nor contrary to the provisions of any statute enacted against pooling or combinations.

B. An association organized hereunder may acquire, exchange, interpret and disseminate to its members, to other cooperative associations and otherwise, past, present and prospective, crop, market, statistical, economic and other similar information either directly or through an agent created or selected by it or by other associations acting in conjunction with it.

C. An association organized hereunder may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities with due account of the prospective volume of consumption, selling prices and existing or potential surpluses to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure supplies without undue enhancement of prices or the accumulation of undue surpluses.

**History:** Laws 1937, ch. 152, § 18; 1941 Comp., § 48-1318; 1953 Comp., § 45-14-18.

### **ANNOTATIONS**

**Cross-references.** - For provision exempting nonprofit mutual help agricultural or horticultural organizations without capital stock from laws against monopolies or combinations in restraint of trade, see 57-1-4 NMSA 1978.

**Compiler's note.** - For similar provision in earlier act, see Laws 1923, ch. 36, § 1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 11.

Legality of combination among farmers, 25 A.L.R. 1113, 33 A.L.R. 247, 47 A.L.R. 936, 77 A.L.R. 405, 98 A.L.R. 1406, 12 A.L.R.2d 130.

## **76-12-19. Quo warranto to test validity of incorporation.**

The right of an association claiming to be organized and incorporated and carrying on its business under this act [76-12-1 to 76-12-23 NMSA 1978] to do and to continue its business, may be inquired into by quo warranto.

**History:** Laws 1937, ch. 152, § 19; 1941 Comp., § 48-1319; 1953 Comp., § 45-14-19.

### **ANNOTATIONS**

**Cross-references.** - As to quo warranto, see 44-3-1 NMSA 1978.

**Compiler's note.** - For similar provision in earlier act, see Laws 1915, ch. 64, § 6.

### **76-12-20. Taxation.**

It is the duty of every association organized under the Cooperative Marketing Association Act [76-12-1 to 76-12-23 NMSA 1978] and foreign associations admitted to do business in this state under that act to procure annually from the state corporation commission a license authorizing the transaction of business in the state. Each domestic or foreign corporation shall pay annually a license fee of twenty-five dollars (\$25.00) to the state corporation commission before receiving such license.

**History:** Laws 1937, ch. 152, § 20; 1941 Comp., § 48-1320; 1953 Comp., § 45-14-20; 1993, ch. 311, § 13.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, substituted "the Cooperative Marketing Association" for "this" in the first sentence and "twenty-five dollars (\$25.00)" for "ten dollars (\$10.00)" in the second sentence, made several stylistic changes, and deleted the following language which formerly followed "license" at the end of the section: "except that when the gross sales of the association on business done within the state shall be less than twenty thousand dollars (\$20,000.000) per year, the license to be paid shall be five dollars (\$5.00)".

**Compiler's note.** - For similar provision in earlier act, see Laws 1925, ch. 99, § 14.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 12; 51 Am. Jur. 2d Licenses and Permits § 42.

### **76-12-21. Application of general corporation laws.**

The provisions of the general business corporation laws of this state and all powers and rights thereunder shall apply to the associations organized hereunder, except where such provisions are inconsistent with the express provisions of this act [76-12-1 to 76-12-23 NMSA 1978].

**History:** Laws 1937, ch. 152, § 21; 1941 Comp., § 48-1321; 1953 Comp., § 45-14-21.

#### **ANNOTATIONS**

**Cross-references.** - For Business Corporation Act, see 53-11-1 NMSA 1978.

**Compiler's note.** - For similar provision in earlier act, see Laws 1925, ch. 99, § 17.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 18 Am. Jur. 2d Cooperative Associations § 12.

#### **76-12-22. Repeal; saving's [saving] clause.**

Chapter 66, Session Laws of 1927, (being Sections 31-201 to 31-214, inclusive, New Mexico Statutes Annotated, 1929 Compilation), is repealed. Provided, however, that this act [76-12-1 to 76-12-23 NMSA 1978], and such repeal, shall not in any way affect or limit any marketing association heretofore organized under the provisions of said laws, and that such association may elect to adopt the provisions of this act as provided in Section 17 [76-12-17 NMSA 1978] hereof.

**History:** Laws 1937, ch. 152, § 22; 1941 Comp., § 48-1322; 1953 Comp., § 45-14-22.

#### **ANNOTATIONS**

**Compiler's note.** - Laws 1927, ch. 66, referred to in this section, relates to marketing agreement crop liens involving cooperative marketing agricultural and horticultural associations created under Laws 1925, ch. 99, or similar associations.

#### **76-12-23. Interpretation.**

Each and all the rights and remedies hereby given shall be construed as in addition to those already existing.

**History:** Laws 1937, ch. 152, § 24; 1941 Comp., § 48-1323; 1953 Comp., § 45-14-23.

#### **ANNOTATIONS**

**Severability clauses.** - Laws 1937, ch. 152, § 23, provides for the severability of the act if any part thereof is held to be unconstitutional.

## **ARTICLE 13**

# **PROCESSORS OF AGRICULTURAL PRODUCTS**

### **76-13-1. Processing enterprises declared public utilities.**

Any mechanical plant, business or establishment operated within New Mexico by any person, firm or corporation for the purpose of treating, processing or refining, or in any other way preparing for sale, use, transportation or marketing agricultural products which are not the property of such person, firm or corporation, but which are treated, processed or refined for sale, use, transportation or marketing for a consideration, charge or fee to be complied with or paid by the owner or owners of such agricultural products, is hereby declared to be a public utility. As used in Sections 76-13-1 through 76-13-9 NMSA 1978, "agricultural products" means cotton, and "mechanical plant, business or establishment" means cotton gins, cotton compresses and cotton warehouses.

**History:** Laws 1927, ch. 101, § 1; C.S. 1929, § 134-1125; 1941 Comp., § 48-1601; 1953 Comp., § 45-15-1; Laws 1979, ch. 62, § 1.

### **ANNOTATIONS**

**Provisions of this article apply to company operating cotton compress,** since it is public utility. 1943-44 Op. Att'y Gen. No. 4568.

**Punitive damages for contract breach.** - In suit for breach of contract to harvest, dehydrate and process alfalfa, evidence that defendants falsified weight records of plaintiff's hay with intent to cheat or defraud him, authorized award of punitive damages. *Whitehead v. Allen*, 63 N.M. 63, 313 P.2d 335 (1957).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 54; 64 Am. Jur. 2d Public Utilities § 1 et seq.

3 C.J.S. Agriculture § 5; 73B C.J.S. Public Utilities § 2.

### **76-13-2. [Considerations, charges or fees; power and duty of corporation commission.]**

The state corporation commission shall have power and be charged with the duty of fixing, determining, supervising, regulating and controlling all considerations, charges or fees of all public utilities defined in Section 1 [76-13-1 NMSA 1978], hereof in the same manner and to the same extent that they are authorized to fix, determine, supervise, regulate and control charges and rates of transportation and transmission companies and common carriers in Article XI of the constitution of the state of New Mexico, except that appeals from the action of the commission shall be taken to the district court.

**History:** Laws 1927, ch. 101, § 2; C.S. 1929, § 134-1126; Laws 1939, ch. 134, § 1; 1941 Comp., § 48-1602; 1953 Comp., § 45-15-2.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 54; 64 Am. Jur. 2d Public Utilities §§ 88 to 100.

Discrimination between property within and that outside governmental districts as to public service or utility rates, 8 A.L.R.2d 839.

3 C.J.S. Agriculture § 5; 73B C.J.S. Public Utilities §§ 15 to 17, 23 to 43, 52, 56 to 59.

### **76-13-3. [Filing schedule of considerations, rates, charges and fees.]**

The owner or owners, lessees, operators or managers of the public utilities defined in Section 1 [76-13-1 NMSA 1978], hereof, shall, within thirty days after this act [76-13-1 to 76-13-9 NMSA 1978] becomes effective, file with the state corporation commission a complete schedule of all its considerations, rates, charges and fees made to owners of agricultural products for treating, refining, processing or otherwise preparing such agricultural products for sale, use, transportation or marketing, which schedule shall include all charges of whatever kind, or character, including handling, weighing, storing, loading and moving, and no other charge shall be made for any service rendered by such public utility except charges included in such schedule. A copy of such schedule shall be posted in a conspicuous place at the plant of any such public utility.

**History:** Laws 1927, ch. 101, § 3; C.S. 1929, § 134-1127; 1941 Comp., § 48-1603; 1953 Comp., § 45-15-3.

## **ANNOTATIONS**

**Effective dates.** - Laws 1927, ch. 101, contained no effective date, but was enacted at a session which adjourned on March 12, 1927. See N.M. Const., art. IV, § 23.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 55 C.J.S. Manufactures § 5.

### **76-13-4. [Filing personnel lists.]**

Every public utility defined in Section 1 [76-13-1 NMSA 1978] hereof, shall file with the state corporation commission a full and complete list of the names and place [places] of residence of all owners, partners and directors of corporations, lessees, operators, managers, superintendents and the firm name and style of any partnership, engaged in operating any such public utility.

**History:** Laws 1927, ch. 101, § 4; C.S. 1929, § 134-1128; 1941 Comp., § 48-1604; 1953 Comp., § 45-15-4.

### **76-13-5. [Decrease or change of rates; restrictions; burden of proving reasonableness.]**

The rates and charges for services to be charged by any public utility defined in Section 1 [76-13-1 NMSA 1978] hereof shall be the rates fixed in the schedule and approved by the commission or as fixed by order of the commission, and it shall be unlawful for such public utility to directly or indirectly decrease, by rebates or any other subterfuge, the charges made to any patron, or to charge a greater sum for services than that fixed in the schedule and approved by the commission or as prescribed by order of the commission.

No person, firm or corporation engaged in operating any public utility defined in Section 1 hereof shall make any change, voluntarily or otherwise, in any existing and duly established rate or charge fixed in its schedule filed with the state corporation commission as required in Section 3 [76-13-3 NMSA 1978] hereof, without the consent and approval of the state corporation commission.

In any proceeding upon the motion of the state corporation commission, involving any proposed or existing rate of any public utility, or in any proceeding upon complaint involving any proposed increase or decrease in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

**History:** Laws 1927, ch. 101, § 5; C.S. 1929, § 134-1129; Laws 1939, ch. 134, § 2; 1941 Comp., § 48-1605; 1953 Comp., § 45-15-5.

#### **ANNOTATIONS**

**Rebates discriminatory.** - Rebates made by cotton ginner based upon amount of business done are probably illegal, as such would be discrimination against little customer and evasion of law fixing rates for public utilities. 1931-32 Op. Att'y Gen. 86.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Utilities §§ 83, 127.

73B C.J.S. Public Utilities §§ 18 to 22, 34, 36 to 41, 45 to 49, 52 to 55, 57.

#### **76-13-6. [Petition of patrons regarding rates; hearing; decision; effect.]**

If, at any time, twenty-five or more patrons of any public utility defined in Section 1 [76-13-1 NMSA 1978] hereof shall file a complaint with the state corporation commission that any rate or charge fixed in its schedule, as required in Section 3 [76-13-3 NMSA 1978] hereof, is unjust, unfair, unreasonable or excessive, the state corporation commission shall fix a time and place for hearing upon such petition, which hearing shall be held in the vicinity in which such public utility is located and after such hearing the state corporation commission shall decide if the rate or charge complained of is unjust, unfair, unreasonable or excessive and if the state corporation commission shall decide that the rate or charge complained of is unjust, unfair, unreasonable or excessive, it shall determine and fix a fair and just rate or charge to be made by such public utility, which rate so fixed and determined shall continue in full force and effect



until changed or modified with the consent and approval of the state corporation commission. In the event an appeal is taken from the decision of the state corporation commission, the rate or charge fixed by the commission, on its hearing, shall continue in full force and effect until the same is changed or modified by any order of the district court.

**History:** Laws 1927, ch. 101, § 6; C.S. 1929, § 134-1130; 1941 Comp., § 48-1606; 1953 Comp., § 45-15-6.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Utilities §§ 126 to 132.

73B C.J.S. Public Utilities § 59.

### **76-13-7. [Penalty for collecting charges different from scheduled rates.]**

Any person, firm or corporation engaged in operating a public utility as defined in Section 1 [76-13-1 NMSA 1978], hereof, who shall collect any charge or rate other than that fixed in the schedule required in Section 3 [76-13-3 NMSA 1978], hereof, or as fixed by the state corporation commission or by order of court shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum of not less than fifty (\$50.00) dollars, nor more than five hundred (\$500.00) dollars, and every day any such person, firm or corporation shall collect such excessive rate or charge shall be considered a separate offense.

**History:** Laws 1927, ch. 101, § 7; C.S. 1929, § 134-1131; Laws 1939, ch. 134, § 3; 1941 Comp., § 48-1607; 1953 Comp., § 45-15-7.

### **76-13-8. [Penalty for refusal to operate because of rates fixed by corporation commission or court.]**

Any person, firm or corporation operating a public utility as defined in Section 1 [76-13-1 NMSA 1978], hereof, who shall refuse to operate any such public utility on account of any rate or charge fixed by the state corporation commission or by order of court, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of five hundred (\$500.00) dollars, and every day any such person, firm or corporation shall so refuse to operate such public utility shall be considered a separate offense.

**History:** Laws 1927, ch. 101, § 8; C.S. 1929, § 134-1132; 1941 Comp., § 48-1608; 1953 Comp., § 45-15-8.

## **76-13-9. [Hearing powers of corporation commission.]**

The state corporation commission in conducting hearings under this act [76-13-1 to 76-13-9 NMSA 1978] shall have the same powers as are conferred on them by the constitution and statutes of this state with reference to hearing in cases of transportation and transmission companies and common carriers.

**History:** Laws 1927, ch. 101, § 9; C.S. 1929, § 134-1133; 1941 Comp., § 48-1609; 1953 Comp., § 45-15-9.

### **ANNOTATIONS**

**Cross-references.** - For powers of corporation commission under state constitution, see N.M. Const., art. XI.

As to hearings on complaints brought before corporation commission, see 63-7-1 NMSA 1978 et seq.

**Severability clauses.** - Laws 1927, ch. 101, § 10, provides for the severability of the act if any part thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Utilities § 283.

73B C.J.S. Public Utilities §§ 44, 50 to 52, 77 to 98.

## **ARTICLE 14 COTTON GINNING AND HANDLING**

### **76-14-1. Short title.**

This act [76-14-1 to 76-14-15 NMSA 1978] may be cited as the "Cotton Ginning and Handling Act".

**History:** 1953 Comp., § 45-16-11, enacted by Laws 1977, ch. 116, § 1.

### **ANNOTATIONS**

**Cross-references.** - For Cotton District Act, see 76-18-1 NMSA 1978 et seq.

**Compiler's note.** - Laws 1957, ch. 136, § 11, repealed former 45-16-11, 1953 Comp., relating to cotton gins.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Cotton industry as affected with a public interest, 23 A.L.R. 1478, 74 A.L.R. 1079.

## **76-14-2. Definitions.**

As used in the Cotton Ginning and Handling Act [76-14-1 to 76-14-15 NMSA 1978]:

- A. "board" means the board of regents of New Mexico state university;
- B. "cotton gin" means the set of machines which operates as a unit to clean and remove cotton lint from cotton seed and produce bales of cotton lint;
- C. "department" means the New Mexico department of agriculture;
- D. "director" means the director of the New Mexico department of agriculture; and
- E. "person" includes individuals, partnerships, corporations, societies and associations.

**History:** 1953 Comp., § 45-16-12, enacted by Laws 1977, ch. 116, § 2.

### **ANNOTATIONS**

**Compiler's note.** - Laws 1957, ch. 136, § 11, repealed former 45-16-12, 1953 Comp., relating to cotton gins.

## **76-14-3. Records of cotton transactions; contents; inspection.**

All common carriers, buyers, sellers and other persons or their agents operating cotton compresses or otherwise dealing in or handling bales of cotton, shall make and keep a complete and accurate record showing the dates of all transactions involving the handling of bales of cotton. The record shall include all identifying markings, gin code and bale numbers and the weight of each bale of cotton handled. The record of a specific lot of cotton shall be open to inspection by only the producer of the cotton or his duly authorized agents or attorneys and by agents of the board. All records required by this section shall be kept for a period of three years.

**History:** Laws 1927, ch. 164, § 1; C.S. 1929, § 116-1001; 1941 Comp., § 48-1713; 1953 Comp., § 45-16-13; Laws 1977, ch. 116, § 3.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 8 C.J.S. Bailments §§ 34, 75.

## **76-14-4. Establishing identity of bales before transporting or compressing.**

Whenever there is delivered to any common carrier or compress, any bale of cotton not bearing the ginner's metal tag or seal bearing the gin code and bale numbers, or if the

tag or seal is so mutilated that the gin code and bale numbers are not legible, the bale of cotton shall be set aside and shall not be transported or compressed until its identity is satisfactorily established.

**History:** Laws 1927, ch. 164, § 2; C.S. 1929, § 116-1002; 1941 Comp., § 48-1714; 1953 Comp., § 45-16-14; Laws 1977, ch. 116, § 4.

### **76-14-5. Compressed bales to bear identical tag or seal attached by ginner.**

Every person engaged in operating a cotton compress shall at the time each bale of cotton is delivered to a carrier, attach thereto the identical ginner's metal tag or seal bearing the gin code and bale numbers, which was attached to the bale when it was received by the compress.

**History:** Laws 1927, ch. 164, § 3; C.S. 1929, § 116-1003; 1941 Comp., § 48-1715; 1953 Comp., § 45-16-15; Laws 1977, ch. 116, § 5.

### **76-14-6. Bill of lading; contents.**

In addition to other information required by law, every common carrier who accepts any bale of cotton for shipment shall state in the bill of lading the name of the consignee, the name and address of the consignor and the gin code and bale numbers as shown on the ginner's metal tag or seal attached to the bale.

**History:** Laws 1927, ch. 164, § 4; C.S. 1929, § 116-1004; 1941 Comp., § 48-1716; 1953 Comp., § 45-16-16; Laws 1977, ch. 116, § 6.

### **76-14-7. Civil liability.**

If any violation of the Cotton Ginning and Handling Act [76-14-1 to 76-14-15 NMSA 1978] results in a loss to the owner of any bale of cotton or cottonseed, the person shall be responsible in a civil action to the owner for any damage suffered by reason of the violation plus a reasonable attorney's fee to be fixed by the court. This section shall not be construed as a limitation upon the owner's remedies.

**History:** Laws 1927, ch. 164, § 5; C.S. 1929, § 116-1005; 1941 Comp., § 48-1717; 1953 Comp., § 45-16-17; Laws 1977, ch. 116, § 7.

## **ANNOTATIONS**

**Cross-references.** - For criminal penalty for violation of act or regulations of board, see 76-14-15 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 8 Am. Jur. 2d Bailments §§ 37 to 39, 41 to 44.

### **76-14-8. Cotton gins; licenses.**

Cotton gins operated in New Mexico shall be charged with a public use. An operator or owner of a cotton gin shall obtain a license as a public ginner by making application to the department. A public ginner license shall be issued for a period not to exceed one year and shall specify the date upon which it is to terminate. The director may, from time to time, renew or extend a ginner's license by a written instrument which shall specify the date of its termination. The fee for issuing or renewing or extending a license shall be ten dollars (\$10.00), which shall be paid to the board and used in carrying out the provisions of the Cotton Ginning and Handling Act [76-14-1 to 76-14-15 NMSA 1978].

**History:** 1953 Comp., § 45-16-18, enacted by Laws 1957, ch. 136, § 1; 1977, ch. 116, § 8.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 8 C.J.S. Bailments § 34; 53 C.J.S. Licenses § 34.

### **76-14-9. Application for license; bond.**

A. The application for a public ginner's license shall state:

- (1) the location of the gin;
- (2) the name and address of the owner or operator;
- (3) the number of gin stands;
- (4) the number of bales of cotton ginned during the preceding season;
- (5) the gin code number; and
- (6) such other information as may be required by the department.

B. The application shall be accompanied by a surety bond in the penal sum of one thousand dollars (\$1,000) payable to the state for the use and benefit of all who may have a claim against the applicant arising under the provisions of the Cotton Ginning and Handling Act [76-14-1 to 76-14-15 NMSA 1978]. When the protection afforded by the bond has been reduced by reason of a judgment against its maker, the maker shall be required to give a new bond or raise the protection afforded by the original bond to its former penal sum. The conditions and obligations in the bond shall be in conformity

with the conditions required of public ginnerers as set forth in the Cotton Ginning and Handling Act.

**History:** 1953 Comp., § 45-16-19, enacted by Laws 1957, ch. 136, § 2; 1977, ch. 116, § 9.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 53 C.J.S. Licenses § 43.

### **76-14-10. Attachment of serial tags or seals.**

A ginner shall securely attach by metal attachment, to each bale of cotton, when ginned, one metal tag or seal showing the serial number of the bale and the name, address and gin code number of the gin. Suitable metal tags or seals, with metal attachments, as prescribed by the department, shall be provided by the ginnerers.

**History:** 1953 Comp., § 45-16-20, enacted by Laws 1957, ch. 136, § 3; 1977, ch. 116, § 10.

### **76-14-11. Misrepresentation of contents of bale.**

No person shall fraudulently, willfully and knowingly place on the outside of a cotton bale a layer of a better grade and quality of cotton than that on the inside of the bale.

**History:** 1953 Comp., § 45-16-21, enacted by Laws 1957, ch. 136, § 4; 1977, ch. 116, § 11.

### **76-14-12. Records.**

Ginnerers operating within the state shall keep, after the end of the ginner's fiscal year and for a period of three years, records of all cotton ginned in a manner approved by the board. The records shall show the name of the ginner, gin code number, the name of the person for whom cotton was ginned, weight of the bale, weight of the seed, numbers placed on bales and the name [names] of persons to whom bales and seed were delivered. The records shall at all times be open to inspection by officers, agents or employees of the department.

**History:** 1953 Comp., § 45-16-22, enacted by Laws 1957, ch. 136, § 5; 1977, ch. 116, § 12.

### **76-14-13. Enforcement.**

The board has full power and authority to make such regulations as may be necessary for the administration and enforcement of the Cotton Ginning and Handling Act [76-14-1

to 76-14-15 NMSA 1978] and through the department shall administer and enforce the Cotton Ginning and Handling Act and regulations adopted by the board.

**History:** 1953 Comp., § 45-16-23, enacted by Laws 1957, ch. 136, § 6; 1977, ch. 116, § 13.

### **ANNOTATIONS**

**Cross-references.** - For State Rules Act, see 14-3-24, 14-3-25 and 14-4-1 to 14-4-9 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 8 C.J.S. Bailments § 34.

#### **76-14-14. Receipt for cotton ginned; liability for loss.**

An owner or person in charge of a cotton gin shall issue a receipt covering the bales of cotton ginned by it and deliver the receipt to the owner of the cotton after payment of charges due. The receipt shall recite the numbers on the bale or bales covered thereby and the name of the owner thereof as given by the person delivering the cotton to the gin. Delivery of cotton receipted to a holder of a receipt, properly endorsed, or made in favor of the bearer, shall exonerate the owner or operator of a gin from liability for wrongful delivery. The owner or operator of a gin may require the surrender of a receipt before the delivery of cotton described therein or may, in lieu of the receipt, require a bond indemnifying him against damages for wrongful delivery. The owner of a cotton gin shall be liable for any damage that may accrue to the owner of cotton by reason of its being damaged by fire or lost by theft, while in the ginner's charge. A ginner shall provide yard space and shall yard all cotton ginned by him and may make a reasonable charge therefor. However, an owner, or person duly authorized by him to sell cotton, may, in writing, relieve the gin owner from liabilities and responsibilities and thereupon the gin owner shall make no charge for yard space. Cotton shall be deemed to be in the charge of the gin owner from the time the seed cotton is weighed or registered at the gin until the ginned cotton is regularly taken from the gin yard. There shall be no liability for loss occasioned by fire until the cotton has been delivered to and received by the gin owner for ginning.

**History:** 1953 Comp., § 45-16-24, enacted by Laws 1957, ch. 136, § 7; 1977, ch. 116, § 14.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 8 Am. Jur. 2d Bailments §§ 37 to 45, 97, 98.

#### **76-14-15. Penalty.**

A. Any person who operates a gin without a license and without giving a bond, as herein provided, or continues to operate a gin after forfeiture of bond, or failure to give sufficient bond is guilty of a misdemeanor and, upon conviction, may be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each and every day the gin is so operated. The director may refuse to grant or renew a license to any person whose license has been revoked within one year of its revocation.

B. Every person who violates a provision of the Cotton Ginning and Handling Act [76-14-1 to 76-14-15 NMSA 1978] or regulation adopted by the board pursuant thereto is guilty of a misdemeanor and, upon conviction, may be fined not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200), or may have his ginner license suspended or revoked, unless a different offense and a different penalty is provided by Subsection A of this section. Each violation is a separate offense.

**History:** 1953 Comp., § 45-16-26, enacted by Laws 1957, ch. 136, § 9; 1977, ch. 116, § 15.

## ANNOTATIONS

**Cross-references.** - As to civil liability for violation of Cotton Ginning and Handling Act, see 76-14-7 NMSA 1978.

**Severability clauses.** - Laws 1957, ch. 136, § 10, provides for the severability of the act if any part or application thereof is held invalid.

Laws 1977, ch. 116, § 17, provides for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 53 C.J.S. Licenses §§ 78 to 81.

## ARTICLE 15 FRUIT AND VEGETABLE STANDARDS

### 76-15-1. Purpose of act.

The declared purpose of this act [76-15-1 to 76-15-9 NMSA 1978] is to promote the development of marketing conditions and grading standards for the New Mexico fruit industry; to prevent fraud and deception in the grading and marketing of fruit in intrastate, interstate and foreign commerce; to control the marketing of substandard fruit; to eliminate or reduce economic waste in marketing; to provide methods for the development of markets and marketing standards for fruit grown within the state of New Mexico by the establishment of districts within the state for such regulation.

**History:** 1941 Comp., § 48-1824, enacted by Laws 1949, ch. 106, § 1; 1953 Comp., § 45-17-24.



## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 19; 35 Am. Jur. 2d Food § 5.

Disease or infection, validity of statutes, ordinances or regulations for protection of vegetation against, 70 A.L.R.2d 852.

3 C.J.S. Agriculture § 6; 36A C.J.S. Food §§ 3, 6.

### **76-15-2. Application of act.**

All fruit grown within the state of New Mexico for which specific standards are hereinunder established, and all growers, shippers and packers growing and handling such fruit raised within any marketing district shall come within the meaning of this act [76-15-1 to 76-15-9 NMSA 1978], except that fruit grown for home consumption and which does not enter the market for resale outside of the district, as herein defined, is exempt herefrom.

**History:** 1941 Comp., § 48-1825, enacted by Laws 1949, ch. 106, § 2; 1953 Comp., § 45-17-25.

## ANNOTATIONS

**Cross-references.** - For definition of "district," see 76-15-3 NMSA 1978.

For controlling effect of Produce Marketing Act fruit grading standards if higher than standards promulgated for a district under this act, see 76-15-22 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 19; 35 Am. Jur. 2d Food § 5.

3 C.J.S. Agriculture § 6; 36A C.J.S. Food § 3.

### **76-15-3. Definition of terms.**

A. "Fruit," as used in this act [76-15-1 to 76-15-9 NMSA 1978], means apples, pears and peaches produced in the state of New Mexico.

B. "Person" means an individual, firm, corporation, association or other business unit.

C. "Grower" means any person engaged in the raising, care and picking of fruit for market.

D. "District," as used in this act, shall mean any county within the state wherein the growers have organized, as provided herein.

E. "Marketing order" means any order regulating the marketing, or grading standards of fruit, or both, issued by the director, to carry out the intents and purposes of this act, with the recommendation and approval, or approval, of the board of directors of any district.

**History:** 1941 Comp., § 48-1826, enacted by Laws 1949, ch. 106, § 3; 1953 Comp., § 45-17-26.

#### **76-15-4. Director; appointment, duties, qualifications, oath, bond, salary, employees, traveling expenses.**

A. The board of regents of the college of agriculture and mechanic arts [New Mexico state university], shall, immediately after the effective date of this act, appoint the director, whose duty it shall be, under the supervision, direction and control of said board of regents, to administer this act [76-15-1 to 76-15-9 NMSA 1978] and be charged with the enforcement of its provisions. Such director, before entering upon the duties of his office, shall make and subscribe to the oath of office required of state officials, and make a surety bond payable to the state of New Mexico, in the sum of \$1000.00, for the faithful performance of his duties. The bond to be approved by said board of regents, aforesaid. The salary of such director shall be fixed annually by the board of regents not to exceed the sum of \$1200.00 per annum, and such board of regents shall appoint such clerks and other employees as it may deem necessary for the efficient administration of the provisions of this act, and shall fix their salaries. Such director, employees and clerks shall serve at the pleasure of the board of regents of the college of agriculture and mechanic arts [New Mexico state university].

B. The director shall appoint, with the consent and approval of the board of directors of each district, an assistant director for each district, who shall make his residence in said district. The duties of the assistant director shall be such as are delegated to him by the director and board of directors of each district.

C. The director shall administer and enforce the provisions of this act, and shall have and may exercise any and all administrative powers conferred upon him under the provisions of this act. In order to effectuate the declared purposes and provisions of this act, the director is authorized to issue, administer and enforce the provisions of marketing orders made hereunder, regulating the marketing and grading standards of fruit. The director shall have power or authority to delegate to any assistants any portion or all of the powers or authority herein vested in the director.

D. The director shall appoint an advisory board of control for each district, upon application of the district through its board of directors. The appointment of the board of control, its membership and duties, shall be as recommended by the board of directors of the district.

E. The director may issue marketing orders, applicable to any district, to carry out the provisions of this act whenever such orders are recommended and approved by the

board of directors of any district. Before the promulgation and effective date of any such order, due notice of and an opportunity for a public hearing shall be given. Said notice of hearing shall be given to all persons directly affected by the order and such hearing shall be open to the public. Notice shall be by publication in a legal newspaper of general circulation within the district. Such notice shall be given and publication made at least five (5) days prior to date of such hearing.

F. Any marketing order issued by the director hereunder shall become effective at once upon issuance thereof.

**History:** 1941 Comp., § 48-1827, enacted by Laws 1949, ch. 106, § 4; 1953 Comp., § 45-17-27.

## ANNOTATIONS

**Cross-references.** - As to oath required of public officers, see N.M. Const., art. XX, § 1.

For State Rules Act, see 14-3-24, 14-3-25 and 14-4-1 to 14-4-9 NMSA 1978.

As to publication of legal notice, see 14-11-1 NMSA 1978 et seq.

**Bracketed material.** - The bracketed references to "New Mexico state university" in Subsection A were inserted by the compiler, as the name of New Mexico college of agriculture and mechanic arts was changed to New Mexico state university by N.M. Const., art. XII, § 11, repealed and reenacted November 8, 1960. The bracketed insertions were not enacted by the legislature and are not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 20; 35 Am. Jur. 2d Food § 5.

36A C.J.S. Food § 4.

### **76-15-5. Districts; organization.**

A. An election for the organization of a district shall be called by the director when twenty-five (25) growers within any given area shall petition the director therefor, which petition shall define the exterior boundaries of such district.

B. Every grower in any district who has from one to five acres in fruit, as herein defined, shall have one vote in any election herein provided for, and for each five acres, or major fraction thereof, in addition thereto such grower shall have one additional vote. The number of acres each voter has under this provision shall be determined by the county agriculture extension agent.

C. When such petition is filed with the director, he shall call an election to be held within the area of such proposed district, the call for such election shall be posted in five public

places within such district and shall be published once each week for three successive weeks in a legal newspaper in each county in the area of such proposed district, and which notice [sic] shall define the exterior boundaries of such district, the last publication to be not less than five days prior to the date of such election.

D. If, in such election, sixty (60%) percent of the votes cast shall be in favor of the organization of a district, then such district shall be considered as an organized district.

E. Within thirty days after the vote for an organized district, the director shall be required to call, by proper notice, a meeting of the growers in said district for the purpose of perfecting the district organization and voting for a board of directors for such district.

F. The board of directors shall consist of not less than five nor more than nine members, as determined by the growers at their first meeting.

G. Organized districts, as herein provided for, shall be considered as and shall become a corporate body [corporate bodies] with power to sue and be sued and to pass bylaws for the governing of the organization.

H. Organized districts may be disestablished after a period of three years of organization in the same manner and by the same method as established.

**History:** 1941 Comp., § 48-1828, enacted by Laws 1949, ch. 106, § 5; 1953 Comp., § 45-17-28.

## **ANNOTATIONS**

**Cross-references.** - As to publication of legal notice, see 14-11-1 NMSA 1978 et seq.

### **76-15-6. Budgeting and collection of fees.**

A. For the purpose of providing funds to defray the necessary expenses incurred by the director in the formulation, issuance, administration and enforcement of any marketing order issued by the director hereunder, together with advertising and sales promotion costs, the director shall prepare a necessary budget covering the costs of the same. Such budget, together with the provisions for the collection of such necessary fees, the time and conditions of such payment, shall in no case exceed five (5%) percent of the gross dollar volume of all sales by growers and shall become a part of any marketing order upon adoption as provided in this act [76-15-1 to 76-15-9 NMSA 1978]. Each and every person engaged in the growing, packing or shipping of any fruit within the state and directly affected by any marketing order issued pursuant to this act for such commodity, shall pay to the director for such time and in such manner as prescribed by the order as adopted, as assessment covering the budgets provided by this act, such percentages of the gross dollar volume of such sales or distribution of any commodity affected by any marketing order, as are necessary to defray the expenses of the

enforcement of this act, but in no case to exceed five (5%) percent of the gross dollar volume.

The director shall prescribe the rules and regulations with respect to the assessment and collection of such funds for such purposes.

B. Any moneys collected by the director shall be deposited in the New Mexico fruit marketing act fund in a federal depository and disbursed only by the board of directors of the district concerned, only for the actual costs, expenses and salaries incurred under the provisions of this act. All moneys remaining in such fund may be refunded at the close of any marketing season upon a pro rata basis to all persons, from whom such funds were collected, or may be held over for the next succeeding year's accruing costs of administration.

**History:** 1941 Comp., § 48-1829, enacted by Laws 1949, ch. 106, § 6; 1953 Comp., § 45-17-29.

## **ANNOTATIONS**

**Cross-references.** - As to collection of assessments under the act, see 76-15-8 NMSA 1978.

### **76-15-7. Compliance; violations; penalties.**

A. The director shall be responsible for the administration and enforcement of this act [76-15-1 to 76-15-9 NMSA 1978].

B. Every person who violates any provision of this act or any provision of any marketing order duly issued by the director hereunder, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00). Each day during which any of the violations above referred to continue [continues] shall constitute a separate offense.

C. Upon the filing of a certified complaint charging violation of any provisions of this act or of any provisions of any marketing order issued by the director hereunder and prior to the institution of any court proceeding authorized hereinafter, the director may, in his discretion, refer the matter to the attorney general or any district attorney of this state for action pursuant to the provisions of this act.

D. If the director finds that no violation has occurred, he shall forthwith dismiss such complaint and notify the parties to such complaint.

E. If the director finds that a violation has occurred, he shall so enter his findings and notify the parties to such complaint. Should the respondent or respondents thereafter fail, neglect or refuse to desist from such violation, within the time specified by the

director, the director may thereupon file a complaint against such respondent or respondents in a court of jurisdiction, as hereinafter set forth.

F. Each district attorney of this state may, upon his own initiative, and upon any complaint of any person, shall, if after investigation he believes a violation to have occurred, bring a criminal action in the proper court in his district, in the name of the state of New Mexico, in any court of competent jurisdiction in the state of New Mexico against any person violating any provision of this act or of any marketing order duly issued by the director hereunder.

G. The director, through the attorney general of this state, may, upon his own initiative, and upon complaint of any person, if, after investigation he believes a violation to have occurred, shall bring an action in the name of the state of New Mexico in the proper court of the state of New Mexico for an injunction against any person violating any provisions of this act or of any marketing order duly issued by the director hereunder.

H. The court may issue a temporary restraining order and preliminary injunction as in other action for injunctive relief, and upon trial of such action, and if judgment be in favor of the plaintiff, the court shall permanently enjoin the defender [defendant] from further violations.

I. The judgment, if in favor of the plaintiff, shall provide that the defendant pay to the plaintiff reasonable costs of such suit, including attorney's fees incurred by any advisory board of control in the prosecution of such action.

J. Any such action may be commenced either in the county where the defendant resides or where any act or omission or part thereof complained of occurred.

**History:** 1941 Comp., § 48-1830, enacted by Laws 1949, ch. 106, § 7; 1953 Comp., § 45-17-30.

## **ANNOTATIONS**

**Cross-references.** - As to injunctions, see Rule 1-066.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 7; 36A C.J.S. Food §§ 21 to 29.

### **76-15-8. [Assessments; collection.]**

Any assessment herein levied, in such specified amount as may be determined by the director pursuant to the provisions of this act [76-15-1 to 76-15-9 NMSA 1978], shall constitute a personal debt of every person so assessed and shall be due and payable to the director when payment is called for by the director. In the event of failure of such person or persons to pay any such assessment upon the date determined by the

director, the director may file a complaint against such person or persons in a state court of competent jurisdiction for the collection thereof.

**History:** 1941 Comp., § 48-1831, enacted by Laws 1949, ch. 106, § 8; 1953 Comp., § 45-17-31.

#### **ANNOTATIONS**

**Cross-references.** - As to determination by director of amount of assessment, limitation thereon and collection of same, see 76-15-6 NMSA 1978.

#### **76-15-9. [Boards of control; boards of directors; limitation on responsibility.]**

The members of any advisory board of control, duly appointed by the director, including employees of such board, and members of a board of directors of any district, shall not be held responsible individually in any way whatsoever to any producer, processor, distributor or other handler or any other person, for errors in judgment, mistakes or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of such board. The liability of the members of such board shall be several and not joint, and no member shall be liable for the default of any other member.

**History:** 1941 Comp., § 48-1832, enacted by Laws 1949, ch. 106, § 9; 1953 Comp., § 45-17-32.

#### **ANNOTATIONS**

**Severability clauses.** - Laws 1949, ch. 106, § 10, provides for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 5.

3 C.J.S. Agriculture §§ 15 to 24; 36A C.J.S. Food § 4.

#### **76-15-10. Exclusions and exemptions.**

The Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978] shall not apply to any New Mexico grower growing and selling produce of his own production.

**History:** 1953 Comp., § 45-17-33, enacted by Laws 1963, ch. 82, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 Am. Jur. 2d Agriculture § 23.

36A C.J.S. Food § 10.

### **76-15-11. Short title.**

This act [76-15-10 to 76-15-22 NMSA 1978] may be cited as the "Produce Marketing Act".

**History:** 1953 Comp., § 45-17-34, enacted by Laws 1963, ch. 82, § 2.

### **76-15-12. Purpose of act.**

The purpose of the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978] is to promote the development of the produce industry in New Mexico, to prevent fraud and deception in the receiving, packing, marketing, shipping, consignment, sale and accounting of sales of produce, to establish quality standards for produce and to provide for proper licensing and bonding of brokers, packers and wholesalers covered by the Produce Marketing Act.

**History:** 1953 Comp., § 45-17-35, enacted by Laws 1963, ch. 82, § 3.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality of statutes relating to grading, packing or branding of farm products, 73 A.L.R. 1445.

36A C.J.S. Food § 3.

### **76-15-13. Definitions.**

As used in the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978]:

A. "produce" means the food product from any vine, tree or plant which produces fruits, vegetables or nuts for human consumption;

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

C. "broker" means a commission merchant or any other person engaged in the business of receiving any produce for sale, on commission or for or on behalf of another;

D. "packer" means any person engaged in the business of grading, packing, cooling or storing of any produce other than his own production;

E. "grower" means any person engaged in the growing of any produce crop;



F. "person" means individuals, partnerships, corporations and grower cooperative associations or any other legal entities;

G. "dealer" means any person engaged in the business of buying any produce from the grower for processing or resale; and

H. "cash buyer" means any person who acquires possession or control of produce and pays in full at the time of the acquisition in lawful money of the United States or by certified or cashier's check or by post office money order.

**History:** 1953 Comp., § 45-17-36, enacted by Laws 1963, ch. 82, § 4; 1981, ch. 283, § 1; 1987, ch. 312, § 1.

### **76-15-14. Application; license; bonds.**

Except for a cash buyer, no person shall act as a dealer, broker or packer without first obtaining a license from the board. The board may grant licenses in proper cases upon written application accompanied by the appropriate fee and surety bond. The application shall be on a form prescribed and provided by the board, and shall require information concerning the identity of the owners and officers of the firm to be licensed, and any other information the board deems necessary. The surety bond shall be approved as to form by the attorney general and shall be conditioned on the conduct of the business of the person bonded in compliance with the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978], and honestly and without fraud. The bond shall run to the state of New Mexico for the payment of all inspection fees, and for the benefit of any person or persons injured by the dishonesty, fraud or noncompliance with the Produce Marketing Act or any regulation of the board.

**History:** 1953 Comp., § 45-17-37, enacted by Laws 1963, ch. 82, § 5; 1981, ch. 283, § 2.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 12.

36A C.J.S. Food § 12.

### **76-15-15. License fees; bonds.**

The fees and bonds required under the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978] shall be established by the department of agriculture in an amount not to exceed:

Fee	License	Bond
Broker	\$100	

\$100,000	
Packer	\$50.00
\$50,000	
Dealer	\$50.00
\$50,000	

**History:** 1953 Comp., § 45-17-38, enacted by Laws 1963, ch. 82, § 6; 1981, ch. 283, § 3.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 12.

36A C.J.S. Food § 12.

### 76-15-16. Records and accounts.

All persons licensed under the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978] shall keep complete and accurate records showing all produce handled by them, the ownership of the produce, date and place of any shipments. Packers will give growers the weight or count by box or bag of any produce packed for the grower. Brokers are required to give growers a record of the shipments upon completion of shipping.

**History:** 1953 Comp., § 45-17-39, enacted by Laws 1963, ch. 82, § 7.

### 76-15-17. Board regulations.

The board is authorized to:

- A. establish, after proper hearing, reasonable rules and regulations on containers, packaging and labeling;
- B. establish regulations on acquiring information about brokers, [and] packers, relative to the officers, or officials in the company; and
- C. establish any other rules or regulations the board may deem necessary.

**History:** 1953 Comp., § 45-17-40, enacted by Laws 1963, ch. 82, § 8.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 5.

3 C.J.S. Agriculture § 6; 36A C.J.S. Food § 19.

## **76-15-18. Voluntary certification; fees.**

Any grower, or broker, desiring federal-state inspection certificates on loads or lots of fruits or vegetables may request inspection and certification and receive such inspection and certification upon payment of fees set by board regulation to cover the cost of inspection fees and issuance of the certificates.

**History:** 1953 Comp., § 45-17-41, enacted by Laws 1963, ch. 82, § 9.

## **76-15-19. Penalties.**

Any person violating any provision of the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978] or any rule or regulation promulgated by the board is guilty of a misdemeanor and upon conviction shall be fined not more than three hundred dollars (\$300) or imprisoned for not more than ninety days, or both. Conviction of a misdemeanor under the Produce Marketing Act is grounds for revocation of license.

**History:** 1953 Comp., § 45-17-42, enacted by Laws 1963, ch. 82, § 10.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 64.

36A C.J.S. Food §§ 30 to 38.

## **76-15-20. Injunction.**

In addition to any other remedy under law, the board may apply to the district court for an injunction, and in proper case the district court may issue a temporary or permanent injunction or both, restraining any person from violating or continuing to violate any of the provisions of the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978] or any regulation promulgated by the board. In issuing an injunction on the application of the board, the court shall require no bond.

**History:** 1953 Comp., § 45-17-43, enacted by Laws 1963, ch. 82, § 11.

### **ANNOTATIONS**

**Cross-references.** - As to injunctions, see Rule 1-066.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 36A C.J.S. Food § 29.

## **76-15-21. Individual action on bond.**

In the absence of written agreement between the parties, setting a shorter time, no action by an owner or grower for payment from any broker or other person for any load or lot of produce shall be commenced prior to sixty days from the time of shipment. After sixty days from the date of shipment such action can be maintained against the broker and his bond unless the broker has ample justification to show why the payments have not been made.

**History:** 1953 Comp., § 45-17-44, enacted by Laws 1963, ch. 82, § 12.

## **76-15-22. Relationship to other laws.**

If at any time, standards are promulgated for the grading of fruit for a district organized under Sections 76-15-1 through 76-15-9 NMSA 1978, the standards for the district shall control insofar as they are higher than the standards set under the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978]. Insofar as the district standards are lower, the standards set under the Produce Marketing Act shall control.

**History:** 1953 Comp., § 45-17-45, enacted by Laws 1963, ch. 82, § 13.

### **ANNOTATIONS**

**Severability clauses.** - Laws 1963, ch. 82, § 14, provides for the severability of the Produce Marketing Act if any part or application thereof is held invalid.

## **ARTICLE 16 PECANS**

### **76-16-1. [Definitions.]**

In this act [76-16-1 to 76-16-9 NMSA 1978], unless the context otherwise requires:

"container" means any sack, box, barrel, carton or other receptacle used for packing, shipping or selling unshelled pecans;

"subcontainer" means any container when being used within another container;

"pack" and "packed" means the regular placing or arrangement of all or parts of the unshelled pecans in any container or subcontainer;

"deceptive pack" means any container or subcontainer which has in the outer layer or any exposed surface, unshelled pecans which are in quality, size, condition or in any other respect so superior to those in the interior of the container or subcontainer, or the unexposed portion, as to materially misrepresent the contents; such pack is deceptive even though the pecans in the container are virtually uniform in size, when the outer or

exposed surface is composed of pecans whose size is not an accurate representation of the variation of size of the pecans in the entire container;

"mislabel" means the placing or presence of any false or misleading statement, design or device, upon any container, or upon the label or lining of any such container or subcontainer containing unshelled pecans, or upon any placard used in connection therewith and having reference to such pecans; a statement, design or device is false or misleading, when the pecans, or container to which it apparently or actually refers, does not conform in every respect to such statement;

"bulk lot" or "bulk load" of any unshelled pecans, means any group of specimens of the same which are not in a container and which is set apart or is separate from any other group or groups;

"placard" means any sign, label or designation other than an oral designation used in connection with any unshelled pecans as a description or identification thereof;

"deceptive arrangement" or "deceptive display" of unshelled pecans means bulk load or lot, arrangement or display thereof which has in the exposed surface unshelled pecans which are so superior in quality, size [or] condition, or in any other respect so superior to those which are concealed, or the unexposed portion, as to materially misrepresent any part of the bulk load or lot;

"mature," except when otherwise specifically defined, means having reached that stage of ripeness which will insure the proper completion of the ripening process after the removal of the product from the tree on which it grew;

"well cured" means that the kernel separates freely from the shell and from the corky partitions inside the shell, and the kernel is not tough or leathery;

"free from rancidity" means that the kernel is not noticeably rancid to the taste;

"free from molds" means that there is no mold on or inside the kernel;

"free from worm injury" means that there are no worms, web or frass inside the shell;

"free from decay" means that the kernel is not putrid or decomposed;

"excessive shriveling" means any combination of shriveling and lack of development which leaves the meat of the nut decidedly shrunken and unpalatable;

"unshelled pecans" means the food product of the pecan tree when the kernel or edible portion has not been separated from the shell;

"germinated kernels" means that the kernels have commenced to grow or develop into a plant or have started to sprout from the shell.

**History:** Laws 1939, ch. 215, § 1; 1941 Comp., § 48-1901; 1953 Comp., § 45-18-1.

#### **ANNOTATIONS**

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality of statutes relating to grading, packing or branding of farm products, 73 A.L.R. 1445.

#### **76-16-2. Declaration.**

The purpose of this act [76-16-1 to 76-16-9 NMSA 1978] is to promote the development of the New Mexico pecan industry; to prevent deception in the packing, marking, shipping or sale of unshelled pecans which are packed, marketed, sold or shipped from this state to other states, or imported from other states into this state, or which are sold in this state in packages or bulk, and to set up and establish standards therefor, and protect from disease and injurious insects the pecan orchards of the state.

**History:** Laws 1939, ch. 215, § 2; 1941 Comp., § 48-1902; 1953 Comp., § 45-18-2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 36A C.J.S. Food § 9.

#### **76-16-3. [Enforcement; rules and regulations; effect; agents and employees; payment.]**

The regents of the college of agriculture and mechanic arts of the state of New Mexico [New Mexico state university], are charged with the enforcement of this act [76-16-1 to 76-16-9 NMSA 1978], and such regents are authorized and empowered to promulgate, publish and enforce such reasonable rules and regulations not in conflict herewith, as they may deem necessary to carry out the provisions of this act, and such rules and regulations shall have the force and effect of law and [the regents] shall appoint such agents and employees and fix the salary thereof as may be necessary for the enforcement hereof, and such salaries and expenses of such agents and employees in connection with the enforcement of this act, shall be a proper charge against the appropriations for the college of agriculture and mechanic arts [New Mexico state university].

**History:** Laws 1939, ch. 215, § 3; 1941 Comp., § 48-1903; 1953 Comp., § 45-18-3.

#### **ANNOTATIONS**

**Bracketed material.** - The bracketed references to "New Mexico state university" were inserted by the compiler, as the name of the New Mexico college of agriculture and

mechanic arts was changed to New Mexico state university by N.M. Const., art. XII, § 11, repealed and reenacted November 8, 1960. The bracketed insertions were not enacted by the legislature and are not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 5.

36A C.J.S. Food § 4.

#### **76-16-4. [Inspection and police powers.]**

Such regents, their agents and employees shall have power to enter and inspect every place or vehicle within the state where pecans are produced, received, packed, delivered, loaded, shipped, offered for sale or sold, whether for intrastate or interstate shipment, and to inspect such places and all unshelled pecans and containers of unshelled pecans therein. Each such agent and employee, shall have the same powers with respect to the performance of the duties imposed by this act [76-16-1 to 76-16-9 NMSA 1978] as are possessed by peace officers, and shall have the right, while exercising such police powers, to seize or hold as evidence such part of any pack, load, lot, consignment or shipment of unshelled pecans packed, delivered for shipment, loaded, shipped or being transported, offered for sale or sold, in violation of this act, as may in his judgment be necessary to secure the conviction of any person whom he knows, or has good reason to believe, is violating any of the provisions thereof.

**History:** Laws 1939, ch. 215, § 4; 1941 Comp., § 48-1904; 1953 Comp., § 45-18-4.

#### **ANNOTATIONS**

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

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 13.

36A C.J.S. Food § 12.

#### **76-16-5. Standard for unshelled pecans.**

A. Unshelled pecans shall be free from blanks and from damage such as germinated kernels, and free from foreign materials. The kernels of unshelled pecans must be mature, well cured, free from rancidity, molds, worm injury and excessive shriveling, so that the meat is [not] leathery, tough, unpalatable or decidedly shrunken and must equal not less than forty-five percent of the total weight of kernel and shell. Not more than ten percent by count of the unshelled pecans in any one container or bulk lot may be below these requirements. Pecans showing the presence of insect pests shall not be tolerated.

B. All containers of unshelled pecans shall bear upon them in plain sight and in plain letters, not less than one and one-half inches in height on the outside thereof, the name of the state or of the foreign country where the pecans were produced.

**History:** Laws 1939, ch. 215, § 5; 1941 Comp., § 48-1905; 1953 Comp., § 45-18-5.

### **76-16-6. Pecans not in conformity with act.**

A. It shall be unlawful to pack or cause to be packed, sell, offer for sale, deliver for shipment, load, ship or transport for shipment, whether packed, shipped or sold or offered for sale in domestic, interstate, intrastate or foreign commerce any unshelled pecans within the meaning of this act [76-16-1 to 76-16-9 NMSA 1978] which do not conform with the requirements of this act. It shall also be unlawful to prepare, deliver for shipment, load, ship, transport, offer for sale or sell a deceptive peck, bulk lot, bulk load, arrangement or display of unshelled pecans within the meaning of this act, or to mislabel any container, subcontainer or display of such unshelled pecans.

B. Nothing in this act shall be construed to conflict with any other law of the state of New Mexico or of the United States of America or regulations regarding net weight or other markings on containers or subcontainers.

**History:** Laws 1939, ch. 215, § 6; 1941 Comp., § 48-1906; 1953 Comp., § 45-18-6.

### **76-16-7. Seizure.**

A. Any unshelled pecans packed, stored or delivered for shipment, loaded, shipped or being transported or sold in violation of any of the provisions of this act [76-16-1 to 76-16-9 NMSA 1978], and their containers, are public nuisances, and shall not be moved from the place where they may be, except under the specific direction of a proper enforcing officer. If, after notice of such violation is given to the packer or owner of such unshelled pecans, such packer or owner refuses, or fails within twenty-four hours, to recondition or re-mark the same so as to comply with all the requirements of this act, such pecans and their containers may be seized by such agent or employee and by the order of the district judge of the county within which the same may be, shall be condemned and destroyed, or released upon such conditions as the court, in its discretion, may impose to insure that they will not be packed, delivered for shipment, shipped, transported or sold in violation of this act.

B. No provision of this act shall be construed to prevent the shelling of any pecans within this state, or to prevent a grower of pecans in this state, from selling or delivering the same unpacked and unmarked, as a part of his crop in bulk, to a sheller or packer of pecans for shelling, grading, packing or storage within this state. Any such agent or employee may require from the owner or shipper of unshelled pecans such written or other proof as may be reasonably necessary that such pecans will be used only as permitted by this section and shall hold such pecans until satisfactory proof is given that the same will be so used.



**History:** Laws 1939, ch. 215, § 7; 1941 Comp., § 48-1907; 1953 Comp., § 45-18-7.

### **ANNOTATIONS**

**Cross-references.** - As to public nuisances in general, and abatement of same, see 30-8-1 and 30-8-8 NMSA 1978.

#### **76-16-8. Prosecution.**

The district attorney of any judicial district in which a violation of this act [76-16-1 to 76-16-9 NMSA 1978] occurs shall, upon request of any enforcing officer or other interested person, prosecute such violation.

**History:** Laws 1939, ch. 215, § 8; 1941 Comp., § 48-1908; 1953 Comp., § 45-18-8.

#### **76-16-9. Penalty for violation.**

Any person who violates any provision of this act [76-16-1 to 76-16-9 NMSA 1978] or lawful rule or regulation made pursuant hereto, shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars [(\$500)] or be imprisoned not more than one year, or both.

**History:** Laws 1939, ch. 215, § 9; 1941 Comp., § 48-1909; 1953 Comp., § 45-18-9.

### **ANNOTATIONS**

**Severability clauses.** - Laws 1939, ch. 215, § 10, provides for the severability of the act if any provision thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 64.

36A C.J.S. Food §§ 30 to 38.

## **ARTICLE 17 PEANUTS**

#### **76-17-1. Short title.**

This act may be cited as the "Peanut Act".

**History:** 1953 Comp., § 45-23-1, enacted by Laws 1963, ch. 167, § 1.

### **ANNOTATIONS**

**Meaning of "this act".** - The phrase "this act", as used in this section refers, to Laws 1963, ch. 167, the provisions of which are presently compiled as 76-17-1 to 76-17-4 and 76-17-6 to 76-17-9 NMSA 1978.

## **76-17-2. Definitions.**

As used in the Peanut Act:

A. "commission" means the New Mexico peanut commission;

B. "producer" means any person who is a resident of New Mexico and engaged in producing peanuts in the state as evidenced by possession of a farm acreage allotment and marketing quota for peanuts issued by the United States department of agriculture; and

C. "processor" means any person who cleans, handles, shells or crushes peanuts in this state.

**History:** 1953 Comp., § 45-23-2, enacted by Laws 1963, ch. 167, § 2.

### **ANNOTATIONS**

**Peanut Act.** - See 76-17-1 NMSA 1978 and note thereto.

**"Handle," as used in Subsection C of this section, encompasses** the buying and selling or dealing in peanuts and those operations that constitute a step in placing peanuts on the market. 1963-64 Op. Att'y Gen. No. 63-164.

## **76-17-3. Peanut commission; creation; members.**

A. There is created the "New Mexico peanut commission", consisting of five members who are producers. Members of the commission shall be elected by all producers, in elections conducted under regulations promulgated by the commission.

B. The secretary of state shall appoint three producers to conduct the election of the initial members of the commission. At the first meeting of the initial members, they shall [shall] determine, by lot, one member to serve for one year from January 1 following his election, one member to serve two years, one member to serve three years, one member to serve four years and one member to serve five years. Thereafter, as the terms of the initial members expire, their replacements shall be elected for terms of five years. Vacancies shall be filled by the remaining members of the commission for the unexpired term.

C. Members of the commission shall receive no compensation but shall be reimbursed for expenses at the rate of twenty dollars (\$20.00) for each day necessarily engaged in the performance of duty, and eight cents (\$.08) a mile for each mile necessarily traveled

in the performance of duty. In lieu of the mileage allowance, actual expense of travel by common carrier may be paid.

D. The commission shall elect one of its members to serve as chairman.

**History:** 1953 Comp., § 45-23-3, enacted by Laws 1963, ch. 167, § 3.

### ANNOTATIONS

**Cross-references.** - For Per Diem and Mileage Act, see 10-8-1 to 10-8-7 NMSA 1978.

**Legislator not prevented from serving as member** of peanut commission by 10-16-9 NMSA 1978. 1979 Op. Att'y Gen. No. 79-34.

**State legislator may serve on commission.** - As the position of peanut commissioner is elected rather than appointed, N.M. Const., art. IV, § 28, does not operate to prevent a state legislator from serving in that capacity during a term for which he was elected. 1979 Op. Att'y Gen. No. 79-34.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 18.

### **76-17-4. Peanut commission; duties.**

The commission shall plan and conduct campaigns for education, advertising, publicity, sales promotion and research as to New Mexico peanuts, and may make contracts and do anything necessary to effectuate the purposes of the Peanut Act. The commission may cooperate with other states, [and] regional and national organizations in research, advertising, publicity, education and other means of promoting sale and use of peanuts, and it may employ and fix the salaries of necessary personnel.

**History:** 1953 Comp., § 45-23-4, enacted by Laws 1963, ch. 167, § 4.

### ANNOTATIONS

**Peanut Act.** - See 76-17-1 NMSA 1978 and note thereto.

**Peanut commissioner elected position.** - If not for the fact of being elected, it would appear that the position of peanut commissioner is a civil office. 1979 Op. Att'y Gen. No. 79-34.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 5.

36A C.J.S. Food § 4.

### **76-17-5. Peanut commission attached to New Mexico department of agriculture.**

The commission is attached for coordinative purposes to the New Mexico department of agriculture. The commission shall execute a memorandum of understanding with the director of the New Mexico department of agriculture, identifying areas for cooperation and coordination of the activities of the commission with those of the department of agriculture. Administrative and other services may be provided the commission by the department pursuant to the terms of the memorandum of understanding. The commission shall submit an annual report on its activities to the director. This section shall not be construed to affect the exercise of any commission power or duty.

**History:** 1953 Comp., § 45-23-4.1, enacted by Laws 1977, ch. 256, § 1.

### **ANNOTATIONS**

**Peanut commissioner elected position.** - If not for the fact of being elected, it would appear that the position of peanut commissioner is a civil office. 1979 Op. Att'y Gen. No. 79-34.

### **76-17-6. Processor license.**

Every processor shall pay to the commission an annual license fee of fifty dollars (\$50.00).

**History:** 1953 Comp., § 45-23-5, enacted by Laws 1963, ch. 167, § 5.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 36A C.J.S. Food § 12.

### **76-17-7. Peanut excise tax.**

In addition to all other taxes, there is levied an excise tax on all peanuts grown and sold in this state, except for peanuts sold for seed. The amount of the tax shall be determined by the commission each year and calculated to return sufficient revenue to meet the amount of the commission's approved budget, less the amount of the balance in the peanut fund, but not to exceed a tax of one dollar (\$1.00) a ton. Each processor shall collect the tax on all peanuts bought by him and shall pay to the commission, not later than the tenth day of each month, the amount collected during the previous month. Each processor shall keep a complete record of the amount of peanuts subject to tax bought by him, for not less than two years, and the records may be inspected by the commission or its agent at any time.

**History:** 1953 Comp., § 45-23-6, enacted by Laws 1963, ch. 167, § 6.

### **ANNOTATIONS**

**"Approved budget".** - "Approved budget" is budget which has been approved by department of finance and administration; peanut commission must prepare and submit budget for such approval. 1965 Op. Att'y Gen. No. 65-224.

Money in "approved budget" comes from peanut excise tax and from amount in "peanut fund," which includes processors' license fees. 1965 Op. Att'y Gen. No. 65-224.

### **76-17-8. Receipts and disbursements.**

A. All money collected by the commission under provisions of the Peanut Act shall be received and disbursed directly by the commission, and proposed vouchers, purchase orders and contracts need not be submitted to the department of finance and administration under Section 6-5-3 NMSA 1978.

B. The commission shall designate banks where its money is to be deposited.

C. When authorized by the commission, its chairman shall, in the name of the commission:

(1) issue warrants against funds of the commission in payment of its lawful obligations;

(2) issue purchase orders; and

(3) execute contracts.

D. The commission shall provide its own warrant, purchase order and contract forms and other supplies and equipment.

E. All receipts and disbursements are subject to audit by the state auditor.

**History:** 1953 Comp., § 45-23-7, enacted by Laws 1963, ch. 167, § 7; 1973, ch. 93, § 1.

### **ANNOTATIONS**

**Peanut Act.** - See 76-17-1 NMSA 1978 and note thereto.

**Peanut commission must prepare and submit budget for approval** by department of finance and administration. 1965 Op. Att'y Gen. No. 65-224.

### **76-17-9. Penalty.**

Any person who violates any provision of the Peanut Act is guilty of a misdemeanor.

**History:** 1953 Comp., § 45-23-8, enacted by Laws 1963, ch. 167, § 8.

### **ANNOTATIONS**

**Peanut Act.** - See 76-17-1 NMSA 1978 and note thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 64.

36A C.J.S. Food §§ 30 to 39.

## **ARTICLE 18 COTTON DISTRICTS**

### **76-18-1. Short title.**

This act [76-18-1 to 76-18-9 NMSA 1978] may be cited as the "Cotton District Act".

**History:** 1953 Comp., § 45-24-1, enacted by Laws 1965, ch. 107, § 1.

### **ANNOTATIONS**

**Cross-references.** - For Cotton Ginning and Handling Act, see 76-14-1 NMSA 1978 et seq.

### **76-18-2. Purpose of act.**

The purpose of the Cotton District Act [76-18-1 to 76-18-9 NMSA 1978] is to promote the cotton industry in the state by preventing fraud and deception in ginning and marketing, eliminating or reducing economic waste in marketing and developing markets.

**History:** 1953 Comp., § 45-24-2, enacted by Laws 1965, ch. 107, § 2.

### **76-18-3. Definitions.**

As used in the Cotton District Act [76-18-1 to 76-18-9 NMSA 1978]:

A. "cotton" means all varieties or strains of upland cotton, except American-Egyptian varieties when not mixed in harvesting or ginning;

B. "grower" means any person engaged in raising cotton for market;

C. "district" means a cotton district organized under the Cotton District Act for the growing and marketing of a single variety of cotton;

D. "order" means any order regulating the marketing or growing of cotton issued under the Cotton District Act; and

E. "director" means the director of the state department of agriculture.

**History:** 1953 Comp., § 45-24-3, enacted by Laws 1965, ch. 107, § 3.

#### **76-18-4. Duties of director.**

Under supervision and control of the board of regents of New Mexico state university, the director shall:

A. administer and enforce the Cotton District Act [76-18-1 to 76-18-9 NMSA 1978], and he may delegate all, or any portion, of his powers to any assistant directors;

B. appoint, with the consent of each district board of directors, an assistant director for each district, who shall reside in the district and perform duties assigned by the director and the district board; and

C. issue orders applicable to any district whenever the orders are recommended and approved by the district board of directors, and after notice and an opportunity for public hearing by all persons directly affected by the order. Notice of the hearing shall be given by publication in a newspaper of general circulation within the district at least five days prior to the hearing. Any order becomes effective upon issuance.

**History:** 1953 Comp., § 45-24-4, enacted by Laws 1965, ch. 107, § 4.

#### **ANNOTATIONS**

**Cross-references.** - As to publication of legal notice, see 14-11-1 NMSA 1978 et seq.

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

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

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

#### **76-18-5. Districts; organization.**

A. Whenever twenty-five or more growers within any given area petition the director to create a district within the area described in the petition, he shall call an election to be held within the area. The call for election shall be posted in five public places within the proposed district and published once in a newspaper of general circulation in each county lying within, or partly within, the proposed district not less than five days prior to the date of the election. At the election, each grower in the proposed district who has up to ten acres of cotton shall have one vote, and he shall have one additional vote for each additional ten acres or major fraction. If sixty percent of the votes cast in the election favor the creation, the district is created.

B. Within thirty days after creation, the director shall call a meeting of growers of the district to perfect the district organization and to select a district board of directors. The district board shall consist of at least five, but not more than nine, members, as determined by the growers at their first meeting.

C. Each district is a corporate body with power to sue and be sued and to pass bylaws for governing the organization.

D. Districts may be abolished after a period of two years in the same manner as provided for their creation.

**History:** 1953 Comp., § 45-24-5, enacted by Laws 1965, ch. 107, § 5.

### **ANNOTATIONS**

**Cross-references.** - As to publication of legal notice, see 14-11-1 NMSA 1978 et seq.

#### **76-18-6. Expenses; fees; disbursements.**

A. In order to defray necessary expenses he incurs in the formulation, issuance, administration and enforcement of any orders in a district, and advertising and sales promotion costs for the district, the director shall prepare a budget for these expenses, but the total budget shall not exceed an amount equal to one dollar (\$1.00) for each bale of cotton grown in the district. He shall issue an order including provision for collection of necessary fees to cover the amount of the budget, together with conditions for payment. Each grower, ginner or shipper of cotton within the district shall pay fees to the director for the time and in the manner prescribed by the order.

B. Any money collected by the director shall be deposited in the "cotton district fund" in a federal depository and disbursed by the district board of directors concerned for actual salaries and expenses incurred under the Cotton District Act [76-18-1 to 76-18-9 NMSA 1978]. Any money remaining in the fund may be refunded at the close of any marketing season upon a pro rata basis to all persons from whom it was collected, or it may be held over for the following year's expenses.

C. Any fee assessed under this section constitutes a personal debt of the person assessed and is subject to collection by the director in a civil action.

**History:** 1953 Comp., § 45-24-6, enacted by Laws 1965, ch. 107, § 6.

#### **76-18-7. Limitation of liability.**

The director and members and employees of a district board of directors are not responsible for errors in judgment, mistakes or other acts of commission or omission except for their own individual acts of dishonesty or crime.



**History:** 1953 Comp., § 45-24-7, enacted by Laws 1965, ch. 107, § 7.

#### **ANNOTATIONS**

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

#### **76-18-8. Penalty.**

Any person who violates any provision of the Cotton District Act [76-18-1 to 76-18-9 NMSA 1978] or any order of the director issued under the act is guilty of a misdemeanor.

**History:** 1953 Comp., § 45-24-8, enacted by Laws 1965, ch. 107, § 8.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food §§ 74 to 82.

36A C.J.S. Food §§ 39 to 49.

#### **76-18-9. Injunction.**

The director may bring an action in the district court to enjoin the violation of any provision of the Cotton District Act [76-18-1 to 76-18-9 NMSA 1978] or order of the director issued under the act.

**History:** 1953 Comp., § 45-24-9, enacted by Laws 1965, ch. 107, § 9.

#### **ANNOTATIONS**

**Cross-references.** - As to injunctions, see Rule 1-066.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 36A C.J.S. Food § 29.

## **ARTICLE 19 COMMERCIAL FEEDS**

#### **76-19-1. Short title.**

This act [76-19-1 to 76-19-14 NMSA 1978] may be cited as the "Commercial Feed Law".

**History:** 1953 Comp., § 47-22-1, enacted by Laws 1961, ch. 151, § 1; 1973, ch. 102, § 1.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Products liability: animal feed or medicines, 29 A.L.R.4th 1045.

Validity, under commerce clause (Art. I, § 8, cl. 3), of state statutes regulating labeling of food, 79 A.L.R. Fed. 246.

### **76-19-2. Enforcing official.**

The Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] shall be administered by the board of regents of New Mexico state university, hereinafter referred to as the "board."

**History:** 1953 Comp., § 47-22-2, enacted by Laws 1961, ch. 151, § 2; 1973, ch. 102, § 2.

### **76-19-3. Definitions.**

As used in the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978]:

- A. "person" includes individual, partnership, corporation and association;
- B. "distribute" means to offer for sale, sell or barter, commercial feed or customer-formula feed; or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder;
- C. "distributor" means any person who distributes;
- D. "sell" or "sale" includes exchange;
- E. "commercial feed" means all materials which are distributed for use as feed or for mixing in feed for animals other than man, except:
  - (1) unmixed or unprocessed whole seeds; or
  - (2) unground hay, straw, stover, silage, cobs, husks and hulls when not mixed with other materials;
- F. "feed ingredient" means each of the constituent materials making up a commercial feed;
- G. "customer-formula feed" means a mixture of commercial feeds or materials, or both, each batch of which is mixed according to the specific instructions of the final purchaser or contract feeder;

H. "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients;

I. "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man, and articles other than feed intended to affect the structure or any function of the animal body;

J. "brand name" means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others;

K. "product name" means the name of the commercial feed which identifies it as to kind, class or specific use;

L. "label" means a display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed;

M. "labeling" means all labels and other written, printed or graphic matter:

(1) upon a commercial feed or any of its containers or wrappers; or

(2) accompanying such commercial feed;

N. "ton" means a net weight of two thousand pounds, avoirdupois;

O. "percent" or "percentages" means percentages by weights;

P. "official sample" means any sample of feed taken by the board or its agent and designated as "official" by the board;

Q. "manufacture" means to grind, mix, blend or further process a commercial feed for distribution;

R. "contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product;

S. "producer-formula feed" means a mixture of commercial feeds or materials, or both, each batch of which is mixed for and according to the specific and signed instruction of the final purchaser or contract feeder. The purchaser or contract feeder shall have grown and furnished at least one of the major components of the mixture. In classifying a feed as a producer-formula feed, the purchaser or contract feeder waives all

protection afforded under the Commercial Feed Law and such feed is exempt from the provisions of that act; and

T. "pet food" means any commercial feed prepared and distributed for consumption by pets.

**History:** 1953 Comp., § 47-22-3, enacted by Laws 1961, ch. 151, § 3; 1973, ch. 102, § 3.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - What is "stock food" within meaning of statute, 17 A.L.R. 1288.

### 76-19-4. Registration.

A. Each commercial feed shall be registered before being distributed in this state. However, customer-formula feeds are exempt from registration. The application for registration shall be submitted on forms furnished by the board, and, if the board so requests, a label or other printed matter describing the product shall also be furnished. Each application for registration shall be accompanied by a fee of two dollars (\$2.00). All registrations expire annually on a date set by the board. Upon approval by the board, a copy of the registration shall be furnished to the applicant. The application shall include the information required by Paragraphs (2), (3), (4) and (5) of Subsection A of Section 76-19-5 NMSA 1978.

B. A distributor shall not be required to register any brand of commercial feed which is already registered under the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] by another person.

C. Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted provided there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

D. The board is empowered to refuse registration of any application not in compliance with the provisions of the Commercial Feed Law and to cancel any registration subsequently found not to be in compliance with any provision of that act. However, no registration shall be refused or cancelled until the registrant shall have been given opportunity to be heard before the board and to amend his application in order to comply with the requirements of the Commercial Feed Law.

**History:** 1953 Comp., § 47-22-4, enacted by Laws 1961, ch. 151, § 4; 1973, ch. 102, § 4.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 107.

36A C.J.S. Food § 3.

### **76-19-5. Labeling.**

A. Any commercial feed distributed in New Mexico, except a customer-formula feed, shall be accompanied by a legible label bearing the following information:

(1) the net weight;

(2) the name or brand under which the commercial feed is sold;

(3) the guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat and maximum percentage of crude fiber. For mineral feeds the list shall include the following, if added: minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I) and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the board. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the board. Products sold solely as mineral or vitamin supplements, or both, and guaranteed as specified in this section need not show guarantees for protein, fat and fiber;

(4) the common or usual name of each ingredient used in the manufacture of the commercial feed, except as the board may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function;

(5) the name and principal address of the person responsible for distributing the commercial feed;

(6) adequate directions for use for all commercial feeds containing drugs and for such other feeds as the board may require by regulation as necessary for their safe and effective use; and

(7) such warning or caution statements as the board by regulation determines are necessary for the safe and effective use of the commercial feed.

B. When a commercial feed is distributed in New Mexico in bags or other containers, the label shall be placed on or affixed to the container. When a commercial feed is distributed in bulk, the label shall accompany delivery and be furnished to the purchaser at time of delivery.

C. A customer-formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

(1) name and address of the mixer;

(2) name and address of the purchaser;

(3) date of sale;

(4) brand name and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added;

(5) adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the board may require by regulation as necessary for their safe and effective use; and

(6) such warning or caution statements as the board by regulation determines are necessary for the safe and effective use of the customer-formula feed.

**History:** 1953 Comp., § 47-22-5, enacted by Laws 1961, ch. 151, § 5; 1973, ch. 102, § 5.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 107.

Constitutionality of statutes requiring notice by label or otherwise of the fact that product is imported, or as to the place of production, 83 A.L.R. 1409, 124 A.L.R. 572.

### **76-19-6. Inspection fees.**

A. There shall be paid to the board for all commercial feeds distributed in New Mexico an inspection fee not to exceed fifteen cents (\$.15) per ton or, for each brand of commercial feed distributed in individual packages of ten pounds or less a distributor shall pay an annual inspection fee not to exceed twenty-five dollars (\$25.00) and shall not pay the tonnage fee on such packages of the brand so registered. The board shall have authority to adjust the fee. Fees collected shall not exceed the costs of inspection, sampling and analysis and other expenses necessary for the administration of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978]. The board shall, before changing the fees, first give notice of intent by publication once in a newspaper of general circulation in this state, setting forth the proposed change and the date on which the board will hold a hearing. Notification of any proposed fee change and date of hearing shall be mailed directly to all commercial feed dealers with products registered with the board. Persons affected by any proposed fee change shall have the right to present to the board their objections prior to its adoption. Fees collected shall constitute

a fund for the payment of the costs of inspection, sampling and analysis and other expenses necessary for the administration of the Commercial Feed Law.

B. Every person, except as hereinafter provided, who distributes commercial feed in New Mexico shall:

(1) file, not later than the last day of January, April, July and October of each year, a quarterly statement setting forth the number of net tons of commercial feeds distributed in New Mexico during the preceding calendar quarter, and upon filing such statement shall pay the inspection fee at the rate stated in Subsection A of this section. When more than one person is involved in the distribution of commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been made by a prior distributor of the feed; and

(2) keep such records as may be necessary or required by the board to indicate accurately the tonnage of commercial feed distributed in New Mexico, and the board shall have the right to examine such records to verify statements of tonnage. If any quarterly report is not filed or if the inspection fee is not paid within the thirty-day period after the end of a quarter, a penalty of twenty percent, or a sum of ten dollars (\$10.00), whichever is greater, will be due in addition to the inspection fees, and the inspection fees and the penalty shall constitute a debt for which suit may be brought by the board.

C. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor.

**History:** 1953 Comp., § 47-22-6, enacted by Laws 1973, ch. 102, § 6.

## **ANNOTATIONS**

**Cross-references.** - As to publication of legal notice, see 14-11-1 NMSA 1978 et seq.

**Repeals and reenactments.** - Laws 1973, ch. 102, § 6, repeals former 47-22-6, 1953 Comp., relating to inspection fees, and enacts the above section.

### **76-19-7. Adulteration.**

No person shall distribute an adulterated feed. A commercial feed or customer-formula feed shall be deemed to be adulterated:

A. if it bears or contains any poisonous, deleterious or nonnutritive ingredient which may render it injurious to health;

B. if it bears or contains any added poisonous, added deleterious or added nonnutritive substance which is unsafe as determined by the board;

C. if it is or it bears or contains any food additive which is unsafe as determined by the board;

D. if it contains a drug and the methods, facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice regulations promulgated by the board to assure that the drug meets the requirement of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the board shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the Federal Food, Drug and Cosmetic Act, unless it determines that they are not appropriate to the conditions which exist in New Mexico;

E. if it contains viable weed seeds in amounts exceeding the limits which the board shall establish by rule or regulation;

F. if any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

G. if its composition or quality falls below or differs from what it is purported to be or is represented to possess by its labeling; or

H. if it contains added hulls, screenings, straw, cobs or other high fiber material, unless the name of each such material is stated on the label.

**History:** 1953 Comp., § 47-22-7, enacted by Laws 1961, ch. 151, § 7; 1973, ch. 102, § 7.

## ANNOTATIONS

**Federal Food, Drug and Cosmetic Act.** - The provisions of the Federal Food, Drug and Cosmetic Act are compiled at 21 U.S.C. 301 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food § 107.

Constitutionality of statutes, ordinances or other regulations against adulteration of food products as applied to substances used for preservative purposes, 114 A.L.R. 1214.

Coloring matter as forbidden adulteration of food, 56 A.L.R.2d 1129.

Seller's duty to test or inspect as affecting his liability for product-caused injury, 6 A.L.R.3d 12.

Products liability: fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or article used in application thereof, 12 A.L.R.4th 462.



Products liability: animal feed or medicines, 29 A.L.R.4th 1045.

36A C.J.S. Food § 69.

### **76-19-8. Misbranding.**

No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded:

A. if its labeling is false or misleading in any particular;

B. if it is distributed under the name of another feed;

C. if it is not labeled as required in Section 76-19-5 NMSA 1978 of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] and in regulations prescribed under that act;

D. if it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition if any, prescribed by regulation of the board. In the adopting of such regulations, the board shall give due regard to commonly accepted definitions such as those issued by the association of American feed control officials; or

E. if any word, statement or other information required by or under authority of the Commercial Feed Law to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of of [sic] purchase and use.

**History:** 1953 Comp., § 47-22-8, enacted by Laws 1961, ch. 151, § 8; 1973, ch. 102, § 8.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Provisions of statutes against misbranding or false labeling of food, drug or cosmetic products, as applicable to literature other than that attached to product itself, 143 A.L.R. 1453.

36A C.J.S. Food § 48.

### **76-19-9. Inspection, sampling and analysis.**

A. It shall be the duty of the board, who may act through its authorized agent, to sample, inspect, make analyses of and test commercial feeds and customer-formula feeds distributed within New Mexico at such time and place to such an extent as may be

deemed necessary to determine whether such feeds are in compliance with the provisions of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978]. The board, individually or through its agent, is authorized to:

- (1) enter, during normal business hours, any public or private premises including any vehicle of transport, any factory, warehouse or establishment within New Mexico in which commercial feeds are manufactured, processed, packed or held for distribution;
- (2) inspect such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling;
- (3) have access to commercial feeds;
- (4) obtain samples; and
- (5) examine records relating to the distribution of commercial feeds.

B. The methods of sampling and analysis shall be those adopted by the board from sources such as the journal of the association of official agricultural chemists.

C. The board, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in Subsection P of Section 76-19-3 NMSA 1978 and obtained and analyzed as provided for in Subsection B of this section.

D. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results of analysis shall be forwarded by the board to the distributor and the purchaser. Upon request within thirty days, the board shall furnish to the distributor a portion of the sample concerned.

**History:** 1953 Comp., § 47-22-9, enacted by Laws 1961, ch. 151, § 9; 1973, ch. 102, § 9.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Seller's duty to test or inspect as affecting his liability for product-caused injury, 6 A.L.R.3d 12.

Products liability: fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof, 12 A.L.R.4th 462.

Products liability: animal feed or medicines, 29 A.L.R.4th 1045.

## **76-19-10. Rules and regulations.**

The board is hereby empowered to enforce the provisions of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] and to adopt standards or definitions for commercial feeding stuffs and to prescribe and enforce such rules and regulations relating to the sale of commercial feeding stuffs as it may deem necessary to carry into effect the lawful intent and meaning of that act. The standards or definitions and rules and regulations when adopted and published by the board shall have the same force and effect as the provisions of the Commercial Feed Law. Violations of the rules and regulations shall be subject to the same penalties as violations of the provisions of the Commercial Feed Law.

**History:** 1953 Comp., § 47-22-10, enacted by Laws 1961, ch. 151, § 10; 1973, ch. 102, § 10.

### **ANNOTATIONS**

**Cross-references.** - For State Rules Act, see 14-3-24, 14-3-25 and 14-4-1 to 14-4-9 NMSA 1978.

For penalties for violation of Commercial Feed Law, see 76-19-12 NMSA 1978.

#### **76-19-11. Detained commercial feeds.**

A. When the board or its authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] or of any of the prescribed regulations under that act, it may issue and enforce a written or printed "withdrawal from sale" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the board or the court. The board shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty days, the board may begin, or upon request of the distributor shall begin, proceedings for condemnation.

B. Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the board to a court of competent jurisdiction in the area in which the commercial feed is located. In the event the court finds the commercial feed to be in violation of the Commercial Feed Law and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of New Mexico. However, in no instance shall the disposition of condemned commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of condemned commercial feed or for permission to process or relabel condemned commercial feed to bring it into compliance with the Commercial Feed Law.

**History:** 1953 Comp., § 47-22-11, enacted by Laws 1961, ch. 151, § 11; 1973, ch. 102, § 11.

## **76-19-12. Penalties.**

A. Any person convicted of violating any of the provisions of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] or the rules and regulations issued thereunder or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent said board or its duly authorized agent in performance of its duty in connection [with] the provisions of that act, shall be adjudged guilty of a misdemeanor and shall be fined not less than five dollars (\$5.00) nor more than one hundred dollars (\$100) for the first violation, and not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for a subsequent violation. In all prosecutions under the Commercial Feed Law involving the composition of a lot of commercial feed, a certified copy of the official analysis shall be accepted as prima facie evidence of the composition.

B. Nothing in the Commercial Feed Law shall be construed as requiring the board or its representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of that act when it believes that the public interest will be best served by a suitable notice of warning in writing.

C. It is the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the board reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the board.

D. The board is authorized to apply for, and the court to grant, [a] temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of the Commercial Feed Law or any rule or regulation promulgated under that act notwithstanding the existence of other remedies at law. The injunction is to be issued without bond.

**History:** 1953 Comp., § 47-22-12, enacted by Laws 1961, ch. 151, § 12; 1973, ch. 102, § 12.

### **ANNOTATIONS**

**Cross-references.** - As to injunctions, see Rule 1-066.

For rule governing presumptions in criminal cases, see Rule 11-302.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Food §§ 64, 107.

Products liability: fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof, 12 A.L.R.4th 462.

Products liability: animal feed or medicines, 29 A.L.R.4th 1045.

36A C.J.S. Food §§ 30 to 38.

### **76-19-13. Cooperation with other entities.**

The board may cooperate with and enter into agreements with governmental agencies of New Mexico, other states, agencies of the United States government and private associations in order to carry out the purpose and provisions of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978].

**History:** 1953 Comp., § 47-22-12.1, enacted by Laws 1973, ch. 102, § 13.

### **76-19-14. Publications.**

The board shall publish at least annually, in such forms as it may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within New Mexico as compared with the analyses guaranteed in the registration and on the label. However, the information concerning production and use of commercial feeds shall not disclose the operations of any person.

**History:** 1953 Comp., § 47-22-13, enacted by Laws 1961, ch. 151, § 13; 1973, ch. 102, § 14.

## **ANNOTATIONS**

**Severability clauses.** - Laws 1961, ch. 151, § 14, as amended by Laws 1973, ch. 102, § 15, provides for the severability of the Commercial Feed Law if any part thereof is held invalid.

## **ARTICLE 20 AGRICULTURAL MARKET DEVELOPMENT**

### **76-20-1. Short title.**

This act [76-20-1 to 76-20-5 NMSA 1978] may be cited as the "Agricultural Market Development Act of 1979".

**History:** Laws 1979, ch. 130, § 1.

### **76-20-2. Definitions.**

As used in the Agricultural Market Development Act of 1979 [76-20-1 to 76-20-5 NMSA 1978]:

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

B. "department" means the department of agriculture;

C. "farm products" means all agricultural, floricultural, vegetable and fruit products of the soil, livestock and meats, poultry, eggs, dairy products and any and all products which have their situs of production on the farm; and

D. "food products" means any and all products either in a natural or processed state used by man or animal as food.

**History:** Laws 1979, ch. 130, § 2.

### **76-20-3. Market development program.**

The department is authorized and may engage in a program of agricultural market development which may include, but not be limited to, the following services and functions:

A. assisting in the development of new markets or expansion of existing markets for farm products produced or processed in the state;

B. disseminating information relating to the availability, quality and use of farm products;

C. collecting and disseminating information relating to prospective market conditions as well as current supplies, demand and prices of farm products;

D. serving as an intermediary between prospective purchasers and sellers of farm products as to source of supply and demand;

E. cooperating with and aiding farmers and other producers of farm and food products and distributors and consumers of such products in improving and maintaining an efficient system of distribution and marketing in reaching advantageous markets;

F. accepting and receiving grants from public or private agencies for expenditure in furtherance of the purposes of the Agricultural Market Development Act of 1979 [76-20-1 to 76-20-5 NMSA 1978];

G. consulting with other states in the development of joint programs for the establishment and development of markets on a mutual or regional basis; and

H. performing such other services as may be necessary to fulfill the purposes of the Agricultural Market Development Act of 1979.

**History:** Laws 1979, ch. 130, § 3.

### **76-20-4. Limitations.**

A. Nothing in the Agricultural Market Development Act of 1979 [76-20-1 to 76-20-5 NMSA 1978] shall authorize the department to:

(1) engage in any commercial transaction involving farm or food products as purchaser, seller, broker or dealer; or

(2) acquire or own any farm or food product.

B. In the performance of his duties under the Agricultural Market Development Act of 1979, no official or employee of the department shall discriminate against any farm or food product, or against any producer, processor, distributor or dealer of any such products.

**History:** Laws 1979, ch. 130, § 4.

### **76-20-5. Reporting.**

A. The department shall report to the legislature at each annual session the progress made in improving agricultural markets for New Mexico farm products. Such report shall include monetary and volume increases achieved.

**History:** Laws 1979, ch. 130, § 5.

## **ANNOTATIONS**

**Compiler's note.** - This section contained no Subsection B as enacted.

## **ARTICLE 21 AGRICULTURAL COMMODITY COMMISSIONS**

### **76-21-1. Short title.**

This act [76-21-1 to 76-21-22 NMSA 1978] may be cited as the "Agricultural Commodity Commission Act".

**History:** Laws 1983, ch. 231, § 1.

### **76-21-2. Definitions.**

As used in the Agricultural Commodity Commission Act [76-21-1 to 76-21-22 NMSA 1978]:

A. "animal" means any agricultural animal except beef cattle and horses;

B. "commercial channels" means the sale of the commodity for use as food or for industrial, agricultural or chemurgic use, when sold to any commercial buyer or to any person who resells the commodity or any product derived therefrom;

C. "commission" means a commodity commission established under the Agricultural Commodity Commission Act;

D. "commodity" means any distinctive type of agricultural, horticultural, floricultural, viticultural, vegetable or animal product of any class, in its natural or processed state. The director of the New Mexico department of agriculture may determine what types or subtypes of commodity may be classed together as a commodity for the purposes of the Agricultural Commodity Commission Act;

E. "director" means the director of the New Mexico department of agriculture;

F. "first purchaser" means any person who buys the commodity, for which a commission is created, from the producer in the first instance, or the handler who received the commodity in the first instance from the producer for resale or processing;

G. "handler" means any producer, processor, distributor or other person engaged in the handling or marketing of or dealing in the commodity for which a commission is created, whether as an owner, agent, employee, broker or otherwise; and

H. "producer" means any person engaged in a proprietary capacity in the commercial production of a commodity for market within this state.

**History:** Laws 1983, ch. 231, § 2; 1987, ch. 94, § 1.

### **76-21-3. Petition for establishment of commission for a particular commodity.**

Any twenty-five or more persons interested in the production of a particular commodity for which it is proposed to establish a commission may file a petition with the department [New Mexico department of agriculture] asking that a commission be established for such commodity. The petition shall set forth:

A. the name of the commodity for which the commission is to be established;

B. a concise statement of the reasons for the establishment of a commission;

C. a request that a referendum be held among the producers of the commodity on the question of the establishment of a commission;

D. the name and address of the individual who is authorized to represent the petitioners;

E. the number of persons to serve on the commission;



F. the maximum per unit assessment on the commodity for which the commission is established; and

G. the method of levy and collection of an assessment upon producers for the support of the commission.

**History:** Laws 1983, ch. 231, § 3.

## **ANNOTATIONS**

**Bracketed material.** - The bracketed reference to "New Mexico department of agriculture" was inserted by the compiler, as the reference to "department" in the above section apparently refers to the department of agriculture. See 76-1-1 and 76-21-2E NMSA 1978. The bracketed insertion was not enacted by the legislature and is not part of the law.

### **76-21-4. Petition filing fee.**

A. The director shall prepare and deliver to the petitioners an original budget estimate of the cost of the proposed hearings and referendum.

B. The petitioners, within thirty days after receipt of the cost estimate, shall remit to the director the amount of the cost estimate.

**History:** Laws 1983, ch. 231, § 4.

### **76-21-5. Hearings regarding establishment of commodity commission; notice of hearings.**

A. Within sixty days after the petition has been filed with the director and upon payment of the cost estimate, the director shall cause notices to be given of the proposed hearings in areas of the state where the commodity is grown in economic quantities.

B. The notices of hearing shall be published at least fourteen days prior to the date of hearing in a newspaper of general circulation in the state.

**History:** Laws 1983, ch. 231, § 5.

### **76-21-6. Determination by director regarding need for commodity commission.**

A. After hearing, the director shall determine, based upon the facts presented and other relevant data available, if there is a need for the creation of a commission whose interest is the general welfare of the producers of the commodity and if the need is sufficient to justify the holding of a referendum thereon.

B. Subsequent petitions relating to the same commodity may not be filed or action taken thereon within one year from the date the director has recorded a determination denying the need for the creation of a commission for a commodity.

**History:** Laws 1983, ch. 231, § 6.

### **76-21-7. Referendum regarding establishment of commodity commission after determination by director.**

A. If the director determines the need for a commission is sufficient to justify the holding of a referendum, he shall within a reasonable time hold a referendum upon the proposition of the creation of the commission.

B. Notice of a referendum upon the proposition of the creation of a commission shall be given in the same manner as notice of other hearings. Included in the notice of referendum shall be:

(1) the name of the commodity for which the commission is to be established;

(2) a concise statement of the reasons for the establishment of a commission;

(3) the name and address of the individual who is authorized to represent the petitioners;

(4) the number of persons to be elected to the commission;

(5) the maximum per unit assessment on the commodity for which the commission is established; and

(6) method of levy and collection of an assessment upon producers for the support of the commission.

C. Preceding any referendum held pursuant to the Agricultural Commodity Commission Act [76-21-1 to 76-21-22 NMSA 1978], the director shall determine the number of producers in this state and their total production in the last preceding production season or year of the commodity for which a commission is proposed. The director's determination shall be predicated upon available relevant and reliable information establishing such facts from statistics of the New Mexico department of agriculture, the United States department of agriculture, the United States department of commerce or other sources as determined by the director. At the request of the director, any handlers or other persons shall furnish information available relevant to the determination required of the director.

D. A ballot on the referendum shall be sent to each producer of record. Included on the ballot shall be the minimum information required in the notice of referendum in Paragraphs (1) through (6) of Subsection B of this section.

**History:** Laws 1983, ch. 231, § 7.

### **76-21-8. Creation of commission.**

The director shall declare a commission created if the proposition received an affirmative vote in the referendum of two-thirds of the producers voting and if the total voting producers are producers of more than one-third of the total quantity of the commodity produced in the state in the last preceding year as determined by the director.

**History:** Laws 1983, ch. 231, § 8.

### **76-21-9. Election of members of commission; number of producers and handlers.**

A. The commission shall be composed of from five to eleven members, as stated in the petition for referendum. Members shall be elected by producers from nominations made to the director by producers or producers' organizations.

B. Members of the commission shall be elected as follows within sixty days following the director's declaration that a commission is created:

(1) approximately one-third of the members for a one-year term;

(2) one-third of the members for a two-year term; and

(3) one-third of the members for a three-year term.

Thereafter, each member shall be elected for a term ending three years from the date of expiration of the term for which his predecessor was elected, except in case of a vacancy when the appointee shall serve the unexpired part of the term of the member whom he replaces.

C. A majority of the members shall be producers, and at least one member shall be a handler. All members other than handlers shall be producers.

**History:** Laws 1983, ch. 231, § 9.

### **76-21-10. Ex officio member of commission.**

The director or his designee shall be ex officio member of the commission, without right to vote.

**History:** Laws 1983, ch. 231, § 10.

### **76-21-11. Qualifications of members.**

Each member of the commission shall have the following qualifications which shall continue during his term of office:

- A. a legal resident of the United States;
- B. a bona fide resident of the state;
- C. shall have demonstrated an active interest in the development of the commodity industry in New Mexico; and
- D. producer members shall be and have been actively engaged in producing and the handler members in the handling of the commodity for which the commission is established and shall derive a substantial portion of their incomes from the sale of the commodity.

**History:** Laws 1983, ch. 231, § 11.

### **76-21-12. Removal of members.**

- A. The director shall immediately declare the office of any member of the commission vacant whenever such member has ceased to be an active producer or handler in this state, has become a resident of another state or is not performing the duties of his office.
- B. The director may remove any member of the commission for inefficiency, neglect of duty or misconduct in office.
- C. The director shall fill vacancies by appointing a replacement to serve the unexpired term.

**History:** Laws 1983, ch. 231, § 12.

### **76-21-13. Commission organization; meetings.**

The commission shall meet as soon as practicable for the purpose of organizing. It shall elect a chairman and a secretary-treasurer from among its members. It shall adopt a general statement of policy for guidance and shall transact such other business as is necessary to start the work of the commission. Thereafter, the commission shall meet regularly once each six months and at such other times as called by the chairman.

**History:** Laws 1983, ch. 231, § 13.

### **76-21-14. Authority of commission generally.**

The commission may:

A. conduct or cause to be conducted studies to increase the commercial value of, expand current markets and find new markets for and establish or provide for the establishment of marketing development projects for the commodity and products thereof;

B. disseminate or cause to be disseminated, reliable information relative to market conditions, current prices and sources of supply and demand showing the value of the commodity and its products for any purpose for which they may be found useful and profitable;

C. sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by the Agricultural Commodity Commission Act [76-21-1 to 76-21-22 NMSA 1978];

D. enter into contracts which it deems appropriate to the carrying out of the purposes of the commission as authorized by the Agricultural Commodity Commission Act;

E. make grants for studies or for the purchase of facilities necessary to carry out the purposes of the commission as authorized by the Agricultural Commodity Commission Act;

F. appoint subordinate officers and employees of the commission and prescribe their duties and fix their compensation;

G. cooperate or act jointly with any local, state or national organization or governmental agency, whether created by law or voluntary, engaged in work or activities similar to that of the commission and enter into contracts with such organizations or agencies for carrying on joint programs deemed by the commission to be beneficial to the commodity industry of this state, and expend funds in connection therewith, provided that such program is compatible with the powers conferred by the Agricultural Commodity Commission Act;

H. adopt, rescind, modify or amend all proper regulations, orders and resolutions for the exercise of its powers and duties; and

I. advertise the commodity and develop new markets through such advertising or enter into contracts for same.

**History:** Laws 1983, ch. 231, § 14; 1987, ch. 94, § 2.

### **76-21-15. Levy of assessment on commodity sales.**

A. The commission may assess, levy and collect an assessment, the amount of which shall not exceed the maximum stated in the petition for referendum, on all units, plants

or animals of the commodity produced or handled within this state and sold in commercial channels. If the commission determines it is impractical to assess on units of the commodity sold into commercial channels, or on wire, twine, binding or packaging material, an assessment may be imposed on the producer. All casual sales of the commodity made by the producer direct to the consumer shall be exempt from the assessment. The amount of the assessment shall be determined by the commission and published annually.

B. The assessment shall be levied and assessed to the producer at the time of sale and shall be deducted by the first purchaser from the price paid to the producer. In the case of assessments imposed on wire, twine, binding or packaging materials, the assessment shall be added to the purchase price by the seller and paid to the commission. In the case of acreage assessments, the amount shall be imposed on the producer at a time established by the commission and the producer shall pay the assessment directly to the commission.

**History:** Laws 1983, ch. 231, § 15; 1993, ch. 36, § 1.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, inserted the second sentence in Subsection A and added the last two sentences in Subsection B.

#### **76-21-16. Refunds.**

Any producer on whose behalf an assessment has been paid is entitled to a refund of the amount paid by making written application therefor to the commission. The application shall be made within thirty days after the sale was made giving rise to the assessment and shall contain enough detail to enable the commission to find the record of payment. Refunds shall be made within thirty days of the date of the application unless the proceeds and the necessary information have not been received by the commission, in which case the refund shall be made within fifteen days after receipt of the proceeds and necessary information.

**History:** Laws 1983, ch. 231, § 16.

#### **76-21-17. First purchaser of commodity to make reports and pay assessment.**

A. On dates established by the commission, the first purchaser shall provide prescribed information and reports on forms designated by the commission.

B. The first purchaser shall deduct an assessment at the time of sale and pay to the commission the amount of the assessment on dates established by the commission.

**History:** Laws 1983, ch. 231, § 17.

## **76-21-18. Records of person required to pay assessment.**

Each person required to pay an assessment on a commodity under the Agricultural Commodity Commission Act [76-21-1 to 76-21-22 NMSA 1978] shall keep records sufficient to enable the commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission. The commission or any person authorized by the commission may inspect and audit these records.

**History:** Laws 1983, ch. 231, § 18.

## **76-21-19. Records and accounts of commission.**

The commission shall:

A. submit to the director for approval a detailed annual budget for the commission on a fiscal year basis and provide a copy of such budget upon request to any person who has paid an assessment;

B. bond officers and employees of the commission who receive and disburse commission funds;

C. keep detailed and accurate records as approved by the director of all receipts and disbursements, have such records audited annually and keep such audit available for inspection in the commission office; and

D. establish procedures for the adoption of regulations that will provide for input from producers.

**History:** Laws 1983, ch. 231, § 19.

## **76-21-20. Referendum on continuance of commission.**

After three years from the date any commission is created, a referendum may be held at the petition of twenty-five or more producers of the commodity or at the request of the commission upon the question of the discontinuance of the commission. Any costs of such referendum are to be borne by the commission.

**History:** Laws 1983, ch. 231, § 20.

## **76-21-21. Disposition of funds.**

A. All funds received by the commission shall be received by the commission and disbursed directly by the commission according to procedures approved by the director and shall be subject to audit by the state auditor at his discretion. The commission is not

required to submit vouchers, purchase orders or contracts to the department of finance and administration as otherwise required by Section 6-5-3 NMSA 1978.

B. The commission shall issue warrants against funds of the commission in payment of its lawful obligations. The commission shall provide its own warrants, purchase orders and contract forms as well as other supplies and equipment. All warrants shall be signed by two officers or employees designated by the commission.

C. The commission shall designate banks where its funds are to be deposited, provided such banks have been qualified as depository banks for state funds.

**History:** Laws 1983, ch. 231, § 21.

### **76-21-22. Public Purchases Act; Personnel Act; exemption; Tort Claims Act.**

The commission is exempt from the operation of the Public Purchases Act and the Personnel Act. The commission members and their employees are public employees for the purposes of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978].

**History:** Laws 1983, ch. 231, § 22.

#### **ANNOTATIONS**

**Public Purchases Act.** - The Public Purchases Act was repealed by Laws 1984, ch. 65, § 175, effective November 1, 1984. For present comparable provisions, see 13-1-28 to 13-1-199 NMSA 1978, the Procurement Code.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

## **ARTICLE 22 ORGANIC COMMODITIES**

### **76-22-1. Short title.**

Chapter 76, Article 22 NMSA 1978 may be cited as the "Organic Commodity Act".

**History:** Laws 1990, ch. 122, § 1; 1993, ch. 330, § 1.

#### **ANNOTATIONS**

**Cross-references.** - As to New Mexico Food Act, see 25-2-1 NMSA 1978 et seq.

**The 1993 amendment,** effective June 18, 1993, substituted "Chapter 76, Article 22 NMSA 1978" for "This act".



**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

## **76-22-2. Purpose of act.**

The purpose of the Organic Commodity Act [this article] is to:

- A. establish standards governing the labeling and advertising of food articles and agricultural commodities as organically produced;
- B. establish an organic certification program;
- C. educate the public regarding those products that are organically produced;
- D. provide access for New Mexico producers and processors into the expanding intrastate and interstate markets in organically produced food articles;
- E. make available, to the widest extent possible, consumer freedom of choice within New Mexico; and
- F. create an entity of competent jurisdiction to establish a state organic certification program and implement the powers and responsibilities of a state organic certification program under the Organic Foods Production Act of 1990.

**History:** Laws 1990, ch. 122, § 2; 1993, ch. 330, § 2.

### **ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, in Subsection A, inserted "and advertising" and "and agricultural commodities"; rewrote Subsection C, which read "provide consumers with reliable information about which products are organically produced"; made minor stylistic changes in Subsections D and E; and added Subsection F.

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

**Organic Foods Production Act.** - The federal Organic Foods Production Act of 1990, referred to in this section, appears as 7 U.S.C. §§ 6501 through 6522.

## **76-22-3. Findings.**

The legislature finds and declares that:

- A. consumers are demanding fresh and processed foods produced using organic methods;

B. organic farming methods promote more sustainable agricultural practices than conventional farming methods;

C. existing agricultural grading standards as contained in Chapter 76 NMSA 1978 governing the contracting and sale of food articles do not provide standards for food articles that are organically produced;

D. due to the proliferation of labeling and advertising claims utilizing and relying on terms such as "organic", "organically grown", "natural", "naturally grown", "ecological", "ecologically grown", "pesticide-residue free" and derivatives of those terms, a need exists to establish organic grading standards to clarify the use of such terms in labeling and advertising; and

E. in order to protect the public from misrepresentation, to secure the general health, to suppress unfair competition in the production and sale of organic food articles, to ensure the purity of the food article imported and to protect the food supply of the state, the Organic Commodity Act [this article] is enacted.

**History:** Laws 1990, ch. 122, § 3; 1993, ch. 330, § 3.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, rewrote Subsection C, which read "existing rules that govern labeling of fresh and processed foods do not provide standards for organic food production"; and inserted "establish organic grading standards to" in Subsection D.

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

#### **76-22-4. Definitions.**

As used in the Organic Commodity Act [this article]:

A. "advertise" means to present a commercial message in any medium, including but not limited to print, radio, television, sign, display, label, tag or oral statement;

B. "agricultural commodity" means any distinctive type of agricultural, horticultural, floricultural, viticultural, vegetable or animal product of any class, in its natural or processed state;

C. "assessment" means funds collected by the commission as provided for under the Organic Commodity Act;

D. "certification" means formal verification by the commission that food articles are organically produced;

E. "certification handbook" means a collection of production and handling standards and rules adopted and promulgated by the commission;

F. "commission" means the organic commodity commission;

G. "food article" means any raw or processed agricultural commodity or product derived from livestock, including any fruits, vegetables, berries, eggs, seeds or dairy or grain products marketed in New Mexico for human or animal consumption;

H. "handle" means to sell, process, transport or package organically produced food articles;

I. "handler" means any individual in the business of handling organically produced food articles;

J. "handling operation" means any operation or portion of an operation that:

(1) receives or otherwise acquires organically produced food articles from the producer of those organically produced food articles;

(2) prepares organically produced food articles for market; or

(3) processes, packages, transports or stores organically produced food articles;

K. "label" means a commercial message in a printed medium that is affixed by any method to a receptacle, including a container or package;

L. "materials list" means a list of approved and prohibited substances to be determined by the commission, in compliance with the national materials list, and set forth in the certification handbook;

M. "ombudsman" means a member of the commission, who has the function of facilitating communication between certified persons and the commission by addressing certified persons' complaints, participating in the fact-finding process, investigating complaints, arbitrating when possible and advocating for the certified person when necessary; except that, the ombudsman shall not represent a certified person before the commission or any other fact-finding body;

N. "organic certification program" means a program designed to ensure that a product is produced, handled, transported and marketed in compliance with the Organic Commodity Act and the Organic Foods Production Act of 1990;

O. "organically certified farm" means a farm, or portion of a farm, that is certified by the commission as utilizing organic productive techniques as set forth by the commission in the certification handbook provided for under the Organic Commodity Act;

P. "organically certified handling operation" means any handling operation, or portion of any handling operation, that is certified by the commission and operated by organically certified handlers;

Q. "organically produced label" means a label established for the purpose of indicating compliance with the certification standards promulgated under the Organic Commodity Act;

R. "organically produced" means food articles produced using organic productive techniques on an organically certified farm and handled by an organically certified handling operation;

S. "organic productive technique" means a system of farming that substitutes appropriate farm management practices for chemical and technological methods and enhances rather than replaces existing biological systems to ensure minimum adverse effects on human health and the environment;

T. "person" means any individual, group of individuals, corporation, association, cooperative or other entity;

U. "processing" means cooking, baking, heating, drying, mixing, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing or otherwise manufacturing food articles and includes packaging, canning, jarring or otherwise enclosing such food articles in a container;

V. "producer" means a person who engages in the business of growing or producing organically produced agricultural commodities; and

W. "steward" means an individual appointed by the commission to oversee the verification component of the certification program.

**History:** Laws 1990, ch. 122, § 4; 1993, ch. 330, § 4.

## **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, added present Subsection B and redesignated former Subsections B, C, D, as present Subsections C, D, and E; deleted former Subsection E, which defined "certification program"; deleted former Subsections G and H, which defined "farm plan" and "first handler", respectively, and redesignated former Subsections I through N as present Subsections G through L; deleted former Subsections O and P, which defined "New Mexico organic certification task force" and "New Mexico organic growers association", respectively, and redesignated the remaining subsections accordingly; in Subsection E, deleted "and procedures for verification of compliance with the Organic Commodity Act" following "standards"; deleted "New Mexico" preceding "organic" in Subsection F; inserted "derived from livestock" in Subsection G; deleted "purchase" preceding "process" in Subsection H;

inserted "in compliance with the national materials list" in Subsection L; substituted "commission" for "commissioner" in Subsection M; and substituted "agricultural commodities" for "food articles for human or animal consumption in New Mexico for sale in commerce" in Subsection V.

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

**Organic Foods Production Act.** - See note under same catchline following 76-22-2 NMSA 1978.

### **76-22-5. Organic market development fund created.**

There is created in the state treasury the "organic market development fund". No money appropriated to this fund or accruing to it through cooperative research agreements, gifts, grants or bequests shall be transferred to another fund or encumbered or disbursed in any manner except for activities conducted pursuant to the Organic Commodity Act [Chapter 76, Article 22 NMSA 1978]. The fund shall not revert at the end of any fiscal year. All interest earned on the fund shall remain in the fund. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the chairman of the commission or his designee for the purpose of paying the cost of the commission's activities conducted pursuant to the Organic Commodity Act.

**History:** Laws 1990, ch. 122, § 5.

### **ANNOTATIONS**

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

### **76-22-6. Organic commodity commission created.**

A. There is created the "organic commodity commission" to achieve the purposes set forth in Section 76-22-2 NMSA 1978.

B. The commission shall be composed of five members appointed by the governor with the advice and consent of the senate.

C. The commission shall elect one of its members to serve as chairman, one to serve as vice chairman, one to serve as secretary and one to serve as ombudsman. A majority of the members of the commission constitutes a quorum for the transaction of business.

D. All commission members shall be residents of New Mexico.

E. The commission shall be appointed by the governor from a list of producers and handlers certified under the provisions of the Organic Commodity Act [this article] and the standards promulgated in the certification handbook. The commission members shall serve staggered terms beginning on March 1, 1992, with two terms ending on December 31, 1995, two ending on December 31, 1996 and one ending on December 31, 1997. Thereafter, appointments shall be for staggered terms of four years.

F. Members of the commission shall be compensated as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

**History:** Laws 1990, ch. 122, § 6; 1993, ch. 330, § 5.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

### **76-22-7. Organic commodity commission; duties.**

The commission:

A. shall adopt and promulgate certification standards for the production and handling of organically produced food articles in the state. The certification standards shall include agricultural commodities used but not consumed as foods by humans and animals. The standards shall be compiled in a certification handbook to be included in the annual report to the legislature;

B. shall conduct studies to increase commercial value of and discover new markets for organically produced food articles;

C. shall disseminate reliable information relative to market conditions, current prices and sources of supply and demand for organically produced food articles;

D. may sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred under the Organic Commodity Act [this article];

E. may enter into contracts;

F. may appoint subordinate officers and employees of the commission, prescribe their duties and fix their compensation;

G. shall cooperate with local, state or national organizations or government agencies engaged in activities similar to that of the commission;

H. shall adopt, rescind, modify or amend regulations, orders and resolutions for the exercise of its powers and duties after providing public notice and the opportunity for public comment on the action; and

I. shall adopt the federal materials list upon its promulgation and shall prepare a registration program for all purveyors of these materials and an assessment schedule for the purveyors of the class of materials appearing on that list.

**History:** Laws 1990, ch. 122, § 7; 1993, ch. 330, § 6.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, added the last two sentences in Subsection A, added the language following "powers and duties" in Subsection H, added Subsection I; and made stylistic changes throughout the section.

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

### **76-22-8. Report of the commission.**

The commission shall review the statutes under which it operates, the state certification program and the contents of the materials list for any conflict with federal statutory enactments or actions of the United States secretary of agriculture at least every two years.

**History:** Laws 1990, ch. 122, § 8; 1993, ch. 330, § 7.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, rewrote the section, which formerly read "It shall be the duty of the commission to transmit to the legislature and to the governor by December 31 of each year a report of its activities for the previous calendar year. The commission's report shall contain a detailed account of all receipts and expenditures by the commission, including any facts relating to the organic food industry in New Mexico that may be of public interest."

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

### **76-22-9. Adoption of seal.**

The commission may adopt, purchase and use a seal. The seal shall only be used with the permission of the commission.

**History:** Laws 1990, ch. 122, § 9.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

#### **76-22-10. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 330, § 18 repeals 76-22-10 NMSA 1978, as enacted by Laws 1990, ch. 122, § 10, relating to the continuance of the organic commodity commission, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

#### **76-22-11. Commission; limitation on liability.**

The members of the commission and employees of the commission shall not be held individually responsible in any way to any producer, processor, distributor or any other person, for errors in judgment, mistakes or other acts, either of commission or omission, as principal, agent, person or employee, except for their individual acts of gross negligence or criminality. No member or employee shall be held individually responsible for any act or omission of any other member or employee. The liability of the members of the commission shall be several and not joint, and no member shall be liable for the default of any other member.

**History:** Laws 1990, ch. 122, § 11.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

#### **76-22-12. Standards.**

To fulfill the purposes of the Organic Commodity Act [this article], the commission may prescribe and adopt standards relating to the production, handling, processing and distribution of organically produced food articles. Under this section, the commission is empowered to adopt and promulgate certification standards for the production, handling, processing and distribution of organically produced food articles, and agricultural commodities, including setting reasonable application fees and requirements. Where a production or handling practice is not prohibited or otherwise



restricted, the practice shall be permitted unless the commission determines that the practice would be inconsistent with the purposes of the Organic Commodity Act.

**History:** Laws 1990, ch. 122, § 12; 1993, ch. 330, § 8.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, deleted the former second sentence, relating to public notice and hearings, and added the language following "organically produced food articles" in the present second sentence.

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

### **76-22-13. Organic certification program; generally.**

A. The commission shall certify any farm or handling operation in New Mexico that meets the requirements of the Organic Commodity Act [this article] and standards set forth in the certification handbook.

B. In order for the certification program to be consistent with the provisions of the Organic Commodity Act, the certification program may:

(1) provide that each food article bearing an organically produced label must be produced on an organically certified farm and handled through an organically certified handling operation in accordance with the Organic Commodity Act;

(2) require the establishment of an organic farm plan;

(3) provide for procedures that allow producers and handlers to appeal an adverse determination under the Organic Commodity Act;

(4) provide for an annual, on-site inspection of each farm and handling operation that has been certified under this section;

(5) make and publish rules and standards for soil inspection and tissue sampling designed to detect prohibited pesticide or fertilizer residues; and

(6) provide for periodic residue testing of food articles and agricultural commodities that have been produced on organically certified farms and handled by organically certified handling operations to determine whether those products contain any unacceptable residue or otherwise indicate whether the provisions of the organic certification program or the Organic Commodity Act have been violated.

**History:** Laws 1990, ch. 122, § 13; 1993, ch. 330, § 9.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, in Subsection B(6), inserted "and agricultural commodities" and added "or otherwise indicate whether the provisions of the organic certification program or the Organic Commodity Act have been violated".

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

### **76-22-14. Certification.**

Each producer and handler covered by the organic certification program shall certify to the commission, on an annual basis, that he has not produced, processed or marketed any food article or agricultural commodity bearing an organically produced label not in compliance with the Organic Commodity Act [this article] and the standards set forth in the certification handbook.

**History:** Laws 1990, ch. 122, § 14; 1993, ch. 330, § 10.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, deleted "Application for" at the beginning of the catchline; deleted former Subsections A and B, relating to applications for certification; deleted the former Subsection C designation which appeared before "Each producer"; and inserted "or agricultural commodity".

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

### **76-22-15. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1993, ch. 330, § 18 repeals 76-22-15 NMSA 1978, as enacted by Laws 1990, ch. 122, § 15, relating to the organic certification handbook, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **76-22-16. Levy of assessment; organically produced food articles; sales.**

The commission may impose and collect assessments as follows:

A. producers and handlers shall be assessed at an annual rate of one-half of one percent of the total gross sales of the organically produced food articles;

B. retailers shall be assessed at an annual rate of one-quarter of one percent of the total gross sales of organically produced food articles;

C. purveyors of materials as set forth in the federal materials list shall be registered with the commission and assessed at an annual rate of one-half of one percent of the total gross sales of the class of materials appearing on that list; and

D. the commission, following notice and comment, may adjust the assessment rate up or down by no more than one hundred percent.

**History:** Laws 1990, ch. 122, § 16; 1993, ch. 330, § 11.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

#### **76-22-17. Supplemental assessment.**

A. The commission may authorize a supplemental assessment to the assessments provided for in the Organic Commodity Act [Chapter 76, Article 22 NMSA 1978], which shall be collected or paid in the same manner as the assessments.

B. If a supplemental assessment is authorized it shall not exceed one-fourth of one percent of the total gross sales of the organically produced food articles.

**History:** Laws 1990, ch. 122, § 17.

### **ANNOTATIONS**

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

#### **76-22-18. Collection of assessment.**

A. The commission shall set forth in the certification handbook a schedule for payment of all assessments due the commission.

B. The commission may adopt rules providing for an exemption from all or part of assessments due the commission under the provisions of the Organic Commodity Act [this article].

C. Failure to pay a due assessment shall result in revocation of certification or assessment of other penalties prescribed by law, upon notice from the commission.

**History:** 1978 Comp., § 76-22-18, enacted by Laws 1993, ch. 330, § 12.

#### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1993, ch. 330, § 12 repeals former 76-22-18, as enacted by Laws 1990, ch. 122, § 18, relating to collection of assessment, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

#### **76-22-19. Disposition of assessments.**

The commission shall remit assessments and fees received from producers and handlers of organically produced food articles to the state treasurer for credit to the organic market development fund.

**History:** Laws 1990, ch. 122, § 19.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

#### **76-22-20. Record of persons required to pay assessment.**

Each person required to pay an assessment under the Organic Commodity Act [Chapter 76, Article 22 NMSA 1978] shall keep records sufficient to enable the commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission. The commission or any person authorized by the commission may inspect and audit the records. The records shall be maintained in compliance with the standards adopted and promulgated under the Organic Commodity Act and set forth in the certification handbook.

**History:** Laws 1990, ch. 122, § 20.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

#### **76-22-21. Proprietary information.**

Any information obtained by the commission that is deemed by the chairman to be proprietary, technical or business information shall be held in confidence. Proprietary,

technical or business information shall not be deemed a public record as set forth in Subsection C of Section 14-3-2 NMSA 1978 or be open to inspection as set forth under Section 14-2-1 NMSA 1978. The commission shall take such steps as are necessary to safeguard the confidentiality of the information.

**History:** Laws 1990, ch. 122, § 21.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

#### **76-22-22. State organic chemist; duties.**

The commission shall designate a state organic chemist. The state organic chemist shall hold a doctoral degree in chemistry or a related field and shall be knowledgeable and experienced in the techniques used for testing soil and plant and animal tissue for pesticide and fertilizer residues. The chemist may be an employee of a private laboratory or an employee of an agency of the state. The chemist shall perform duties as prescribed by the commission.

**History:** Laws 1990, ch. 122, § 22.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

#### **76-22-23. Stewards; powers and duties; review.**

The powers and duties of the stewards appointed by the commission shall conform to the minimum standards contained in the Organic Foods Production Act of 1990 and shall be set forth in the state certification program.

**History:** Laws 1990, ch. 122, § 23; 1993, ch. 330, § 13.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, rewrote the section, which formerly read "There shall be two stewards appointed by the commission to oversee the verification component of the certification program. One of the stewards shall be the 'official steward' of the commission. Stewards shall exercise those powers and duties prescribed by the commission. Any decision or action of either of the stewards may be reviewed or reconsidered by the commission."

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

**Organic Foods Production Act.** - See note under same catchline following 76-22-2 NMSA 1978.

### **76-22-24. Stewards; authority to inspect.**

Stewards appointed by the commission under the Organic Commodity Act [this article] may inspect any production, handling, processing or distribution place or vehicle that is certified by the commission or is being considered for certification or any other place or vehicle believed to be in violation of the federal or state provisions that the commission implements. Any inspection shall be conducted during normal business hours.

**History:** Laws 1990, ch. 122, § 24; 1993, ch. 330, § 14.

#### **ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, added "or any other place or vehicle believed to be in violation of the federal or state provisions that the commission implements" at the end of the first sentence.

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

### **76-22-25. Stewards; inspection.**

A. Stewards appointed by the commission under the Organic Commodity Act [Chapter 76, Article 22 NMSA 1978] shall make at least one announced visit to each certified organic producer and handler per year for the purpose of verifying compliance with the standards of certification set by the commission. Stewards appointed by the commission may make unannounced visits if a need exists.

B. The inspection may entail a survey of required records, an examination of crops and fields and any other information deemed necessary to demonstrate compliance with the requirements of the Organic Commodity Act and the standards set forth in the certification handbook.

C. It shall be the responsibility of the producer or handler to arrange for and bear the costs of additional verification that is deemed necessary by stewards.

**History:** Laws 1990, ch. 122, § 25.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

### **76-22-26. Labeling.**

A. The commission shall establish a label to be affixed to agricultural products that have been produced on organically certified farms and have been handled by organically certified handlers.

B. The label shall state that a food article has been organically produced and shall bear the seal of the commission.

C. Except as otherwise provided in the Organic Commodity Act [this article], the terms "organic", "organically produced", "certified organic", "certified organically grown", "natural", "naturally grown", "pesticide-residue free" or derivatives of these terms shall not be used by any person for advertising, labeling or otherwise affixing the terms to a food article or its container, unless the food article has been produced and marketed in compliance with the provisions of the Organic Commodity Act and the certificate standards promulgated under that act.

D. The commission shall have the exclusive authority under the state certification program to approve the affixing of labels to food articles.

**History:** Laws 1990, ch. 122, § 26; 1993, ch. 330, § 15.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, in Subsection C, deleted "certified as an organic producer or handler under the provisions of this Act" preceding "for advertising" and made several minor stylistic changes; and, in Subsection D, substituted the language following "authority" for "to affix such a label to an agricultural product".

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

### **76-22-27. Violations and enforcing authority.**

A. Any producer or handler of organically produced food articles who issues a false certification, attempts to have an organically produced label affixed to a food article that the producer or handler knows, or should have known, to have been produced in a manner that is not in compliance with the Organic Commodity Act [this article] or otherwise violates the purposes of the certification program under that act, as determined by the commission, shall be subject to the following procedures and penalties:

(1) the commission shall cause notice of the violations to be given to the producer or handler having responsibility for the violation in the form of a complaint; any person so notified shall be given an opportunity to be heard under the rules prescribed by the commission. If the commission finds no violation has occurred, it shall dismiss the complaint and notify the parties to the complaint;

(2) if, at the conclusion of the hearing, the commission finds that a violation has occurred, either in the presence or absence of the person notified, it shall enter findings to that effect and notify the parties to the complaint. If such a finding is made, the person shall not be eligible to receive certification under the Organic Commodity Act for a period of five years with respect to any farm or handling operation in which the producer has an interest; and

(3) notwithstanding Paragraph (2) of this subsection, the commission may reduce or eliminate the period of ineligibility if the commission determines that modification or waiver would be in the best interest of the certification program established under the Organic Commodity Act.

B. No person shall be subject to the penalties and procedures described in Subsection A of this section for having violated the provisions of the Organic Commodity Act or the standards contained in the certification handbook if he possesses a guaranty that states that the food article is labeled in compliance with the Organic Commodity Act and the standards contained in the certification handbook.

C. The commission may apply for, and the court may grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of the Organic Commodity Act or any certification standard adopted and promulgated under that act, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

**History:** Laws 1990, ch. 122, § 27; 1993, ch. 330, § 16.

### **ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, in Subsection A, inserted "or should have known" in the introductory paragraph and made a minor stylistic change.

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

### **76-22-28. Applicability to other laws.**

A. Any transactions involving food articles bearing an organically produced label shall be subject to Sections 57-15-1 through 57-15-10 NMSA 1978.



B. Any transactions involving food articles bearing an organically produced label shall be subject to the New Mexico Food Act [25-2-1 to 25-2-19 NMSA 1978].

C. Any transactions involving food articles bearing an organically produced label shall be subject to the provisions of the federal Organic Foods Production Act of 1990.

**History:** Laws 1990, ch. 122, § 28; 1993, ch. 330, § 17.

### **ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, added Subsection C.

**Effective dates.** - Laws 1990, ch. 122 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

**Organic Foods Production Act.** - See note under same catchline following 76-22-2 NMSA 1978.