

This is an amendment to 21.17.36 NMAC, Sections 1, 4, 7, 8, 9, 10, 11 and 14, effective 11/08/2022.

21.17.36.1 ISSUING AGENCY: [~~New Mexico state university,~~] New Mexico department of agriculture, MSC, 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007.
[21.17.36.1 NMAC - N, 11/01/2018; A, 11/08/2022]

21.17.36.4 DURATION: [~~March 1, 2023~~] Permanent.
[21.17 36.4 NMAC - N, 11/01/2018; A, 11/08/2022]

21.17.36.7 DEFINITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Transported in enclosed trailers or other containers approved by the director and

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

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

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

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

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

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

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

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

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

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

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

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

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

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