

**NOTICE OF PROPOSED RULEMAKING
EXTENDED PUBLIC COMMENT AND ADDITIONAL HEARING**

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

PURPOSE AND SUMMARY OF THE PROPOSED RULES:

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

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

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

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

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

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

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

Meeting ID: 950 3224 3174

Passcode: 538839

or

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

+1 669 900 6833 or +1 253 215 8782

Meeting ID: 950 3224 3174

Passcode: 538839

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

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

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

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

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

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

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

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