

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 17 PEST, DISEASE, AND WEED CONTROL
PART 2 PLANT NURSERY LICENSING AND INSPECTION

21.17.2.1 ISSUING AGENCY: New Mexico State University, New Mexico Department of Agriculture, MSC 3189, Box 30005, Las Cruces New Mexico 88003-8005, Telephone No. (505) 646-3007.
[7/1/97; 21.17.2.1 NMAC - Rn, 21 NMAC 17.2.1, 01/01/09]

21.17.2.2 SCOPE: Part 2 shall apply to all persons selling nursery stock in New Mexico.
[7/1/97; 21.17.2.2 NMAC - Rn, 21 NMAC 17.2.2, 01/01/09]

21.17.2.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Plant Protection Act, Chapter 76, Article 5, Sections 11 through 28, NMSA 1978 Compilation.
[7/1/97; 21.17.2.3 NMAC - Rn, 21 NMAC 17.2.3, 01/01/09]

21.17.2.4 DURATION: Permanent.
[7/1/97; 21.17.2.4 NMAC - Rn, 21 NMAC 17.2.4, 01/01/09]

21.17.2.5 EFFECTIVE DATE: July 1, 1997
[7/1/97; 21.17.2.5 NMAC - Rn, 21 NMAC 17.2.5, 01/01/09]

21.17.2.6 OBJECTIVE: The objective of Part 2 of Chapter 17 is to establish annual fees for nursery inspections, licenses, and collected plants permits; and to establish standards to maintain the health and vigor of nursery stock offered for sale in New Mexico.
[7/1/97; 21.17.2.6 NMAC - Rn, 21 NMAC 17.2.6, 01/01/09]

21.17.2.7 DEFINITIONS: [RESERVED]

21.17.2.8 LICENSE YEAR: The license year shall be a twelve month period from October 1 to September 30. Licenses, certificates or permits issued at any time during the license year shall expire on September 30 following issuance.
[7/1/97; 21.17.2.8 NMAC - Rn, 21 NMAC 17.2.8, 01/01/09]

21.17.2.9 FEES:

- A. The annual fee for an inspection certificate shall be seventy-five dollars (\$75) plus two dollars (\$2) per acre, except as provided for in Subsection A of 21.17.2.10 NMAC.
- B. The annual fee for an inspection certificate for farmers markets or other grower cooperatives shall be seventy-five dollars (\$75) per location.
- C. The annual license fee for a nursery or florist dealer, landscaper or agent shall be seventy-five dollars (\$75).
- D. The annual fee for a special dealer's license for persons who handle only vegetable or cactus plants shall be twenty-five dollars (\$25).
- E. The annual fee for a special vegetable inspection certificate for persons who grow only vegetable plants shall be twenty-five dollars (\$25).
- F. The annual fee for a collected plants permit shall be seventy-five dollars (\$75).
- G. Double fees required because of late renewal of licenses or permits described in Subsections A through F of 21.17.2.9 NMAC shall be twice the amount stated for the appropriate license or permit.
- H. Once the appropriate document has been issued by the department, fees collected for licenses or permits are non-refundable.
- I. Fees for licenses or permits may be paid by money order, personal check or cashier's check. Cash may be accepted only at the Las Cruces office of the department and only during business hours. Businesses or individuals who pay fees with personal checks that are later returned to the department because of insufficient funds or accounts closed shall make all future payments of fees with money orders, cashier's checks or cash. Fees and licenses are not transferable between individuals or businesses whether or not the businesses are owned by the same individual.

[7/1/97; 21.17.2.9 NMAC – Rn & A, 21 NMAC 17.2.9, 01/01/09]

21.17.2.10 EXEMPTIONS:

A. A non-profit educational, charitable or service organization may be exempt from payment of fees for a plant protection license or permit provided the applicant provides to the department in writing that:

(1) nursery and/or floral stock offered for sale by the organization is grown by its members and/or is purchased from a New Mexico certified or licensed nursery or florist dealer;

(2) the funds received from the sale of such plants shall be used for the benefit of the organization or for improvement or beautification projects within the local community;

(3) a properly completed and signed application for the appropriate license or permit is filed by the applicant in addition to written statements described in Paragraphs (1) and (2) of Subsection A of 21.17.2.10 NMAC;

(4) an organization meeting the criteria described in Paragraphs (1) through (3) of Subsection A of 21.17.2.10 NMAC may be exempt from fees for one license or permit for one activity category only. Additional licenses or permits and all tags shall be available at the fee schedule described in Subsections A through I of 21.17.2.9 NMAC.

B. A school organization affiliated with a state accredited education institution, whose primary function as part of the offered academic curriculum is to teach members or students to landscape or to propagate and market nursery and floral stock, may provide landscape services or may sell nursery or florist stock raised by organization members without payment of fees. A properly completed application for the appropriate license, permit and activity shall be filed with the department annually by the organization's sponsor along with a written description of the organization, its activities and its affiliation with a particular state accredited institution.

C. An individual who grows plants by his own efforts for pleasure, whose return from sales do not exceed the outlay for propagative plant materials, who does not advertise or display for purpose of sale and who does not sell any nursery/floral stock interstate or internationally is exempt from payment of fees. No license or permit is required.

D. Fees may be waived by the director when, in his discretion, special circumstances warrant such a waiver.

[7/1/97; 21.17.2.10 NMAC - Rn, 21 NMAC 17.2.10, 01/01/09]

21.17.2.11 LICENSES FOR FARMERS MARKETS AND GROWER COOPERATIVES:

A. Farmers markets and grower cooperatives may obtain an inspection certificate whereby registered members of the farmers market or grower cooperative may sell plants they have grown on land owned or leased by them without obtaining an individual inspection certificate.

B. A person selling under a farmers market or grower cooperative inspection certificate may only sell plants grown by themselves on land owned or leased by them.

C. Persons selling plants which have been purchased from a wholesaler or other person for resale shall be required to obtain a nursery dealers license in order to sell their plants.

D. The farmers market or grower cooperative shall supply the department with a list of registered persons authorized to sell plants grown by them at the farmers market or grower cooperative.

E. Persons selling plants under a farmers market or grower cooperative permit can only sell plants at the registered location for the farmers market or growers cooperative. Sales at any other location shall require an individual inspection certificate or nursery dealers license issued to that individual person or company.

[7/1/97; 21.17.2.11 NMAC - Rn, 21 NMAC 17.2.11, 01/01/09]

21.17.2.12 EFFECTIVE DATE OF APPLICATION AND PAYMENT OF DOUBLE FEES:

A. The effective date of application for license and permit renewals by mail shall be the date postmarked on the applicant's properly completed application package. Renewal packages postmarked September 30 or before may be considered for renewal at single fee rates as described in Subsections A through F of 21.17.2.9 NMAC. Renewal packages postmarked October 1 or later are considered late; these packages will be returned to the applicant along with appropriate paperwork for renewal at double fee rates as described in Subsection G of 21.17.2.9 NMAC.

B. The effective date of application for license and permit renewals done in person shall be the actual calendar date when the properly completed application or renewal package is presented to the department. These application or renewal packages may be received by the department only during regular business hours.

C. Incomplete or improperly completed application or renewal packages will be so identified by the department and returned to the applicant for completion or correction. The effective date of application shall be the date postmarked on the original envelope for packages received by mail; the effective date of application for packages submitted in person shall be the actual calendar date the applicant first presents the package to the department office. This presentation shall occur during regular business hours only.
[7/1/97; 21.17.2.12 NMAC - Rn, 21 NMAC 17.2.12, 01/01/09]

21.17.2.13 USE OF AN AFFIDAVIT TO OBTAIN A PLANT PROTECTION LICENSE OR PERMIT AT SINGLE FEE RATES: Owners or operators of seasonal businesses may renew their plant protection licenses or permits at single fee rates only if they provide the department with an affidavit stating that they have not engaged in buying, selling, digging or taking orders for florist or nursery stock for at least ninety (90) days following the expiration of their old license or permit. This claim by the businessman shall be verified in writing by the department's inspector. Contradictory evidence obtained by the inspector at any time during the license year shall be cause to require payment of double fees for renewal of all appropriate license categories.
[7/1/97; 21.17.2.13 NMAC - Rn, 21 NMAC 17.2.13, 01/01/09]

21.17.2.14 COLLECTING PLANTS THAT ARE GROWING IN THE WILD ON STATE, FEDERAL, OR PRIVATE LANDS:

A. Any person, prior to collecting plants growing in the wild for sale, shall obtain annually a collected plant permit from the department. Application shall be made on a form prescribed by the department and shall be accompanied by the prescribed fee.

B. Vehicles used to transport collected plants for sale by persons holding valid collected plant permits shall have the collected plant permit number displayed on both sides of the vehicle in letters and numerals not less than three (3) inches high.

(1) The letters and numerals shall be in a contrasting color.

(2) The number shall be in the following format: CP no. XXXX.

(3) The XXXX is the collected plant permit number issued by the department.

(4) The permit number may be on magnetic or other removable media, but must be displayed at all times when transporting collected plants for sale.

C. Collected plants brought into New Mexico from out-of-state for sale shall be accompanied by a bill-of-sale showing the state of origin.

D. Collected plant permits are not transferable.

[7/1/97; 21.17.2.14 NMAC - Rn, 21 NMAC 17.2.14, 01/01/09]

21.17.2.15 STORAGE AND DISPLAY OF NURSERY STOCK:

A. Balled and burlapped nursery stock shall be maintained by surrounding and covering the earth ball with sawdust, peat, shingletow or other moisture-holding material not toxic to plants. Such moisture-holding material shall be kept moist at all times.

B. Container nursery stock shall be watered sufficiently to maintain the viability and vigor of the stock and shall be kept under temperature and light intensity conditions that will permit normal growth.

C. Bare-root nursery stock shall be kept under conditions of temperature and moisture to retard growth and maintain viability. Moisture must be supplied to the root system by high humidity conditions in storage or by covering the roots with soil, sawdust, peat, shingletow or other moisture-holding material not toxic to plants; such moisture-holding material to be kept moist at all times.

D. Prepackaged nursery stock with roots packaged in moisture retaining plastic, peat, shingletow or other moisture retaining material not toxic to plants must be stored and displayed under conditions that will retard etiolated (non-green) or otherwise abnormal growth and will insure an adequate supply of moisture to the roots at all times.

E. All prepackaged nursery stock must have printed on the package the name and address of the packer or grower.

[7/1/97; 21.17.2.15 NMAC - Rn, 21 NMAC 17.2.15, 01/01/09]

21.17.2.16 MINIMUM INDICES OF VITALITY:

A. Woody stemmed deciduous nursery stock such as fruit and shade trees, rose bushes and flowering shrubs shall have moist, green cambium tissue, in the stem or stems and branches and shall have viable buds or

normal green, unwilted growth sufficient to permit the stock to live and grow in a form characteristic of the species when planted and given reasonable care, except that in the cases of rose bushes each stem must show moist, green undamaged cambium in at least the first 8 inches above the graft. Any single stem on a rose bush not meeting this specification shall disqualify the entire plant: provided that a bush may be pruned to comply with the specification of at least one stem meeting the specification remains and the grade designation is changed accordingly, if sold by grade. No green wax or other colored coatings may be used on nursery stock which may conceal harmful insects and diseases or conceal the true condition of plants.

B. Hardy herbaceous biennials or perennials when in a wilted, rotted or any other such condition indicative of subnormal vitality shall not be sold or offered for sale.

C. Any bare-rotted or prepackaged woody-stemmed nursery stock having more than 2 inches of etiolated (non-green) growth from individual buds shall not be sold or offered for sale.

D. Balled and burlapped nursery stock in a weakened condition as evidenced by die-back or dryness of foliage or such stock having broken or loose earthballs or earthballs of a size smaller than established by the American standard for nursery stock shall not be sold or offered for sale.

E. Nursery stock on display at sales outlets not meeting the foregoing minimum indices of vitality shall be destroyed or removed from public view by the owner or person in charge and not offered for sale.
[7/1/97; 21.17.2.16 NMAC - Rn, 21 NMAC 17.2.16, 01/01/09]

HISTORY OF 21.17.2 NMAC:

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

NMDA Rule 63-2, Care of Nursery Stock in Sales Outlets, filed 11/14/84.

NMDA Rule 72-4, Regulatory Order No. 4, Out of State Nursery, filed 9/19/72.

NMDA Rule 73-4, Regulatory Order No. 3, License Year, filed 5/15/73.

NMDA Rule 73-4 Amendment No. 1, Regulatory Order No. 3, Amended, License Year, filed 8/3/73.

NMDA Rule 80-1, Establishes Requirements for Collection of Plants Growing in the Wild, filed 3/27/80.

NMDA Rules 80-2, Regulatory Order No. 5, Establishes Annual Inspection Fees, Dealer's, Landscaper's and Agent's License Fees, Collected Plants Permit Fees, and Exemptions from Payment of Fees, filed 3/27/80.

NMDA Rule 80-3, Regulatory Order No. 6, filed 3/27/80.

NMDA Rule 85-5, Plant Protection Act Fees, filed 8/7/85.

NMDA Rule 93-11, Plant Protection Act Fees, filed 8/2/93.

NMDA Rule 95-4, Regulation of Collected Plants, filed 11/14/95.

History of Repealed Material: [RESERVED]