June 11, 2013

MEMORANDUM

TO: All Vendors of New Mexico Chile Products

FROM: Joe E. Gomez, Division Director

SUBJECT: Notice of Hearing

New Mexico Department of Agriculture (NMDA) will hold two public hearings on the following topic:

- Amending of 21.16.7 NMAC, updating the New Mexico Chile Registration and Record Requirements for New Mexico chile and products offered for sale containing New Mexico chile, under the New Mexico Chile Advertising Act, Chapter 25, Article 11, Sections 1 through 4, New Mexico Statutes Annotated 1978 Compilation.

NMDA is proposing to pass amendments to the NMAC, which would bring the NMAC into harmony with new changes in the New Mexico Chile Advertising Act. The amendments include:

1) Section title change in 21.16.7.10 from Record Requirements to Registration and Record Requirements.
2) Phrase added in Section A, Part 1 of 21.16.7.10, “or product that reasonably implies that the chile peppers are, or the product contains, New Mexico Chile.”
3) Paragraph added in Section B, Part 4 of 21.16.7.10, “Sales of twenty thousand pounds or less of chile peppers per calendar year by the persons that grew the chile peppers are exempt from any record keeping requirement.”

A hearing will be held in Albuquerque, New Mexico, at the New Mexico State University Albuquerque Center, 4501 Indian School Road, NE, Suite 100, at 4:00 p.m. on Wednesday, July 10, 2013. A second hearing will be held in Las Cruces, New Mexico, at the NMDA conference room, 3190 South Espina Street (Corner of Espina and Greggs), at 4:00 p.m. on Thursday, July 11, 2013.

Written statements in support or opposition and signed by the submitting person will be accepted if received prior to 5:00 p.m. on Thursday, July 11, 2013. Address written statements or inquiries to Joe Gomez at NMDA, Standards and Consumer Services Division, MSC 3170, P.O. Box 30005, Las Cruces, New Mexico 88003-8005 or telephone (575) 646-1616.

Attached is a copy of the proposed rule for your information. A copy will also be posted on the NMDA website [www.nmda.nmsu.edu](http://www.nmda.nmsu.edu).

Attachment: Amended rule 21.16.7 NMAC
This is an amendment to 21.16.7 NMAC, Section 3 and Section 10, effective September 30, 2013.

21.16.7.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university, under the New Mexico Chile Advertising Act, Chapter 25, Article 11, Sections 1 through [§] 4, New Mexico Statutes Annotated 1978 Compilation.
[21.16.7.3 NMAC - N, 01/17/2012; A, 09/30/2013]

21.16.7.10 REGISTRATION AND RECORD REQUIREMENTS:
A. Submission of verification form requirement for processed chile:
   (1) Each chile vendor of products offered for sale containing New Mexico chile or product that reasonably implies that the chile peppers are, or the product contains, New Mexico chile, must fill out, sign, and submit a verification form to the department. Verification forms must be submitted within three months of institution of these rules for existing vendors and within one month for new vendors starting a business. The department will supply a verification form (available at the department and on the website) which includes:
      (a) a guarantee by the submitter that record keeping requirements are being met for chile advertised as New Mexico chile;
      (b) a guarantee by the submitter that chile sold as New Mexico chile was grown in New Mexico;
      (c) a guarantee that the regulations are being followed by those selling chile as New Mexico chile.
   (2) The department is empowered to audit the required purchasing and sales records of any vendor coming under the provisions of the New Mexico Chile Advertising Act, Chapter 25, Article 11, Sections 1 through [§] 4, NMSA 1978. These records shall be retained for a period of one year. A business receiving request for records shall permit the inspection immediately or as soon as is practicable under the circumstances not to exceed three business days. Failure to submit the records on request of the department or its authorized agents is a violation of the New Mexico Chile Advertising Act.

B. Submission of verification form requirement for fresh chile:
   (1) Verification forms must be submitted with each load and followed through to the point of sale. The department will supply a verification form (available at the department and on the website) and includes:
      (a) a guarantee by the submitter that record keeping requirements are being met for chile advertised as New Mexico chile;
      (b) a guarantee by the submitter that chile sold as New Mexico chile was grown in New Mexico.
   (2) Copy of the verification form must accompany each load of fresh New Mexico chile wherever it is sold.
   (3) The department is empowered to audit the required purchasing and sales records of any vendor coming under the provisions of the New Mexico Chile Advertising Act, Chapter 25, Article 11, Sections 1 through [§] 4, NMSA, 1978 Compilation. These records shall be retained for a period of one year. Failure to submit the records on request of the department or its authorized agents is a violation of the New Mexico Chile Advertising Act.
   (4) Sales of twenty thousand pounds or less of chile peppers per calendar year by the person that grew the chile peppers are exempt from any record keeping requirement.

C. The department will maintain a public website that lists all chile product vendors that have submitted verification form(s).
[21.16.7.10 NMAC - N, 01/17/2012; A, 09/30/2013]