ISSUING AGENCY: New Mexico State University, New Mexico Department of Agriculture.

SCOPE: This rule shall apply to all persons regulated under the Pesticide Control Act.

STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the New Mexico Pesticide Control Act, Chapter 76, Article 4, Sections 1 through 39, NMSA 1978 Compilation.

DURATION: Permanent.

EFFECTIVE DATE: January 1, 2015, unless a later date is cited in the history note at the end of a section.

OBJECTIVE: The objective of this rule is to establish the standards and procedures for certification, licensing, and recertification of pesticide applicators, operator/technicians, dealers and consultants.

DEFINITIONS:
A. "Certification" means official documentation that an individual has met the requirements for the license and category of pest control shown.
B. "Certified person" means any person who has complied with the certification requirements established by the department and who holds a valid license issued by the department.
C. "Competent" means properly qualified to perform functions associated with pesticide application and/or use, the degree of capability required being directly related to the nature of the activity and the associated responsibility.
D. "Continuing education unit" (CEU) means a credit granted for the attendance and successful completion of an approved training or educational workshop or seminar.
E. "Core" means education and/or knowledge of the safe, effective use of pesticides and the principles and practices of pest control.
F. "Director" means the director of the New Mexico department of agriculture or a delegate.
G. "Direct supervision" means:
   (1) providing detailed guidance including specific, verifiable instruction on personal safety, environmental protection, and any precautions appropriate for safe, effective use of the pesticides to be applied; and
   (2) providing all personal protective equipment, clean and in proper working order, required by the labels of the pesticides for the uses being performed; and
   (3) providing copies of the labels of the pesticides to be applied, any needed explanation, and verification of understanding of the label requirements; and
   (4) providing the means and instructions to establish contact with the supervising commercial applicator in the event needed, or the physical presence of the supervising commercial applicator if required by labeling.
H. "License" means a written document issued by the department to a person which shows that the person has met all licensing requirements.
I. "Operator/technician" means any person who uses any pesticide as an employee of a commercial applicator.
J. "Recertification training" means workshops, seminars, classes or similar educational forums approved by the New Mexico department of agriculture.
K. "Reciprocity" means the recognition of certifications issued by other states or by federal government agencies in core and/or categories of pest management.
L. "Supervising commercial applicator" means the licensed commercial pesticide applicator designated in writing as responsible for direct supervision of operator/technicians for a company.
M. "Termite technician" means an operator/technician who has met the education requirements and passed an examination on termite and other wood-destroying pest control.
21.17.53.8 CERTIFICATION AND LICENSING:
A. Applicants for any license designated under the New Mexico Pesticide Control Act shall be at least 18 years of age. Applicants employed by a parent or guardian shall be exempt from the age requirement.
B. Applicants for any license designated under the New Mexico Pesticide Control Act shall demonstrate competence by successfully completing the appropriate examinations. Examinations shall cover applicable laws and rules and core pesticide topics such as safety, label comprehension, application equipment, methods and precautions, pest management techniques, pesticide characteristics, calculations associated with pesticide use, environmental protection, and drift minimization practices.
C. Examination fees, if applicable, shall be paid prior to administering any examination.
D. If the applicant fails to pass any required examination, he may request reexamination at the next testing session.
E. A grade of seventy percent (70%) shall be passing on all examinations.
F. The director shall not consider any license application by any individual during the effective suspension or revocation of any license issued under the Pesticide Control Act.
G. Applicants for a commercial, noncommercial, or public pesticide applicator license or a pest management consultant license shall successfully complete an examination in one or more of the categories of pest control listed in Section 12.
H. If an applicant has not completed all license requirements within sixty (60) days from the date of the original application, then said applicant will be subject to the fees and requirements of a new applicant.
I. Licenses authorized under the New Mexico Pesticide Control Act are issued to an individual and are not transferrable to another individual.

21.17.53.9 RESPONSIBILITY OF SUPERVISING COMMERCIAL APPLICATOR: Any commercial pesticide applicator who employs operators/technicians must:
A. Provide training for operators/technicians, sufficient so they can safely and competently perform any pesticide applications expected of them; and
B. Provide direct supervision of operators/technicians.

21.17.53.10 TECHNICIAN TRAINING PERMITS: A new employee of a licensed commercial applicator may work up to sixty (60) calendar days under a technician training permit provided another commercial applicator or technician licensed in New Mexico at least 6 months is present on the application site. The supervising commercial applicator shall apply for the permit on behalf of his or her employee. The permittee shall take the required examinations prior to expiration of the technician training permit. The technician training permit cannot be extended or renewed.

21.17.53.11 TERMITE AND OTHER WOOD DESTROYING PEST CERTIFICATION:
A. Any person who performs wood destroying pest control or inspection or who makes recommendations for the use of pesticides to control wood destroying pests shall be certified in 7D, termite and wood destroying pests.
   (1) All applicants for certification in termite and other wood destroying pests shall have attended four (4) hours of approved training.
   (2) Certified applicators shall have at least one (1) year of experience in termite and other wood destroying pest control. Practical training or education may be accepted by the director in lieu of experience.

21.17.53.12 CERTIFICATION CATEGORIES: This section delineates the certification categories for commercial applicators, noncommercial applicators, public applicators, and pest management consultants; and the scope of operations which may be performed under each category.
A. (1A) Agricultural pests – includes the use of pesticides for the control of insects and other invertebrates, plant diseases, nematodes, and similar pests in agricultural sites
B. (1B) Agricultural weeds – includes the use of pesticides for the control of undesirable plants or as desiccants or defoliants in agricultural sites
C. (1C) Pests of animals – includes the use of pesticides to control lice, mites, fleas, flies, and other pests of pets, livestock, or other animals, and the use of pesticides in places where animals are confined
D. (1D) Aerial Application – the application of pesticides by fixed or rotary wing aircraft
(2) Forest pests and weeds – includes the use of pesticides to control pests and weeds in forests and forest nurseries

F.  (3A) Ornamental and Turf invertebrate and disease pests – includes the use of pesticides to control insects and other invertebrates, plant diseases, nematodes, and similar pests in ornamental sites such as lawns, landscapes, parks, golf courses, nurseries, and athletic fields

G.  (3B) Ornamental and Turf weeds – includes the use of pesticides to control weeds in ornamental sites such as lawns, landscapes, parks, golf courses, nurseries, and athletic fields

H.  (4) Seed Treatment – includes the use of pesticides on plant seeds to control insects, plant diseases and other pests

I.  (5) Aquatic pests and weeds – includes the use of pesticides to control algae, undesirable fish and other aquatic organisms, excluding public health pests, in aquatic sites

J.  (6A) Industrial Wood Preservation – includes the use of pesticides to control wood destroying organisms such as insects or fungi in wood products before those products are used in construction, and to treat in place utility poles, pilings, bridge supports, and similar elements

K.  (6B) Right-of-way and industrial weeds – includes the use of pesticides to control vegetation along public roads, electric power lines, pipelines, railway rights-of-way, around oil wells, storage areas, airports and similar areas

L.  (7A) Structural invertebrate pests – includes the use of pesticides other than gases to control household invertebrate pests in and around structures such as residences, schools, hospitals, offices, and other buildings

M.  (7B) Structural vertebrate pests – includes the use of pesticides other than gases to control rodents, birds, bats, and other vertebrate pests in and around structures such as residences, schools, hospitals, offices, warehouses, and other buildings

N.  (7D) Termite and other wood-destroying pests – includes the use of pesticides to control termites, carpenter ants, beetles, fungi, and other pests which attack lumber in structures or sawed timber

O.  (8) Public health pests – includes the use of pesticides to control pests such as mosquitoes, flies, fleas and other vectors that transmit human or animal diseases

P.  (9) Regulatory pests - includes the use of pesticides by federal or state employees to control regulated or quarantined pests. Applicator must hold at least one specific pest control category in addition to Regulatory pests

Q.  (10) Research and demonstration - includes the use of pesticides in the course of field research or demonstration. Applicator must hold at least one specific pest control category in addition to Research and demonstration

R.  (11) Fumigation - includes the use of fumigants to control pests. Subcategories to be assigned by the director, including:

(1)  (11A) Soil fumigation - includes the use of fumigants to control pests in agricultural soil

(2)  (11B) Structural fumigation - includes the use of fumigants to control pests in and around structures such as residences, schools, hospitals, offices, and other buildings associated with human use, and pests of bulk commodities in structures such as rail cars, grain silos or other confined spaces

(3)  (11C) Rodent burrow fumigation - includes the use of fumigants to control burrowing rodent pests

S.  (12A) Wildlife pests – includes the use of pesticides to control rodents, birds, bats, and other wildlife, other than predators, away from structures

T.  (12B) Predator control – the use of LPCs or M-44s to control predators of livestock, other domestic animals, or wildlife. Open only to permanent employees of government animal damage control agencies

U.  (13) Other – The use of a very limited number of specialized pesticides in or on a very limited number of sites and situations not adequately covered by other categories in this section. Requirements for this category shall be assigned by the director.

21.17.53.13 RECIPROCITY FOR COMMERCIAL APPLICATORS CERTIFIED IN OTHER STATES

A.  The department may certify a commercial applicator in one or more of the categories listed in Section 12 if all of the following apply:

(1) the individual is currently certified as a commercial applicator in another state; and

(2) the department determines that the other state has equivalent certification standards; and

(3) the other state has certified the individual based on a written examination; and

(4) the other state has never suspended or revoked its certification of that individual.
B. The applicant must successfully complete an examination covering New Mexico pesticide laws and rules.
C. Certification by reciprocity expires December 31 of the year in which it is issued and may only be applied at initial certification. In order to recertify the individual must meet recertification requirements in Section 16.

21.17.53.14 PRIVATE APPLICATOR CERTIFICATION, LICENSING AND RECERTIFICATION:
A. Applicants for a private applicator license shall successfully complete an examination in one or more of the private applicator categories listed below:
   (1) Private Restricted Agricultural Pesticides (PRAP) - includes the use of restricted pesticides to control insects, weeds, nematodes, rodents, and disease causing organisms in agricultural sites.
   (2) Private Restricted Rodenticides Only (PRRO) - includes the use of restricted pesticides to control only rodent pests in agricultural sites.
   (3) Private Livestock Protection Collar (PLPC) - includes the use of Livestock Protection Collars to control predators of livestock
   (4) Private M-44 Devices (PM44) - includes the use of M-44 Devices to control predators of livestock
B. Private applicators shall be recertified every five (5) years following the issuance of their license. Private applicators shall recertify by one of the following methods:
   (1) Complete the original certification requirements by passing each required examination with a score of 70% or above; or
   (2) Participate in approved continuing education courses to accumulate five (5) CEUs during the license period in each category covered by his certification.

21.17.53.15 PESTICIDE DEALER LICENSING:
A. A pesticide dealer license shall be required for each location or outlet from which restricted use pesticides are distributed to New Mexico applicators or dealers.
B. A pesticide dealer license does not qualify the licensee or an individual employed by the licensee to offer or supply technical advice or make recommendations for the use of restricted use pesticides.

21.17.53.16 RECERTIFICATION: The requirements contained in this section are the minimum required for recertification.
A. All commercial, noncommercial, and public applicators and pest management consultants shall be recertified annually following the issuance of their license. Applicators and consultants shall recertify by one of the following methods:
   (1) Complete the original certification requirements by passing each required examination with a score of 70% or above; or
   (2) Participate in approved continuing education courses to accumulate a minimum of four (4) CEUs during the license year, to consist of one (1) CEU in laws and rules, one (1) CEUs in Core education topics, and two (2) CEUs in each category covered by his certification, other than Categories 9 and 10. Applicators certified in Categories 9 and/or 10 will be recertified in those categories provided they earn the required CEUs in the other categories covered by their certifications.
B. All operator/technicians shall be recertified annually following the issuance of their license. Operator/technicians shall recertify by one of the following methods:
   (1) Complete the original certification requirements by passing each required examination with a score of 70% or above; or
   (2) Participate in approved continuing education courses to accumulate a minimum of 3 CEUs during the license year, to consist of one (1) CEU in laws and rules and two (2) CEUs in Core education topics and/or category groups. Termite technicians must participate in a minimum of two (2) CEUs in the wood destroying pest category to maintain that certification.
C. Maximum CEUs: Applicators who earn 10 or more CEUs including one (1) in laws and rules, one (1) in Core education, and eight (8) or more in certification categories will be eligible for recertification in all their categories except 7D (Termite and other wood-destroying pests), 11A (Soil fumigation), 11B (Structural fumigation), and 12B (Predator control).
21.17.53.17 CATEGORY GROUPS FOR RECERTIFICATION:
A. CEUs for recertification of categories shall be grouped. NMDA shall make the final determination, based on training sponsors' descriptions of recertification training, as to what category or category group any approved educational program shall apply. Category groups include:
   (1) Agricultural CEU group: Categories 1A, 1B, 1C, 2, 6B, PRAP, and PRRO
   (2) Ornamental and turf CEU group: Categories 3A, 3B, 2, 6B
   (3) Structural CEU group: Categories 7A, 7B
B. CEUs for recertification of the following categories shall not be grouped.
   (1) (1D) Aerial application
   (2) (4) Seed treatment
   (3) (5) Aquatic pests and weeds
   (4) (6A) Industrial wood preservation
   (5) (7D) Termite and other wood-destroying pests
   (6) (8) Public health pests
   (7) (11A) Soil fumigation
   (8) (11B) Structural fumigation
   (9) (11C) Rodent burrow fumigation
   (10) (12A) Wildlife pests
   (11) (12B) Predator control
   (12) (13) Other
C. Applicators may request a variance from the director in the event that limited training was available for a specific category during the license year. The request shall be made in writing within 30 days after the license expiration date.

21.17.53.18 APPROVAL OF RECERTIFICATION TRAINING: NMDA shall have final and sole authority in the awarding of CEUs for any approved educational program. CEUs shall be awarded only for topics relating to the safe effective use of pesticides and the laws and rules governing pesticide use.
A. Persons seeking approval of educational programs for CEUs shall submit, at least fifteen (15) days prior to the beginning date for the program, information on the program including a copy of the program complete with topics, copies of any handouts or other materials to be used in the program, detailed description of each topic for which CEUs are sought, the length of presentation per topic, names and qualifications of speakers, and other information required by the director.
B. Persons sponsoring an approved educational program shall allow at least two (2) NMDA employees to attend and monitor the programs without payment of any registration fee.
C. Persons sponsoring recertification training shall complete and return to NMDA a copy of the meeting attendance roster no later than ten (10) days from the last day of the program.
D. One (1) CEU shall be awarded for each hour of approved instruction or training.
E. One (1) CEU shall be the smallest unit awarded.
F. Educational programs that fail to cover the topics submitted for recertification credit shall be subject to revocation of any awarded CEUs.

21.17.53.19 EXPIRATION DATE OF LICENSES: Licenses for pesticide dealers, pest management consultants, commercial applicators, operator/technicians, and public applicators shall expire on December 31 following issuance. The private applicator license shall expire on December 31 five years following issuance.

21.17.53.20 FEES:
A. The annual commercial applicator license fee shall be seventy-five dollars ($75.00).
B. The annual operator/technician license fee shall be fifty dollars ($50.00).
C. The annual pest management consultant license fee shall be seventy-five dollars ($75.00).
D. The annual non-commercial applicator license fee shall be seventy-five dollars ($75.00)
E. The annual pesticide dealer license fee shall be seventy-five dollars ($75.00).
F. The private applicator certification fee shall be fifteen dollars ($15.00).
G. The fee for each examination administered shall be ten dollars ($10.00).
21.17.53.21 PROOF OF FINANCIAL RESPONSIBILITY:
A. A commercial applicator license shall not be issued until the applicant has furnished proof of financial responsibility acceptable to the director. This requirement may be satisfied by:
   (1) a certificate of liability insurance signed by an authorized insurance representative; or
   (2) a certified copy of a liability insurance policy; or
   (3) a surety bond.
B. Proof of financial responsibility shall be clearly conditioned to cover liability resulting from the handling, storage, disposal, application, use or misuse of any pesticide.
C. The director shall be notified in writing by the issuing company ten (10) days prior to any reduction or cancellation of insurance coverage.

21.17.53.22 MINIMUM COVERAGE REQUIREMENTS:
A. Surety bond: $100,000
B. Liability insurance:
   (1) Aircraft.
      (a) Bodily injury -- $50,000 each occurrence -- $100,000 aggregate.
      (b) Property damage -- $50,000 each occurrence, $100,000 aggregate.
   (2) Ground or manual.
      (a) Bodily injury -- $50,000 each occurrence -- $100,000 aggregate.
      (b) Property damage -- $50,000 each occurrence -- $100,000 aggregate.

21.17.53.23 CHANGE OF BUSINESS STATUS: Any person issued a license under the Pesticide Control Act shall within ten (10) days notify the director in writing of any change of employment, change to the business name or address, termination of licensed employees, or any other pertinent information.

21.17.53.24 REVIEW OF CERTIFICATION AND LICENSES: The director may review any certification, license, or permit to determine if there are grounds for denial, suspension, or revocation action. A review shall be warranted in the case of:
A. a violation of the Pesticide Control Act or regulations promulgated thereunder;
B. a final order imposing civil or criminal conviction under Section 14 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended;
C. a determination that the certification or license was obtained by cheating on an examination or providing false information about attendance or completion of required training or continuing education;
E. a determination that the certification or license was obtained or utilized for reasons other than the intended purpose of allowing distribution, purchase or use of pesticides as required under the New Mexico Pesticide Control Act or regulations promulgated thereunder.

21.17.53.25 VARIANCE:
A. The director may grant a variance from any provision of 21.17.53 NMAC under special circumstances, provided such variance does not violate other state or federal laws.
B. A request for a variance shall be made to the director in writing and shall contain such information as the director deems necessary.