

“Integrated” Version of Proposed Repeal and Replacement Rule 10.25.1 NMAC

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT **CHAPTER 25 STATE FIRE MARSHAL** **PART 1 GENERAL PROVISIONS**

10.25.1.1 ISSUING AGENCY: New Mexico Public Regulation Commission, State Fire Marshal Division until June 30, 2021; State Fire Marshal, effective July 1, 2021.
[10.25.1.1 NMAC - N, 11/15/2007; Rp, ___/___/2020]

10.25.1.2 SCOPE: This rule applies to any person whose activities are regulated by the provisions of Chapter 59A, Article 52 NMSA 1978 or the Fireworks Licensing and Safety Act, Section 60-2C-1 through 60-2C-11 NMSA 1978.
[10.25.1.2 NMAC - N, 11/15/2007; Rp, ___/___/2020]

10.25.1.3 STATUTORY AUTHORITY: Sections 8-8-6 and 8-8-15, until June 30, 2021, 59A-52-2, 59A-52-15, 59A-52-15.1, 59A-52-16 and 60-2C-3 NMSA 1978 and Laws 2020, Chapter 9, Section 52, effective July 1, 2021.
[10.25.1.3 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019; Rp, ___/___/2020]

10.25.1.4 DURATION: Permanent.
[10.25.1.4 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019; Rp, ___/___/2020]

10.25.1.5 EFFECTIVE DATE: Unless another date is otherwise provided by law or in the rule, the effective date of this rule shall be the date of publication in the New Mexico register.
[10.25.1.5 NMAC - N, 11/15/2007; Rp, ___/___/2020]

10.25.1.6 OBJECTIVE: The purpose of this rule is to set forth general provisions governing fire prevention, control of fires, and safe egress from and use of public occupancies.
[10.25.1.6 NMAC - N, 11/15/2007; Rp, ___/___/2020]

10.25.1.7 DEFINITIONS: In addition to the definitions contained in Section 60-2C-2 NMSA 1978 and the definitions contained in Sections 10.25.2.7 and 10.25.5.7 NMAC of the rules pertaining to certificates of fitness and fire prevention and public occupancy, respectively, the following definitions apply to the rules of the State Fire Marshal:

A. "AHJ" means an authority having jurisdiction, which may refer to an organization, office or individual responsible for enforcing the requirements of codes, standards and permits within their respective jurisdiction regarding equipment, materials and procedures utilized for installations of fire protection systems, and may refer to the SFM or FM, as appropriate, or to other authorities having an approved partnership agreement with the SFM, such as a municipality or county that wishes to perform final acceptance testing of fire protection systems, conduct fire and life safety inspections, conduct inspections for the sale or display of fireworks, the review of fire protection system drawings, or perform investigation of complaints not posing an immediate danger to life and health.

B. "Commission" means the New Mexico public regulation commission. This Subsection shall expire on June 30, 2021.

C. "Fire Services Council" means that body created in Laws 2020, Chapter 9, Section 53. This Subsection shall become effective on July 1, 2021.

D. "FM" means the fire marshal with the authority over permitting and inspections of fire protection systems within a particular political subdivision of the state. A valid partnership agreement shall be on file with the SFM, defined below.

E. "Partnership Agreement" means a signed and notarized agreement between the SFM and an AHJ, their manager, and their attorney, where statutory responsibilities involving inspections and investigations are granted to the AHJ by the SFM. This agreement shall be reviewed annually, and may be revoked by the SFM. Any change of a fire chief or of personnel in a fire department who has been authorized to perform responsibilities listed in the agreement must be communicated to the SFM, accompanied with documentation identifying the change within seven calendar days. For any reason, the SFM may cancel the agreement seven calendar days after written notice has been received by the FM, AHJ, or authorized fire chief. The FM or AHJ reserves the right to cancel the agreement by providing written notice within 30 calendar days to the SFM.

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F. "SFM", until June 30, 2021, means the director of the state fire marshal division under the public regulation commission who has the authority for final determination of the application of the fire provisions of this rule throughout the state. Effective July 1, 2021, "SFM" means the director of the division of the state fire marshal's office under the homeland security and emergency management department who has the authority for final determination of the application of the fire provisions of this rule throughout the state.

G. "SFMO" means a SFM deputy, a SFM supervisor or a SFM fire inspector.
[10.25.1.7 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.1.8 REQUIREMENTS FOR FILED DOCUMENTS: In addition to the requirements stated here, particular rules may include other filing requirements. All documents required by these rules to be filed with the SFM, including applications referenced in 10.25.6 NMAC, shall be filed as follows.

A. Address for filing documents.

(1) Until June 30, 2021, documents filed by mail shall be addressed to the State Fire Marshal, P.O. Box 1269, Santa Fe, New Mexico 87504-1269. Effective July 1, 2021, documents filed by mail shall be mailed to the address posted on the current website of the SFM.

(2) Until June 30, 2021, documents filed in person or by delivery service shall be delivered to the State Fire Marshal located on the fourth floor of 1120 Paseo de Peralta, in Santa Fe, New Mexico. Effective July 1, 2021, personal delivery of documents shall be made at the physical address posted on the current website of the SFM.

(3) If documents are sent by email as may be authorized by the SFM, the email address for the SFM is sfmo.info@state.nm.us.

B. Required format. All reports, articles, applications and other documents filed with the SFM shall be typewritten, clearly legible, on good quality white paper 8 1/2 x 11 inches in size, have a 1 inch margin on each side and at least a one-inch margin at the top and bottom of each page, and be signed or executed in black or blue-black ink.

C. Facsimile filing prohibited. The SFM will not accept documents for filing or applications submitted by facsimile.

D. Date of filing. The SFM shall consider any document filed pursuant to this rule as filed on the date it was received and stamped by the SFM. If the SFM receives a document by mail, personal delivery, or email after regular business hours, the SFM shall stamp and consider it received on the next regular business day.
[10.25.1.8 NMAC - N, 11/15/2007; A/E, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.1.9 APPLICATIONS, FORMS AND GUIDELINES:

A. Mandatory applications. For ease and consistency of data entry, the SFM has prepared guidelines and mandatory certificates of fitness applications, and license and permit for the sale of fireworks applications for compliance with 10.25.2 and 10.25.6 NMAC.

B. Optional permit application and guidelines. The SFM provides an optional permit application for display fireworks, described in Subsection E of 10.25.6.8 NMAC, and other guidelines to aid in fire prevention and safety, and to assist in carrying out certain requirements of these rules.

C. How to obtain. Interested persons may obtain copies of applications, forms, and guidelines:

(1) by calling the SFM at 505-476-0080 or 1-800-244-6702;

(2) in person until June 30, 2021, at the SFM's office located on the fourth floor of 1120 Paseo de Peralta in Santa Fe. Effective July 1, 2021, copies may be obtained at the physical address posted on the current website of the SFM;

(3) in writing until June 30, 2021, to the SFM, P.O. Box 1269, Santa Fe, New Mexico 87504-1269. Effective July 1, 2021, a written request for copies may be sent to the mailing address posted on the current website of the SFM; or

(4) from the SFM website.

[10.25.1.9 NMAC - N, 11/15/2007; A/E, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.1.10 INCOMPLETE FILINGS:

A. A filing will be considered incomplete if:

(1) it is unsigned;

(2) it omits any information required by law or SFM rule or order;

(3) it is not accompanied by the appropriate filing fee; or

(4) the SFMO determines the filing is otherwise insufficient.

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B. Return of incomplete filings. Any application returned by the SFMO shall be deemed denied. The SFMO shall return an incomplete filing with a statement indicating the nature of the insufficiency to:

- (1) the address on any cover letter included with the form or document;
- (2) if no cover letter was included, then to the return address on the envelope in which the document or form was received;
- (3) if no cover letter or envelope with return address were included, then to the address on any check delivered with the form or document for filing; or
- (4) if none of the above were included, then to any other address in the applicant's file.

[10.25.1.10 NMAC - N, 11/15/2007; Rp, ___/___/2020]

10.25.1.11 INSPECTION OF DOCUMENTS: Any person who wishes to inspect public records or other documents relating to fires shall make a request to the SFM. The request shall meet the requirements of the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, shall follow the procedure required by that law, and shall be accompanied by the associated fees.

[10.25.1.11 NMAC - N, 11/15/2007; A, 9/1/2008; Rp, ___/___/2020]

10.25.1.12 REQUESTS FOR COPIES:

A. Filing of request. A person shall make a request in writing for copies of a document or report and shall list all documents or information requested. A request may be mailed or delivered to the addresses listed in Paragraphs 2 and 3 of Subsection C of 10.25.1.9 NMAC. If a person cancels a request within 24 hours, the SFM shall not assess any fees.

B. Estimate of fees. When the SFM receives a request for copies, the SFM must issue an informal estimate of fees.

C. Completion of request.

(1) If the informal estimate of fees is acceptable to the person who made the request, the SFM shall prepare the copies within the time periods provided in the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, as may be amended.

(2) When the requested documents are ready, the SFM shall provide a written statement of fees due and shall make available or provide the copies upon payment of all fees due.

[10.25.1.12 NMAC - N, 11/15/2007; A, 9/1/2008; A/E, 6/28/2019; Rp, 11/26/2019; Rp, ___/___/2020]

10.25.1.13 PAYMENT OF FEES: Fees charged by the SFM shall be paid by cashier's or company check or money order from funds on deposit with a United States financial institution, made payable to the "State Fire Marshal". Payment by personal check or cash cannot be accepted.

[10.25.1.13 NMAC - N, 11/15/2007; Rp, ___/___/2020]

10.25.1.14 RULES OF PROCEDURE: Until June 30, 2021, all matters before the commission involving the SFM shall follow the commission's rules of procedure. Effective July 1, 2020, all appeals involving the SFM shall follow rules of procedure that may be adopted by the Fire Services Council through the SFM.

[10.25.1.14 NMAC - N, 11/15/2007; Rp, ___/___/2020]

10.25.1.15 REVIEW OR APPEAL:

A. A person aggrieved by any decision made by the SFM, SFMO or an AHJ may request a review by the SFM of the decision. A review by the SFM shall take place and a written order shall be issued by the SFM in a time not to exceed 16 calendar days from the date of the request for review. A person may request such a review as follows:

- (1) by calling the SFM at 505-476-0080 or 1-800-244-6702;
- (2) in person until June 30, 2021, at the SFM's office located on the fourth floor of 1120 Paseo de Peralta in Santa Fe. Effective July 1, 2021, an in person request may be made at the physical address posted on the current website of the SFM; or
- (3) in writing until June 30, 2021, to the SFM, P.O. Box 1269, Santa Fe, New Mexico 87504-1269. Effective July 1, 2021, a written request may be sent to the mailing address posted on the current website of the SFM.

B. Until June 30, 2021, a person aggrieved by any order of the SFM may make an administrative appeal of an order by submitting a written appeal to the commission in accordance with Section 59A-52-21 NMSA 1978, by filing an appeal with the New Mexico public regulation commission docketing office by mail to P.O. Box

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1269, Santa Fe, New Mexico 87504-1269 or by delivery to the P.E.R.A. Building, Room 413, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501. Effective July 1, 2021, and within ten days from the date of service of the order, an administrative appeal of an order may be made by submitting a written appeal to the fire services council to the address for appeals posted on the current website of the SFM. A written appeal must contain all pertinent information to enable the fire services council to make a determination on the appeal. The fire services council shall render a determination on the appeal as provided by 59A-52-21 NMSA 1978.

C. A person aggrieved by any order of the SFM may appeal the order to state district court in accordance with the provisions of Section 59A-52-22 NMSA 1978.

[10.25.1.15 NMAC - N, 11/15/2007; A/E, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

HISTORY OF 10.25.1 NMAC: [RESERVED]