

FINAL INTEGRATED RULE 10.25.3 NMAC, EFFECTIVE NOVEMBER 26, 2019

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE MARSHAL
PART 3 PARENTAL RESPONSIBILITY

10.25.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission, State Fire Marshal Division, Post Office Box 1269, Santa Fe, NM 87504-1269.
[10.25.3.1 NMAC - Rp, 10.25.3.1 NMAC, 11/26/2019]

10.25.3.2 SCOPE: This rule applies to all persons required to have a license issued by the state fire marshal in order to sell fireworks.
[10.25.3.2 NMAC - Rp, 10.25.3.2 NMAC, 11/26/2019]

10.25.3.3 STATUTORY AUTHORITY: Sections 8-8-6, 8-8-15, 40-5A-9 and 60-2C-3 NMSA 1978.
[10.25.3.3 NMAC - Rp, 10.25.3.3 NMAC, 11/26/2019]

10.25.3.4 DURATION: Permanent.
[10.25.3.4 NMAC - Rp, 10.25.3.4 NMAC, 11/26/2019]

10.25.3.5 EFFECTIVE DATE: November 26, 2019, unless a later date is cited at the end of a section.
[10.25.3.5 NMAC - Rp, 10.25.3.5 NMAC, 11/26/2019]

10.25.3.6 OBJECTIVE: The purpose of this rule is to implement the requirements of the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, as they apply to the issuance, renewal, suspension or revocation of fireworks vendor licenses.
[10.25.3.6 NMAC - Rp, 10.25.3.6 NMAC, 11/26/2019]

10.25.3.7 DEFINITIONS: All terms defined in the Parental Responsibility Act shall have the same meanings in this rule unless defined below.

A. HSD means the New Mexico human services department.

B. License means a display distributor, distributor, manufacturer, retailer, specialty retailer or wholesaler license issued to an individual pursuant to the Fireworks Licensing and Safety Act, Sections 60-2C-1 to 60-2C-11 NMSA 1978.

C. Statement of compliance means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support.

D. Statement of non-compliance means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[10.25.3.7 NMAC - Rp, 10.25.3.7 NMAC, 11/26/2019]

10.25.3.8 SANCTIONS: If an applicant or licensee is not in compliance with a judgment and order for support, the state fire marshal shall:

A. deny an application for a license;

B. deny the renewal of a license;

C. have grounds for suspension or revocation of a license.

[10.25.3.8 NMAC - Rp, 10.25.3.8 NMAC, 11/26/2019]

10.25.3.9 CERTIFIED LIST:

A. Receipt of certified list from HSD: Upon receipt of HSDs certified list of obligors not in compliance with a judgment and order for support, the state fire marshal shall match the certified list of obligors against the current list of applicants and licensees. By the end of the month in which the certified list of obligors is received from HSD, the state fire marshal shall report to HSD the names of applicants and licensees who are on the certified list of obligors and the action the state fire marshal has taken in connection with such applicants and licensees.

B. Receipt of application: Upon the later receipt of an application for license or renewal, the state fire marshal shall match the applicant against the most recent certified list of obligors.

[10.25.3.9 NMAC - Rp, 10.25.3.9 NMAC, 11/26/2019]

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10.25.3.10 INITIAL NOTICE:

A. Notification by letter: Upon determination that an applicant or licensee appears on HSD's certified list of obligors, the state fire marshal shall notify the applicant or licensee by letter that the applicant or licensee must provide the state fire marshal with a subsequent statement of compliance within 30 days of the date the state fire marshal mailed the notification.

B. Contents of letter: The notice letter to applicants and licensees shall advise that failure to timely provide the statement of compliance shall result in commencement of a formal hearing brought by the state fire marshal before the state fire board for rejection of an application or suspension or revocation of an issued license as provided in 10.25.3.11 NMAC.

C. Retailer permits: In order to ensure compliance with the Parental Responsibility Act, every distributor, wholesaler, or manufacturer, before issuing retail permits to individuals, must receive a letter of clearance from the state fire marshal or his designee, stating that the individual applicant is not on the HSD certified list of obligors in violation of a child support judgment and order. Retail permits issued by distributors, wholesalers, and manufacturers to individuals are invalid without state fire marshal's clearance being attached and available for display. Telefaxed transmission of the state fire marshal's clearance letter is permissible.

[10.25.3.10 NMAC - Rp, 10.25.3.10 NMAC, 11/26/2019]

10.25.3.11 PROCEEDING TO REJECT APPLICATION OR TO SUSPEND OR REVOKE LICENSE:

If an applicant or licensee fails to respond to the initial notice as required by 10.25.3.10 NMAC, the state fire marshal shall file and serve a complaint upon the applicant or licensee. If the state fire marshal's complaint for rejection of an application or suspension or revocation of a license is based solely on the respondent's failure to comply with a judgment and order of support, and there are no additional grounds based on violations of the Fireworks Licensing and Safety Act, Sections 60-2C-1 to 60-2C-11 NMSA 1978, the complaint shall state:

A. the grounds for the state fire marshals proposed action, and

B. that a hearing shall be held before the state fire board at least 30 days after the date the complaint is mailed, unless the respondent applicant or licensee provides the state fire marshal with a statement of compliance prior to the hearing date.

[10.25.3.11 NMAC - Rp, 10.25.3.11 NMAC, 11/26/2019]

10.25.3.12 EVIDENCE AND PROOF: In any hearing under 10.25.3.11 NMAC, relevant evidence is limited to the accuracy or veracity of the statement of non-compliance. The statement of non-compliance is conclusive evidence requiring the state fire marshal to take the rejection, suspension or revocation action under 10.25.3.11 NMAC, and is rebuttable only with a subsequent statement of compliance. Upon presentation of the subsequent statement of compliance, the state fire marshal shall dismiss the rejection, suspension or revocation action if it is based solely upon licensee or permittees failure to comply with a judgment and order for support.

[10.25.3.12 NMAC - Rp, 10.25.3.12 NMAC, 11/26/2019]

10.25.3.13 ORDER: When an action to reject an application or suspend or revoke a license or permit is taken by the state fire marshal solely because the applicant, licensee or permittee is not in compliance with a judgment and order for support, the final order shall state that:

A. in application rejection actions, the respondent may reapply for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal;

B. in suspension actions, the respondent may be reinstated for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal;

C. in revocation actions, the respondent may reapply for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal.

[10.25.3.13 NMAC - Rp, 10.25.3.13 NMAC, 11/26/2019]

10.25.3.14 PROCEDURES: Proceedings and administrative hearings held pursuant to this rule shall be governed by Section 60-2C-11 NMSA 1978 and the New Mexico public regulation commission rules of procedure, 1.2.2 NMAC.

[10.25.3.14 NMAC - Rp, 10.25.3.14 NMAC, 11/26/2019]

HISTORY OF 10.25.3 NMAC:

Pre-NMAC History: The material in this rule was originally filed with the State Records Center as: SCC Rule 95-03-FM, Parental Responsibility Act Rule, filed 10/18/95.

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History of Repealed Material:

10 NMAC 25. 3, State Fire Marshal - Parental Responsibility filed 5/9/1997 effective 6/28/2019.

10.25.3 NMAC, State Fire Marshal - Parental Responsibility filed 6/28/2019 effective 11/26/2019.

NMAC History:

10 NMAC 25. 3, State Fire Marshal - Parental Responsibility filed 5/9/1997 was replaced by 10.25.3 NMAC State Fire Marshal - Parental Responsibility, effective 6/28/2019.

10.25.3 NMAC, State Fire Marshal - Parental Responsibility filed 6/28/2019 was replaced by 10.25.3 NMAC, State Fire Marshal - Parental Responsibility, effective 11/26/2019.