

FINAL INTEGRATED RULE 10.25.6 NMAC, EFFECTIVE NOVEMBER 26, 2019

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE MARSHAL
PART 6 SAFE HANDLING AND SALE OF FIREWORKS**

10.25.6.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[10.25.6.1 NMAC - N, 11/15/2007]

10.25.6.2 SCOPE: This rule applies to all persons applying for licenses or permits to sell fireworks in New Mexico and to all persons applying for certification as fireworks safety inspectors. It does not apply to local governing bodies for display fireworks.
[10.25.6.2 NMAC - N, 11/15/2007]

10.25.6.3 STATUTORY AUTHORITY: Sections 8-8-6, 8-8-15, 59A-52-15, and 60-2C-3 NMSA 1978.
[10.25.6.3 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

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

10.25.6.5 EFFECTIVE DATE: November 15, 2007, unless a later date is cited at the end of a section.
[10.25.6.5 NMAC - N, 11/15/2007]

10.25.6.6 OBJECTIVE: The purpose of this rule is to implement the Fireworks Licensing and Safety Act, Chapter 60, Article 2C NMSA 1978, so as to increase the observance of safety precautions in handling fireworks and decrease the number of fireworks related accidents in New Mexico.
[10.25.6.6 NMAC - N, 11/15/2007]

10.25.6.7 DEFINITIONS: See the definitions in 10.25.1.7 NMAC.
[10.25.6.7 NMAC - N, 11/15/2007]

10.25.6.8 LICENSES AND PERMITS FOR SALE OF FIREWORKS: The fire marshal issues licenses and permits as provided in Section 60-2C-4 NMSA 1978. Local governing bodies may have additional requirements for fireworks sale or use.

A. Application procedures and forms. Any person may apply for a license or permit to sell fireworks as provided in Section 60-2C-4 NMSA 1978 by submitting a required application to the fire marshal as provided in 10.25.1.9 NMAC. The following information shall be included in each application for a permit or license involving fireworks:

- (1) the applicant's name and mailing address;
- (2) the applicant's telephone number and social security number;
- (3) any company or corporate name or name the applicant is using for business purposes;
- (4) the type of permit or license requested;
- (5) the physical address where applicant will sell fireworks and a description of the type of structure in which applicant proposes to sell fireworks;
- (6) name and phone number of a contact person at the location where applicant proposes to sell fireworks;
- (7) the name and address of applicant's primary supplier of fireworks;
- (8) the following statement: "All information provided on and with this form is true and correct to the best of my knowledge and belief. I have read, reviewed and understand the New Mexico laws and rules regarding safe packaging, handling and sale of fireworks. I agree to fully comply with these laws and rules as a condition of obtaining and operating pursuant to a fireworks license or permit. I understand that the approval of this application depends upon compliance with Sections 60-2C-1 through 60-2C-11 NMSA 1978 of the Fireworks Licensing and Safety Act. In the event that my license or permit is lost or destroyed, I understand that I shall immediately notify the Fire Marshal's office and that I am not entitled to a refund of the original application fees, but must submit a new application and pay a \$20.00 replacement fee for the type of license or permit required for that location. I understand that Section 60-2C-4 NMSA 1978 does not permit the fire marshal to process applications for a license or permit during any holiday selling periods";
- (9) each application shall contain the date and notarized signature of the applicant; and

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(10) an applicant shall submit fees required by Section 60-2C-4 NMSA 1978 with each application following the provisions of 10.25.1.13 NMAC.

B. Review of application. The fire marshal shall review all applications for licenses and permits. Unless otherwise prohibited by law, the fire marshal shall issue licenses and permits within 30 days of receipt of complete applications. The fire marshal shall disapprove and return incomplete applications within 30 days of receipt.

C. Damaged or lost license or permit. The fire marshal will not issue duplicate fireworks licenses or permits. If a license or permit is lost or damaged, the vendor shall immediately notify the fire marshal who shall revoke the license or permit. The fire marshal will not refund any fees for a lost or damaged license or permit. If the vendor wishes to continue to sell fireworks at that location, the vendor shall submit the \$20.00 fee required by section 60-2C-4 NMSA 1978 for a replacement license or permit.

D. Special provisions for retailer permits. Applicants may obtain retailer permits for the sale of fireworks from the fire marshal or from a licensed manufacturer, distributor or wholesaler.

(1) **Products list.** Any person with a retailer permit shall maintain a complete written list of products for sale, available on inspection by an AHJ, of all fireworks at each retail location.

(2) **Obtaining books of 20 retailer permits.** A licensed manufacturer, distributor or wholesaler may obtain books of 20 retailer permits from the fire marshal by following the process in Subsection A of 10.25.6.8 NMAC.

(3) **Requirements for resale of retailer permits.** A licensed manufacturer, distributor or wholesaler may re-sell retailer permits in books of 20, by requiring the same mandatory application form, fees and other requirements in Subsection A of 10.25.6.8 NMAC. A licensed manufacturer, distributor or wholesaler shall account for all fees collected and permits sold.

(a) **Semi-annual report.** On January 31 and July 31 of each year, a licensed manufacturer, distributor or wholesaler that has purchased any books of 20 retailer permits shall provide a report to the fire marshal detailing the numbers of sold and unsold permits, with all information required by Section 60-2C-3 NMSA 1978. The report shall include a copy of each permit application and permit issued, as well as the name and address of each location permitted for the sale of fireworks.

(b) **Unsold permits.** If a licensed manufacturer, distributor or wholesaler has not sold all permits in books of 20 purchased, it may request in writing that the fire marshal issue to it credit toward new permits. The written request shall contain a list of all unsold permit numbers and shall include the original unsold permits.

(c) **Inspection list.** On or before June 15 of each year, each licensed manufacturer, distributor and wholesaler shall provide to the fire marshal a list of locations of sales of fireworks for the retailer permits it has sold to assist the fire marshal in conducting inspections of these locations.

E. Display permit. The fire marshal provides an optional permit application for display fireworks as required by Section 60-2C-9 NMSA 1978, available as provided in 10.25.1 NMAC, for the use of counties and municipalities requiring such display permits.

F. Revocation of license or permit.

(1) Notwithstanding any other provision of these rules, if the fire marshal determines that any licensee's or permittee's actions or facility constitutes:

(a) a hazard to life or property, the fire marshal shall so notify the licensee or permittee in writing, and shall permit him a reasonable period of time to comply with these rules and to eliminate the hazard; if the licensee or permittee does not comply with the notification and its requirements within the time specified, the fire marshal may revoke the applicable license or permit; for reinstatement, the licensee or permittee must comply with initial application requirements;

(b) an imminent hazard to life or property, the fire marshal shall order the licensee or permittee to eliminate the hazard immediately; if the licensee or permittee fails to eliminate the hazard immediately, the fire marshal shall revoke the applicable license or permit; for reinstatement, the licensee or permittee must comply with initial application requirements and demonstrate that the hazard has been eliminated.

(2) If any retailer possesses fireworks not permitted by Section 60-2C-7 NMSA 1978, the fire marshal shall revoke the retailer's permit and confiscate the impermissible fireworks using the procedure required by 10.25.6.11 NMAC.

[10.25.6.8 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/29/2019]

10.25.6.9 FIREWORKS SAFETY INSPECTIONS.

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A. Who may conduct inspections. Fireworks safety inspectors with authority to conduct inspections are:

- (1) the state fire marshal and his staff;
- (2) any person appointed by the state fire marshal; and
- (3) any person authorized by an AHJ.

B. When inspections may be conducted. A fireworks safety inspector may at reasonable hours enter and inspect a licensee's or permittee's premises, buildings, motor vehicles, and mobile, temporary or permanent structures to determine compliance with the Fireworks Licensing and Safety Act and these rules.

C. Inspection procedures. Fireworks safety inspectors shall conduct all inspections using the required form available from the fire marshal as provided in 25.5.1.9 NMAC. Inspectors shall provide completed forms to the fire marshal within 10 working days of the date of inspection.

D. Frequency of inspections. Fireworks safety inspectors shall inspect all retail locations at least twice during each sales period listed in Section 60-2C-8K NMSA 1978 and shall inspect all specialty retail locations within New Mexico semi-annually.

[10.25.6.9 NMAC - N, 11/15/2007]

10.25.6.10 CITATIONS FOR FIREWORKS SAFETY VIOLATIONS:

A. A commissioned law enforcement officer shall issue a citation to or file charges in magistrate or municipal court against any person who violates any provision of the Fireworks Licensing and Safety Act or this rule.

B. Within five days of issuing a citation or filing charges, a law enforcement officer shall submit a detailed written report to the fire marshal describing the incident and violation.

[10.25.6.10 NMAC - N, 11/15/2007]

10.25.6.11 CONFISCATION OF FIREWORKS:

A. A fireworks safety inspector may confiscate fireworks for either of the following reasons:

- (1) the fireworks are not permissible fireworks enumerated in Section 60-2C-7 NMSA 1978;

or

- (2) the person selling the fireworks does not have an appropriate license or permit.

B. Whenever a fireworks safety inspector confiscates fireworks, he shall issue a written receipt for the fireworks including an inventory of all items confiscated and shall provide an opportunity for the violator to sign the receipt. The fireworks safety inspector shall store all confiscated fireworks as evidence until final disposition of any enforcement case.

[10.25.6.11 NMAC - N, 11/15/2007]

10.25.6.12 REQUIRED SAFETY PROVISIONS:

A. Tents and mobile structures used for the sale of fireworks shall comply with these rules, which adopt and incorporate by reference the IFC.

B. Licensees and permittees shall:

- (1) maintain fire extinguishers at all sale locations in accordance with these rules, which

adopt and incorporate by reference the IFC;

- (2) train their employees in the proper use of fire extinguishers;

- (3) exhibit the proper use of fire extinguishers when so requested by the AHJ during an

inspection; and

- (4) provide at least one method of fire alarm and emergency communication that is approved

by the AHJ in each tent or other permanent or temporary structure used for selling fireworks.

C. No loose combustible material shall be permitted within any tent or other permanent or temporary structure used for selling fireworks.

D. All fireworks vendors shall provide to all purchasers of fireworks a safety-tips handout containing at a minimum the following information: "In order to ensure that you and your family have a safe holiday, the state fire board and the fire marshal offer the following safety tips.

- (1) ALWAYS read and follow label directions.
- (2) ALWAYS have an adult present when handling fireworks.
- (3) ALWAYS buy from a reliable fireworks vendor.
- (4) ALWAYS ignite fireworks outdoors.
- (5) ALWAYS have water handy.

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- (6) ALWAYS light one fireworks at a time.
- (7) ALWAYS store fireworks in a cool, dry place.
- (8) ALWAYS dispose of fireworks properly.
- (9) NEVER re-ignite malfunctioning fireworks.
- (10) NEVER give fireworks to small children.
- (11) NEVER experiment with or attempt to make your own fireworks.
- (12) NEVER throw fireworks at another person.
- (13) NEVER carry fireworks in your pockets.
- (14) NEVER shoot fireworks in metal or glass containers.”

[10.25.6.12 NMAC - N, 11/15/2007]

HISTORY OF 10.25.6 NMAC:

Pre-NMAC History: The material in this rule was originally filed with the commission of public records, state records center and archives as:

FM 81-1, Handling and Possession of Fireworks Bulletin, filed 6/26/1981.

An amended version of the rule may have been adopted by the State Fire Marshal effective 1/1/91, but it was never filed with the state records center in accordance with the State Rules Act.

History of Repealed Material:

10 NMAC 25.6, Safe Handling and Sale of Fireworks (filed 05/09/1997) repealed 11/15/2007.

Other History:

FM 81-1, Handling and Possession of Fireworks Bulletin (filed 6/26/1981) was renumbered, reformatted, amended and replaced by 10 NMAC 25.6, Safe Handling and Sale of Fireworks, effective 6/9/1997.

10 NMAC 25.6, Safe Handling and Sale of Fireworks (filed 05/09/1997) was replaced by 10.25.6 NMAC, Safe Handling and Sale of Fireworks, effective 11/15/2007.