



This fact sheet has been developed by the NMED's Hazardous Waste Bureau (HWB) to detail regulatory changes from prospective adoption updates from 2018-2024 that will be required by NMED beginning July 1, 2026. This fact sheet provides an explanation and reference to each regulatory change. A full description of these regulatory changes is provided in the U.S. Federal Register pages cited.

New Regulatory Exemption for Vehicle Airbags removed for proper disposal

Recent extensive recalls of defective vehicle airbags resulted in the large-scale handling of waste airbags that, by the nature of how they operate, qualified as a reactive hazardous waste. USEPA provided a temporary exemption for vehicle maintenance businesses and dealerships to manage the defective airbags under authority from the National Highway Traffic Safety Administration (NHTSA) to manage recalled airbags. The difficulties encountered during this process by both the regulated community and regulators showed the need for a more tailored approach to these materials to encourage the prompt removal and proper disposal of airbags not safe for New Mexico's roadways.

Therefore, USEPA promulgated a rule at 40 CFR 261.4(j) on November 30, 2018 to expedite removal of airbag modules or inflators from vehicles by dealerships, salvage yards and other locations for environmentally sound disposal by exempting the collection of airbag waste from the hazardous waste requirements so long as certain conditions are met. This rulemaking can be found in Issue 83 Federal Register 61552-61563, and is available as part of the administrative record.

New Hazardous Waste Management System available for healthcare facilities to manage their pharmaceutical hazardous wastes

An emerging environmental concern that USEPA, NMED and other state agencies have researched is the concern for releases of trace amounts of pharmaceuticals to water resources. Because of the potentially toxic nature of several of these pharmaceuticals, many are classified as hazardous wastes with some varieties being acutely toxic hazardous wastes. Because of this, healthcare facilities have been required to manage such hazardous waste pharmaceuticals as hazardous wastes upon expiration or when no longer needed. More recently, to alleviate the regulatory burden on healthcare facilities and encourage proper management and recycling of these wastes, USEPA developed the Hazardous Waste Pharmaceuticals Rule.

The Hazardous Waste Pharmaceutical Rule, promulgated at 40 CFR 266 Subpart P on February 22, 2019 (revised to make technical corrections to typographical and other errors on August 9, 2023), makes several important changes to the way in which Hazardous Waste Pharmaceuticals may be managed:

1. Hazardous Waste Pharmaceuticals will no longer count towards hazardous waste generator status.
2. Defines what qualifies as “RCRA-empty” for stock bottles, syringes, IV bags, and other containers.
3. Defines “creditable” hazardous waste pharmaceuticals that may be sent for reverse distribution within 1 year of expiration. DEA controlled substances are managed according to those requirements.
4. Provides labeling, container management, shipping, and personnel training standards.

NMED intends to provide additional informational materials on 40 CFR 266 Subpart P regulations in the near future. The promulgated rulemaking can be found at Issue 84 Federal Register 5816-5950.

New Mexico’s universal waste aerosol regulation now nationwide, slightly stricter

For many years, the State of New Mexico has had universal waste regulations for aerosol cans where the tip is broken off or otherwise becomes a waste without fully being emptied. The requirements included standards for labeling, storage in a proper container, tracking accumulation period, storage under 1 year, and the ability to puncture aerosol cans and drain the contents to encourage recycling. The USEPA largely brought these same requirements nationwide in changes made to 40 CFR Part 273 on December 9, 2019. The newer federal standards are very similar to New Mexico’s preexisting requirements, with a couple slightly stricter requirements:

- The EPA rule provides a more specific definition of aerosol cans.
- The EPA rule requires that a container of aerosol cans is protected from sources of heat
- The EPA rule requires that a puncturing device has been specifically designed to safely puncture aerosols.
- The EPA rule requires that puncturing of aerosol cans is performed in a way to prevent fires.

Those who perform a review of the promulgated rulemaking in Issue 84 Federal Register 67202-67220 and compare to the language currently present in 20.4.1.1001(D) NMAC will find that a the vast majority of the management standards in that rulemaking were already present and enforced in New Mexico prior, however this regulatory change provides additional protection to New Mexicans and more synergy with our neighboring states.

Updates to testing standards for analyzing wastes at environmental laboratories

Environmental laboratories provide 2 essential functions in the hazardous waste management industry: (1) Assisting industry and regulators with determining the hazardous characteristics of wastes, and (2) helping consultants and regulators establish the nature and extent of environmental contamination for hazardous constituents that have entered the environment. Therefore, EPA regulates and provides scientific guidance, with the participation and input from state such as New Mexico, to the operation of these environmental laboratories.

In updating and modernizing testing standards, specifically the standard to determine the ignitability of a substance and certain air sampling and stack emissions methods, on July 7, 2020 EPA promulgated changes to 40 CFR Parts 260 and 261 to include the current ASTM standards, define “aqueous” as “50% water by weight”, and update different cross-references. The promulgated rulemaking can be found at Issue 85 Federal Register 40594-40608.

Updates to standards for management of certain hydrofluorocarbons and substitutes under the American Innovation and Manufacturing Act

Since the 1980s, EPA and NMED have had a major role in the elimination of hazardous air pollutants such as CFCs, also known as chlorofluorocarbons. That fight still continues as EPA and NMED continue to ensure proper management of hazardous refrigerants. On October 11, 2024, EPA promulgated alternative recycling standards at 40 CFR 266 Subpart Q for certain ignitable refrigerants. However, many aspects of the standards are implemented directly by EPA, which has long maintained a certification program for management of refrigerants to ensure their proper recycling. For additional information on these standards, the regulated community can contact the Compliance and Technical Assistance Program for further guidance and resources.

The promulgated rulemaking can be found at Issue 89 Federal Register 82682-82872.

Technical corrections of typos and other sections that required clarification

From time to time, errors are found in the regulations and must be corrected, including typos. These errors can lie in the regulations for several years before first being noticed. On August 9, 2023, EPA promulgated a series of technical corrections to several sections of the hazardous waste regulations, summarized below:

- Corrects outdated references to other regulations that have since moved locations in the regulation.
- Provides clarifications to the definition of solid waste in 40 CFR Part 261, and corrects errors in the regulations for hazardous secondary materials.
- Clarifies and corrects definitions and references in 40 CFR part 262
- Corrects errors in the content, citations and references for the hazardous waste generator standards in 40 CFR 262.14, 262.16 and 262.17, and the academic laboratory standards in 40 CFR 262 Subpart K.
- Correct errors in the content, citations and references in 40 CFR 266 Subpart P.

The changes performed to the regulations are relatively minor and address instances such as improper grammar, typos or incorrect citations of another regulation. The promulgated rulemaking can be found at Issue 88 Federal Register 54086-54115, and subsequently Issue 88 Federal Register 847109 on December 6, 2023, and Issue 89 Federal Register 99727-99732 on December 11, 2024.

Changes made to Import/Export provisions not delegated to NMED

One of EPA's major functions is regulating the importation and exportation of hazardous wastes across the U.S. Border. Consequently, NMED does not have a delegated role to implement any of the preexisting import/export regulations found in 40 CFR 262 Subpart H. However, these regulations must be adopted into the New Mexico Hazardous Waste Management Regulations to maintain federal equivalency. These include the changes to certain recovery and disposal operations used in hazardous waste export and import notices submitted to EPA by U.S. exporters and importers, and in movement documents that accompany export and import shipments, promulgated October 1, 2021; and changes to the e-Manifest system in 40 CFR 262 Subpart B to harmonize with import/export provisions, promulgated July 26, 2024.

The promulgated rulemakings can be found at Issue 86 Federal Register 45381-45386, 89 Federal Register 60692-60740, and a technical correction at 89 Federal Register 86758-86759.

