



This fact sheet has been developed by the NMED's Hazardous Waste Bureau (HWB) to inform the public of proposed changes to the New Mexico Administrative Code (NMAC) to maintain equivalency and properly implement updates to the Federal Hazardous Waste management regulations. These changes are necessary to ensure authorization of New Mexico's Hazardous Waste Program. This fact sheet provides an explanation and reference to these changes.

Going paperless-Changes needed for terminology and roles/responsibilities for e-manifest provisions

Over the past decade plus, both the New Mexico Environment Department and the USEPA have prioritized the transition from using paper correspondence to digital communications, conserving America's natural resources and reducing the overall carbon footprint. To that end, USEPA has made several changes to provisions of Chapter 40 Code of Federal Regulations ("CFR") concerning the use of hazardous waste manifest shipping documents, encouraging the use of electronic, instead of physical, manifests. These provisions have already been prospectively adopted into the NMAC.

However, most of the internet services that make e-manifest possible are operated by USEPA personnel, and the relevant newer regulations specify this role is primarily executed by the Federal government and has not been delegated to the states. Many other provisions in the CFR, as adopted by the states, do delegate most of the roles and responsibilities for ensuring compliance to the states. These intricacies require that New Mexico slightly alter the existing terminology substitutions in the NMAC to clarify that e-manifest provisions are not delegated to New Mexico. This change is required to ensure equivalency and proper coordination with the Federal Hazardous Waste Program.

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.

Because New Mexico has already prospectively adopted the more stringent Federal regulations, the previous state-specific regulations in 20.4.1.1001(D) NMAC must be removed as not to conflict.

Technical corrections of typos and other errors in the Hazardous Waste regulations

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. During preparation of this rulemaking action and through consultation with USEPA, NMED identified the required corrections summarized below:

- During the 2019 rulemaking allowing for prospective adoption of Federal hazardous waste regulations, not all of the appropriate provisions were changed. Specifically, the provisions for public notices for permitting actions for hazardous waste Treatment, Storage and Disposal facilities at 20.4.1.901(C) NMAC were inadvertently left without language changes that would allow for the prospective adoption of the relevant Federal regulations found at Chapter 40 CFR Part 124. This change will ensure that Federally-initiated updates to these regulations can be quickly adopted by New Mexico, as it currently exists for most of the other Hazardous Waste Management Regulations at 20.4.1 NMAC.
- NMED also discovered an incorrect citation in the Hazardous Waste Fee Regulations, at 20.4.3.202(C) that requires correction. This provision was most recently promulgated by the EIB following a 2019 hearing and intended to allow NMED to adjust annual hazardous waste generation fees for inflation. However, the citation for the annual hazardous waste generation fees in this section is incorrect and must be revised for clarity. The citation was intended to refer to 20.4.3.201 NMAC, however the version promulgated by the EIB in 2019 incorrectly cites 20.4.3.401 NMAC. This error appears to have been a typo that was not caught at the time.