

## **NMED CROSSWALK FOR DRAFT NMPDES STATUTE AND RULE**

**July 1, 2024**

40 CFR 123.25(a): "All State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements."

Note: Except for [electronic reporting in Parts 3 and 27], States need not implement [identical] provisions. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. State programs may, if they have adequate legal authority, implement any of the provisions of parts 122 and 124. See, for example, §§ 122.5(d) (continuation of permits) and 124.4 (consolidation of permit processing).... For example, a State may impose more stringent requirements in an NPDES program by omitting the upset provision of § 122.41 of this chapter or by requiring more prompt notice of an upset."

Section 74-6C-5(A) authorizes WQCC to adopt rules to implement NPDES program, including federal regulations incorporated by reference.

<b>40 CFR §</b>	<b>Statute/Rule</b>	<b>NMED Note</b>
122.2 Definitions	74-6C-3  20.6.2.7 NMAC	terms are either defined in NMPDES Act or rule with the same meaning as CFR or incorporated by reference
122.3 Exclusions	74-6C-11(D) 20.6.5.102(A) NMAC	not required; return flows from irrigated agriculture incorporated by reference
122.4 Prohibitions	20.6.5.406(A)(2) NMAC	incorporated by reference
122.5(a)(1) Effect of Permit	20.6.5.501(C) NMAC 20.6.5.301(D) NMAC 20.6.5.301(E) NMAC	permit may be modified for reasons listed in 122.62; permit may be terminated for reasons listed in 122.64; there is no process for revocation/reissuance
122.5(a)(2) Effect of Permit	20.6.5.501(C) NMAC	
122.5(b) No Property Right or Privilege	74-6C-4(B)	
122.5(c) No Right to Injure/Infringe	74-6C-4(B)	not required
122.6 Permit Continuance	20.6.5.301(C) NMAC	not required but 20.6.5 NMAC provides for permit continuance; if permit has expired, then any discharge violates the prohibition on discharging without a permit; if permit has not expired, then the terms and conditions of permit are enforceable
122.7(b-c) Denial of Confidentiality Claims	74-6C-12(A)	122.7(a) applies to EPA only; 74-6C-12(B), (C), and (D) are standard requirements in NM environmental statutes
122.21(a) Duty to Apply	74-6C-4(A) 20.6.5.101 NMAC	permit required for discharge to WOTUS; 301(A) requires application to be submitted in format specified by NMED, and 401(B)(2) says that

Revised August 30, 2024. Pertains to draft statute and rule dated July 1, 2024.

40 CFR §	Statute/Rule	NMED Note
	20.6.5.301(A) NMAC	application must contain the information required by 22.21 to be administratively complete. NMED will ensure that the format for each type of application complies with 122.21; additionally, applications will be provided in electronic format only
122.21(b) Applicant	20.6.5.7(A) NMAC	
122.21(c)(1) Time to Apply	20.6.5.301(B) NMAC	not required
122.21(c)(2) Section 405(f) Permits	20.6.5.301(G) NMAC	<p>(c)(2)(i) requires TWTDS to submit permit application at time of next renewal; covered by 20.6.5.301(C)(1) NMAC</p> <p>(c)(2)(ii) requires a TWTDS to submit information identified in 122.21(c)(2)(ii)(A) through (E) within one year after publication of applicable standard, and based thereon, the agency will determine whether the TWTDS must submit an application</p> <p>(c)(2)(iii) authorizes the secretary to require a TWTDS to submit a permit application at any time he determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge</p> <p>(c)(2)(iv) requires a TWTDS that commences operation after promulgation of an applicable standard for sewage sludge or disposal to submit an application at least 180 days prior to the date proposed for commencing operations</p>
122.21(d) Duty to Reapply	20.6.5.301(C)(1) NMAC	not required; 20.6.5 NMAC does not allow filing of application on later date
122.21(e) Completeness	20.6.5.401 NMAC	authority for supplemental information and inspection; also allows NMED to require applicant to use more sensitive analytical methods as necessary
122.21(f) Information Requirements	20.6.5.401(B)(1-2) NMAC	
122.21(g) Industrial Application Requirements	20.6.5.401(B)(1-2) NMAC	
122.21(h) Industrial Application Requirements	20.6.5.401(B)(1-2) NMAC	
122.21(i) CAFO and CAAPF Application Requirements	20.6.5.401(B)(1-2) NMAC	
122.21(j) POTW Application Requirements	20.6.5.401(B)(1-2) NMAC	
122.21(k) New Source & Discharge Application Requirements	20.6.5.401(B)(1-2) NMAC	
122.21(l)		not applicable to delegated states

40 CFR §	Statute/Rule	NMED Note
122.21(m) Non-POTW Variance Requests	20.6.5.301(H) NMAC	does not allow applicants to request variances until the end of public comment period (cf. 122.21(m)(1)(i)(A), (m)(5), (m)(6), and (n)(3)) because such allowance would require a second public comment period
122.21(n) POTW Variances	20.6.5.301(H) NMAC	20.6.5 NMAC addresses (n)(3) only; (n)(1)(marine waters) is not applicable and (n)(2) is reserved
122.21(o) Expedited Variance Procedures		these procedures do not "expedite" the process, but rather require the agency to inform the applicant if an applicant is available; NMED expects the applicant to make this determination before submitting the application; omission has effect of making the rule more stringent than CFR
122.21(p) Recordkeeping	20.6.5.301(A)(2) NMAC  20.6.5.406(A)(1)(a) NMAC	5 year record retention requirement for application data  requirement included in list of required conditions  Note: 122.21(p) establishes a 5 year retention period for information required by 122.21(d)(3)(ii), which does not exist
122.21(q) Sewage Sludge Management	20.6.5.401(B)(1-2) NMAC	
122.21(r) Cooling Water Intake Structures	20.6.5.401(B)(1-2) NMAC	
122.22 Signatories	20.6.5.401(B)(3) NMAC	
122.23 CAFOs	74-6C-4(A) 20.6.5.101 NMAC	permit required for discharge to WOTUS; 20.6.5 NMAC does not identify specific process for designating CAFOs
122.24 CAAPFs	74-6C-4(A) 20.6.5.101 NMAC	permit required for discharge to WOTUS; 20.6.5 NMAC does not identify specific process for designating CAAPFs
122.25 Aquaculture Projects	74-6C-4(A) 20.6.5.101 NMAC	permit required for discharge to WOTUS
122.26 Storm Water Discharges	74-6C-4(A) 20.6.5.101 NMAC 74-6C-11(E) 20.6.5.102(B) NMAC	permit required for discharge to WOTUS; exclusion for uncontaminated storm water runoff from mining and oil and gas; Paragraphs 1-3 are limitations in WQA
122.27 Silviculture	74-6C-4(A) 20.6.5.101 NMAC 74-6C-11(F)	permit required for discharge to WOTUS; exclusion for discharge of runoff from certain silviculture activities
122.28 General Permits	74-6C-3(I) 20.6.5.302 NMAC 20.6.5.303 NMAC	"permit" includes general permits general permits NOIs for general permit coverage
122.29 New Sources	20.6.5.102(A)(2) NMAC	not required
40 CFR 122.33 and 122.34	20.6.5.201(A)(2) NMAC	incorporated by reference
122.41(a)(1)	20.6.5.406(A)(1)(a) NMAC	122.41(a)(2-3) not required (but see 74-6C-7 & 8 and 20.6.5.501 NMAC)

40 CFR §	Statute/Rule	NMED Note
Duty to Comply		
122.41(b) Duty to Reapply	20.6.5.406(A)(1)(a) NMAC 20.6.5.301(C) NMAC	
122.41(c) Halt or Reduce Not Defense	20.6.5.406(A)(1)(a) NMAC	
122.41(d) Duty to Mitigate	20.6.5.406(A)(1)(a) NMAC	
122.41(e) Proper O&M	20.6.5.406(A)(1)(a) NMAC	
122.41(f) Permit Actions	20.6.5.406(A)(1)(a) NMAC	
122.41(g) Property Rights	74-6C-4(B) 20.6.5.406(A)(3) NMAC	see 122.5(b)
122.41(h) Duty to Provide Information	20.6.5.406(A)(1)(a) NMAC 20.6.5.301(I)(2) NMAC 20.6.5.401(C)(2) NMAC	
122.41(i) Inspection and Entry	74-6C-6(B)(2),(3),(4),(7) 20.6.5.406(A)(1)(a) NMAC 20.6.5.301(I)(3) NMAC	
122.41(j) Monitoring and Records	74-6C-6(B)(3) 20.6.5.406(A)(1)(a) NMAC 74-6C-8(A)(4)	see previous discussion re record retention requirements
122.41(k)(1) Signatory	20.6.5.401(B)(3) NMAC	see 122.22
122.41(k)(2) False Statement	74-6C-8(A)(3) 20.6.5.406(A)(1)(a) NMAC	
122.41(l) Reporting	20.6.5.406(A)(1)(a) NMAC	
122.41(m) Bypass	20.6.5.406(A)(1)(a) NMAC	
122.41(n) Upset	20.6.5.406(A)(1)(a) NMAC	
122.42 Category-Specific Conditions	20.6.5.406(A)(1)(a) NMAC	
122.43 Establishing Permit Conditions	20.6.5.406(A)(1)(a) NMAC	
122.44 Establishing NPDES Permit Conditions	20.6.5.406(A)(1)(a) NMAC	

40 CFR §	Statute/Rule	NMED Note
122.45 Calculating Permit Conditions	20.6.5.406(A)(1)(a) NMAC	
122.46 Duration	20.6.5.406(A)(1)(d) NMAC	
122.47 Compliance Schedules	20.6.5.406(A)(1)(c) NMAC	122.47(b) allowing alternate schedules of compliance is not required and is not included
122.48 Monitoring	20.6.5.406(A)(1)(a) NMAC	
122.49 Considerations under federal law		not required; federal laws do not apply to state-issued permits though some do apply to projects with federal funding
122.50 Well Disposal	20.6.5.406(A)(1)(a) NMAC	
122.61 Transfers	20.6.5.301(F) NMAC	NMED declines to allow automatic transfer per 122.61(b), which has effect of making rule more stringent than CFR
122.62 Modifications	20.6.5.301(D) NMAC	addresses major modifications (122.62) and minor modifications (122.63 – not required); no need to define "minor modification" because distinction between "major" and "minor" modifications is evident from applicable processes
122.64 Terminations	20.6.5.301(E) NMAC	requires application or compliance order; does not allow notices of termination process (122.64(b)), which has effect of making rule more stringent than CFR
Part 122 Apps. A-J	20.6.5.201(B) NMAC	
123.25(c) Conflict of Interest	20.6.5.103 NMAC	
123.26 Compliance Evaluation	74-6C-6(B)(7) & (8) 20.6.5.501 NMAC	
123.27(a)-(c) Enforcement – remedies for violations	74-6C-6(B)(7) & (8)	
123.27(d) Enforcement – public participation	20.6.5.501 NMAC	
123.29 Prohibition	74-6C-5(C) & 6(B)(9)	address in MOA
123.30 Judicial Review	74-6C-10	
124.3 Applications	20.6.5.301(A) NMAC 20.6.5.402(B-C) NMAC 20.6.5.401(A-B) NMAC 20.6.5.401(C) NMAC	<p>application requirement supplemental information, inspections (124.3(d)-(f); not required) administrative completeness review and determination denial of administratively incomplete application and permit process schedule</p> <p>124.3(c) requires administrative completeness reviews within 30 days for new sources and dischargers and 60 days for existing sources and sludge-only facilities, but is not applicable to state programs; 124.3(d)-(f) addressing application deficiency, site visits, completeness review are not applicable to state programs; 124.3(g) requires estimated project decision schedule for new sources</p>

40 CFR §	Statute/Rule	NMED Note
		and dischargers, but not for modifications and renewals, but is not applicable to state programs; nonetheless, for administrative efficiency NMED has decided to retain a single deadline for administrative completeness determinations and project decision schedules for all applications
124.4 Permit Process Consolidation		not required
124.5(a) Modifications	20.6.5.301(D) NMAC 20.6.5.403 NMAC	
124.5(b) Modifications - denial	20.6.5.301(D) NMAC 20.6.5.402 NMAC	not required; NMED issues notices of intent to deny application, which are treated like draft permits
124.5(c) Modifications	20.6.5.301(D) NMAC 20.6.5.403 NMAC	
124.5(d) Modifications	20.6.5.301(D) NMAC 20.6.5.403 NMAC	
124.5(f) Modifications		applies to Section 404 permits
124.6(a) Draft Permits	20.6.5.403 NMAC	
124.6(b)	20.6.5.403 NMAC	not required; NMED issues notices of intent to deny application, which are treated like draft permits
124.6(c) General Permits	20.6.5.302 NMAC 20.6.5.303 NMAC	
124.6(d) Draft Permits	20.6.5.403(B) NMAC	
124.6(e) Draft Permits	20.6.5.403 NMAC 20.6.5.404 NMAC 20.6.5.405 NMAC 20.6.5.406 NMAC 20.6.5.601 NMAC 74-6C-9	
124.7 Statements of Basis	20.6.5.403 (F-G) NMAC	not required
124.8 Fact Sheet	20.6.5.403(D) NMAC	see 124.56
124.10(a)(1)(i) Public Notice	20.6.5.403(H)	not required; NMED provides public notice of notices of intent to deny
124.10(a)(1) (ii) Public Notice	20.6.5.403(E) NMAC 20.6.5.403(H) NMAC	most facilities new source and new dischargers
124.10(a)(1) (iii) Public Notice	20.6.5.405(C) NMAC	
124.10(a)(1) (iv)		applies to Section 404 permits

40 CFR §	Statute/Rule	NMED Note
Public Notice		
124.10(a)(1) (v) Public Notice	20.6.5.405(H) NMAC	required because NMED is including 122.29
124.10(b)(1) Public Notice	20.6.5.404(A) NMAC 20.6.5.403(G)(6) NMAC	
124.10(b)(2) Public Notice	20.6.5.405(C) NMAC	
124.10(c) Public Notice	20.6.5.403(E) NMAC 20.6.5.405(C) NMAC	
124.10(d) Public Notice	20.6.5.403(G) NMAC 20.6.5.405((D) NMAC	
124.10(e) Mail Fact Sheet/ Application/ Draft Permit	20.6.5.403(F) NMAC	NMED is the state agency responsible for plan development under CWA 208(b)(2), b(4), or 303(e)
124.11 Public Comments/ Requests for Hearing	20.6.5.404 NMAC	
124.12(a) Public Hearings	20.6.5.405 NMAC	
124.12(c)-(d) Public Hearings	20.6.5.405 NMAC	not required
124.13 Obligation to Raise Public Comment		not required  124.13 says that all persons including applicants, "must" raise all issues and arguments and "shall" submit all supporting materials. 124.19(a)(2) then says that a person may file an appeal if (1) she filed comments or participated in the public hearing, or (2) she is appealing a permit condition that changed from the draft permit.  The draft statute currently limits appeals to persons who "participated in and [are] adversely affected" by a permitting action. This language is the same as the existing standard in the WQA (see 74-6-5(O) (WQCC appeals) and 74-6-7(A) and 20.6.2.3111 NMAC (judicial appeals)). "Participated in" is not defined, but is understood to mean a person who testifies at the hearing or submits a written statement for the record. See 20.6.2.3110(M) NMAC.
124.14 Reopening Public Comment Period	20.6.5.404(B) NMAC	not required; also not necessary because 404(B) already allows NMED to extend the public comment period
124.15 Issuance & Effective Date	20.6.5.406(C) NMAC	not required
124.16 Stays	74-6C-5(C) 74-6C-9(B) & (D)	not required; stays are addressed in the draft statute (74-6C-9(B) and 10(D)); when a permit condition is stayed, the previous condition remains applicable; if necessary, in a stay proceeding

40 CFR §	Statute/Rule	NMED Note
		the agency will request a court order affirming the validity of the previous condition
124.17(a) Response to Comments	20.6.5.406(C) NMAC	
124.17(c) Response to Comments	20.6.5.405(C) NMAC	
124.19 Appeals	74-6C-9 74-6C-10	not required
124.56 Fact Sheets	20.6.5.403(D) NMAC	see 124.8
124.57(a) Public Notice for 316 Requests	20.6.5.403(G)(12) NMAC	
124.59(a) Corps of Engineers	20.6.5.406(A)(1)(a) NMAC	permit must be denied if Corps finds substantial impairment of anchorage or navigation of WOTUS per 122.4(e); secretary must include permit conditions requested by Corps to avoid substantial impairment of anchorage or navigation
124.59(b) Fish, Wildlife, Public Health Agencies	20.6.5.406(A)(1)(b) NMAC	
124.59(c) Agency Comments	20.6.5.402(D) NMAC	
124.60 Stays and Effective Dates	74-6C-9 74-6C-10	not required
124.61 FEIS new source		not required
124.62 Variances	20.6.5.301(H) NMAC	
Part 125 Subparts A-B, D, H-J Criteria and Standards	20.6.5.201(B) NMAC	incorporated by reference
Part 129 Toxic Pollutant Effluent Standards	20.6.5.201(C) NMAC	incorporated by reference
Part 133 Secondary Treatment Regulation	20.6.5.201(D) NMAC	incorporated by reference
Part 136 Test Procedures for Analysis of Pollutants	20.6.5.201(E) NMAC	incorporated by reference
Subchapter N Effluent Guidelines and Standards	20.6.5.201(F)	incorporated by reference
Part 503 Standards for Use or Disposal of Sewage Sludge	20.6.5.201(G) NMAC	incorporated by reference



40 CFR §	Statute/Rule	NMED Note
Parts 3 & 127 E-Reporting		required by 123.25(a)(46); NMED will confirm the legal authority in MOA