

ARTICLE 52 STATE FIRE MARSHAL

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59A-52-1. State fire marshal created.

The position of "state fire marshal" is created as the bureau chief of the fire marshal bureau of the insurance division.

History: Laws 1984, ch. 127, § 947; 1998, ch. 108, § 38.

59A-52-2. State fire marshal to administer article.

The state fire marshal shall administer the provisions of [Chapter 59A, Article 52](#) NMSA 1978.

History: Laws 1984, ch. 127, § 948; 1998, ch. 108, § 39.

59A-52-3. Deputy state fire marshal and other employees; qualifications of deputy.

The state fire marshal may, with the approval of the superintendent, appoint or remove a deputy state fire marshal and other employees to assist in the execution of the marshal's duties; provided, however, that the state fire marshal and any deputy state fire marshal appointed by the state fire marshal shall be experienced in fire prevention and fire fighting and have completed a course of training by actual attendance at a fire-training school.

History: Laws 1984, ch. 127, § 949; 1998, ch. 108, § 40.

59A-52-4. Bonding of employees.

The marshal shall require the bonding of those employees whose duties in his opinion require such bonds and in amount determined by him. The premiums of such bonds shall be paid out of the appropriation hereinafter made to the marshal.

History: Laws 1984, ch. 127, § 950.

59A-52-5. Cooperation with other agencies for prevention and control of fires.

The marshal is authorized to cooperate with all other groups, organizations and agencies in this state or in other states in the collection, dissemination and evaluation of information, statistics and suggestions for prevention or control of fires.

History: Laws 1984, ch. 127, § 951.

59A-52-6. Fire protection training programs.

The marshal shall establish and conduct training programs throughout the state for demonstrating and teaching firemen proper methods of preventing and extinguishing fires. The marshal shall have available, from funds included in the general appropriation act of each legislature, money for use by him in establishing and conducting such training programs.

History: Laws 1984, ch. 127, § 952.

59A-52-7. Teaching fire prevention and control in public schools; rules for school building evacuation.

The marshal shall prescribe reasonable rules and regulations and programs for the teaching to all school children in the state, whether in public or private schools, the proper methods of fire prevention and control. Such rules, regulations and programs shall be submitted to the department of education on or before August first of each year. Among other things, such rules, regulations and programs shall prescribe drills for evacuating school buildings.

History: Laws 1984, ch. 127, § 953.

59A-52-8. Investigation of fire hazards; abatement.

The marshal is authorized to make investigations or require his deputy to make investigations and reports of existing conditions in the state which are fire hazards, and to make reasonable orders for the alleviation of such situations as he may deem necessary. If the orders of the marshal are not carried out by persons to whom they are directed, he shall institute proper proceedings under municipal ordinances or state laws to require compliance with his orders, as he may deem necessary.

History: Laws 1984, ch. 127, § 954.

59A-52-9. May enter upon premises.

The marshal, his deputy, his authorized officer or designated agent shall have authority at all normal hours of operation to enter in and upon all buildings and premises subject to this article for the purpose of examination and inspection.

History: Laws 1984, ch. 127, § 955.

59A-52-10. Investigation of fires and explosions; hearings; use of state police laboratory.

The marshal, or his deputies or employees are authorized to make investigations deemed necessary of any fire or explosion, or attempt to cause any fire or explosion in the state, and to require reports from his deputies concerning all fires and explosions in their districts. For the purpose of such investigations, the marshal and his deputies or designated persons are authorized to conduct hearing, subpoena witnesses, take testimony and enter upon and examine any building

or premises where any fire or explosion or attempt to cause a fire or explosion shall have occurred, or which at the time may be burning. The marshal or his deputies or designated persons shall also have the power to cause to be produced before them such papers as they may require in making such examination. In addition the marshal or his deputies or designated persons may, in their discretion, take full control and custody of such buildings and premises, and place such person in charge thereof as they may deem proper, until their examination and investigation is completed. For evaluation of the evidence the marshal shall have access to the facilities and personnel of the state police laboratory, and the executive head of such laboratory shall cooperate fully with the marshal.

History: Laws 1984, ch. 127, § 956.

59A-52-11. Witnesses; per diem and mileage.

Witnesses or persons subpoenaed under this article shall be paid as to time and expense from the fire marshal's fund at per diem and mileage rates on the same bases and at the same rates as currently apply as to state employees in general.

History: Laws 1984, ch. 127, § 957.

59A-52-12. Records of fires open to public.

The marshal shall keep open to public inspection, at reasonable hours, all records of fires occurring within the state.

History: Laws 1984, ch. 127, § 958.

59A-52-13. Transmittal of evidence indicating criminal acts.

The marshal shall furnish to the proper law enforcement officers any evidence he may discover in his investigations which indicates criminal acts.

History: Laws 1984, ch. 127, § 959.

59A-52-14. Appropriations.

For the purposes of this article an appropriation shall be included in the general appropriation act of each legislature, the appropriation to be made from the fire protection fund, which funds are to be paid out by the secretary of finance and administration on vouchers signed by the marshal.

History: Laws 1984, ch. 127, § 960.

59A-52-15. Fire prevention; public occupancies regulations.

A. For prevention and control of fires the state fire board shall formulate, adopt and promulgate, and amend or revise regulations for fire prevention and safe conduct or use of public

occupancies. For the purposes of this provision "public occupancies" consist of places of assembly, educational occupancies, institutional occupancies, residential occupancies consisting of four (4) or more family units, mercantile occupancies, office occupancies, industrial occupancies, storage occupancies and miscellaneous structures consisting of towers, underground structures and windowless buildings and all buildings owned or occupied by the state government or any political subdivision thereof or by municipal governments; and regulations concerning the sale, servicing or use of fire safety, prevention, detection or suppression equipment or materials. The regulations shall be adopted after notice and public hearing. The notice shall be entitled "notice of proposed rule making" and it shall contain the date of the hearing and shall state the subject of the hearing. A copy of the notice, along with a copy of the proposed regulations, shall be filed with the supreme court librarian at least twenty (20) days prior to the hearing. In addition, the board shall make available for inspection at its offices, a copy of the proposed regulations.

B. The rules and regulations shall follow nationwide standards except in the area of life safety codes which shall be compatible with the Uniform Building Code, as revised from time to time, issued by the international conference of building officials.

C. The rules and regulations shall allow reasonable provision under which facilities in service prior to the effective date of the rules and regulations and not in strict conformity therewith may be continued in service. Nonconforming facilities in service prior to the adoption of regulations which are found by the marshal to constitute a distinct hazard to life or property shall not be exempt from regulations nor permitted to continue in service.

History: Laws 1984, ch. 127, § 961.

59A-52-16. Flammable liquids regulations; nationwide standards; savings clause; definition.

A. The state fire board shall formulate, adopt and promulgate and amend or revise rules and regulations for the safe vehicular transportation, storage, handling and use of flammable and combustible liquids.

B. The rules and regulations shall be in keeping with the latest generally recognized safety standards for flammable and combustible liquids. Rules and regulations in substantial conformity with the published standards of the National Fire Protection Association for vehicular transportation, storage, handling and use of flammable and combustible liquids shall be deemed to be in substantial conformity with the generally accepted and recognized standards of safety concerning the same subject matter.

C. The rules and regulations shall include reasonable provisions under which facilities in service prior to the effective date of the rules and regulations and not in strict conformity therewith may be continued in service. Nonconforming facilities in service prior to the adoption of regulations which are found by the fire marshal to constitute a distinct hazard to life or property may not be excepted from regulations or permitted to continue in service. For guidance in enforcement, the rules and regulations may delineate those types of nonconformities that should be considered distinctly hazardous and those nonconformities which should be evaluated in the light of local conditions. If the need for compliance with any rule or regulation is conditioned on local factors, the rules and regulations shall provide that reasonable notice be given to the proprietor of the facility affected of intention to evaluate the need for compliance and of the time and place at

which he may appear and offer evidence thereon.

D. As used in this article the term "flammable liquid" shall mean any liquid having a flash point below one hundred (100) degrees fahrenheit, and "combustible liquid" shall mean any liquid having a flash point at or above one hundred (100) degrees fahrenheit and below two hundred (200) degrees fahrenheit.

History: Laws 1984, ch. 127, § 962.

59A-52-17. Regulations; public hearing.

No rule or regulation shall be adopted or revised under Section 962 [[59A-52-16](#) NMSA 1978] of this article or made effective until after public hearing thereon, of which at least twenty (20) days' written notice shall be given by certified mail to each motor carrier, producer, refiner, distributor or other person who or which shall have registered his or its name and mailing address with the marshal as a party interested in such proceedings, and at which any such interested party may appear and present testimony. Every such notice shall contain a copy of each rule and regulation proposed for adoption or revision pursuant to such hearing.

History: Laws 1984, ch. 127, § 963.

59A-52-18. Rules and regulations; statewide effect; reserved power of municipalities.

The rules and regulations promulgated pursuant to this article shall have uniform force and effect throughout the state and no municipality or subdivision shall enact or enforce any ordinances, rules or regulations inconsistent with the statewide rules and regulations promulgated pursuant to this article. Nothing in this article shall in any way impair the power of any municipality to regulate the use of its land by zoning, building codes or restricted fire district regulations.

History: Laws 1984, ch. 127, § 964.

59A-52-19. Police power of marshal; cooperation of state officers.

A. The marshal, his deputy or his authorized officer or designated agent shall have full powers as peace officers to enforce the provisions of this article and all rules and regulations issued pursuant to this article.

B. The revenue officers and law enforcement officers of the state shall cooperate with the marshal, his deputy or authorized officer or designated agent whenever called upon by them for assistance in enforcing this article.

History: Laws 1984, ch. 127, § 965.

59A-52-20. Cease and desist orders; certain violations are misdemeanors.

A. When the marshal, his deputy or his authorized officer or designated agent finds any violation of the regulations issued in compliance with this article, he or they shall issue an order to the owner or his agent to cease and desist such violations.

B. When there is so found any violation of any statute or rules and regulations concerning flammable liquids a cease and desist order shall issue if the violation constitutes an immediate and distinct hazard to life or property, and any such violation shall constitute a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500). Each day such violation continues constitutes a separate offense.

History: Laws 1984, ch. 127, § 966.

59A-52-21. Administrative appeal of orders and modifications.

Any person aggrieved by any order of the state fire marshal, his deputy or authorized officer or his designated agent may appeal to the commission within ten days from the date of the service of such order. The commission shall hear such party within twenty days after receipt of an appeal request and shall give not less than ten days' written notice of the hearing. Within fifteen days after such hearing, the commission shall file its decision and, unless by its authority the order is revoked or modified, it shall be complied with within the time fixed in the decision, with such time to be not less than thirty days.

History: Laws 1984, ch. 127, § 967; 1998, ch. 108, § 41.

59A-52-22. Judicial review of order.

A person aggrieved by a decision of the state fire marshal may appeal to the district court pursuant to the provisions of [Section 39-3-1.1](#) NMSA 1978.

History: Laws 1984, ch. 127, § 968; 1998, ch. 55, § 69; 1999, ch. 265, § 72.

59A-52-23. Enforcement of cease and desist orders.

After expiration of time for an administrative appeal, and if no such appeal has been taken, the state fire marshal may commence an action in the district court for Santa Fe county to enforce the cease and desist order by injunction or other appropriate remedy as the district court may adjudge. The commission may likewise commence an action in the district court for Santa Fe county to enforce its decision rendered on appeal from the cease and desist order of the state fire marshal.

History: Laws 1984, ch. 127, § 969; 1998, ch. 108, § 42.

59A-52-24. Penalty for violation of law or regulations.

Violation of any of the provisions of this article or of any of the regulations lawfully enacted pursuant thereto shall constitute a misdemeanor for which the punishment shall be a fine of not more than five hundred dollars (\$500). Each day any such violation continues shall constitute a separate offense.

History: Laws 1984, ch. 127, § 970.

59A-52-25. Penalty for violation of cease and desist order.

Any person, firm or corporation that violates any final cease and desist order shall be subject to a penalty in the sum of five hundred dollars (\$500) for each day such violation continues. The attorney general is empowered to bring a civil suit for the enforcement of this section on the relation of the marshal. Any penalty collected under the provisions of this section shall be credited to the fire protection fund.

History: Laws 1984, ch. 127, § 971.