

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 PETROLEUM STORAGE TANKS
PART 116 DELIVERY PROHIBITION

20.5.116.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[20.5.116.1 NMAC - N, 07/24/2018]

20.5.116.2 SCOPE: This part applies to owners and operators of storage tanks and facilities holding petroleum and to product deliverers, as defined in 20.5.101 NMAC, who deliver petroleum, and to any person subject to the provisions of 20.5 NMAC.
[20.5.116.2 NMAC - N, 07/24/2018]

20.5.116.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Groundwater Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.
[20.5.116.3 NMAC - N, 07/24/2018]

20.5.116.4 DURATION: Permanent.
[20.5.116.4 NMAC - N, 07/24/2018]

20.5.116.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.116.5 NMAC - N, 07/24/2018]

20.5.116.6 OBJECTIVE: The purpose of this part is to set forth the prohibitions for the delivery, deposit, or acceptance of product at or to a storage tank or a facility that has been determined by the department to be ineligible for such delivery, deposit or acceptance, in order to protect the public health, safety and welfare and the environment of the state.
[20.5.116.6 NMAC - N, 07/24/2018]

20.5.116.7 DEFINITIONS: The definitions in 20.5.101 NMAC shall apply to this part.
[20.5.116.7 NMAC - N, 07/24/2018]

20.5.116.8 to 20.5.116.1599 [RESERVED]

20.5.116.1600 GENERAL: It shall be unlawful for any owner, operator or product deliverer to deliver to, deposit into or accept a regulated substance at or to a storage tank or a facility that has been identified by the department as ineligible for product delivery, deposit or acceptance. It shall also be unlawful for any person to remove, tamper with, destroy or damage a red tag or certificate posted pursuant to this part.
[20.5.116.1600 NMAC - N, 07/24/2018]

20.5.116.1601 DELIVERY PROHIBITIONS:

A. Mandatory ineligibility. The department shall classify a storage tank as ineligible for delivery, deposit or acceptance of product if any of the following conditions exist at the storage tank, or shall classify a facility as ineligible for delivery or acceptance of product if any of the following conditions exist at every storage tank at the facility:

- (1) required spill prevention equipment is not installed;
- (2) required overfill protection equipment is not installed;
- (3) required leak detection equipment is not installed; or
- (4) required corrosion protection equipment is not installed, including required corrosion protection equipment for a buried metal flexible connector.

B. Discretionary ineligibility. The department may, in its sole discretion, classify a storage tank as ineligible for delivery, deposit or acceptance of product if any of the following conditions exist at the storage tank, or may classify a facility as ineligible for delivery, deposit or acceptance of product if any of the following conditions exist at every storage tank at the facility:

- (1) improper operation or maintenance of required equipment for:
 - (a) spill prevention;
 - (b) overfill prevention;
 - (c) leak detection;
 - (d) corrosion protection; or
- (2) operation of the storage tank or facility in a manner that creates an imminent threat to public health and the environment.

[20.5.116.1601 NMAC - N, 07/24/2018]

20.5.116.1602 PROCEDURES FOR CLASSIFYING A STORAGE TANK OR FACILITY AS INELIGIBLE:

A. Mandatory ineligibility. Notice of intent to red tag: Upon identification of a condition or conditions at one or more storage tanks at a facility under Subsection A of 20.5.116.1601 NMAC, the department shall issue the owner and operator a notice of intent to red tag stating the violations and providing the owner or operator 30 days from the date of the notice to correct the violations. The notice of intent to red tag shall inform the owner and operator that the department will prohibit delivery to each storage tank with one or more conditions identified under 20.5.116.1601 NMAC at the facility if the violations are not corrected. The notice of intent to red tag shall state if the facility is in a rural and remote area as defined in 20.5.101.7 NMAC, and shall grant a deferral as provided in 20.5.116.1608 NMAC.

B. Discretionary ineligibility.

(1) Notice of violation. Upon identification of a condition or conditions at one or more storage tanks at a facility under Subsection B of 20.5.116.1601 NMAC, the department shall issue the owner and operator a notice of violation stating the violation and providing the owner or operator 30 days from the date of the notice to correct the violation. The notice of violation shall inform the owner and operator that the violation cited could subject the owner and operator to delivery prohibition at the identified tanks if the violations are not corrected.

(2) Notice of deficiency. If the owner or operator fails to correct the violations within the timeframe provided in the notice of violation, the department shall issue the owner or operator a notice of deficiency re-stating the violations and providing the owner or operator an additional 30 days from the date of the notice to correct the violations. The notice of deficiency shall inform the owner and operator that the violations cited could subject the owner and operator to delivery prohibition at the identified tanks if the violations are not corrected.

(3) Notice of intent to red tag. If the owner or operator fails to correct the violations within the timeframe provided in the notice of deficiency, the department shall issue the owner or operator a notice of intent to red tag re-stating the violations and providing the owner or operator an additional 30 days from the date of the notice to correct the violations. The notice of intent to red tag shall inform the owner and operator that the department will prohibit delivery to the identified tanks at the facility if the violations are not corrected. The notice of intent to red tag shall state if the facility is in a rural and remote area as defined in 20.5.101.7 NMAC, and shall grant a deferral as provided in 20.5.116.1608 NMAC.

C. Red tag placement and ineligibility for delivery. If the owner or operator fails to correct the violations within the timeframe provided in the notice of intent to red tag, the department shall affix a red tag to the fill pipe of every storage tank with one or more conditions identified under 20.5.116.1601 NMAC at the facility pursuant to 20.5.116.1603 NMAC.

D. Notification of installation, replacement, repair or modification. Owners and operators shall give the department notice of any installation, replacement, repair or modification performed to correct the conditions listed in the notice of violation, notice of deficiency or notice of intent to red tag in accordance with 20.5.106 NMAC, 20.5.107 NMAC, 20.5.109 NMAC, and 20.5.110 NMAC. The department may grant a waiver shortening the notification time periods required by those parts if warranted by the circumstances.

[20.5.116.1602 NMAC - N, 07/24/2018]

20.5.116.1603 IDENTIFICATION OF INELIGIBLE STORAGE TANKS OR FACILITIES:

A. Red tag. In order to prevent the delivery, deposit or acceptance of product at or to a storage tank or a facility that has been identified by the department as ineligible under 20.5.116.1601 NMAC and 20.5.116.1602 NMAC, the department shall affix a tamper-proof red tag to the fill pipe of every storage tank with one or more

conditions identified under 20.5.116.1601 NMAC at the facility 48 hours after posting the name and address of the facility on the department's website list of facilities that are ineligible for delivery. The department shall document the level of stored product in each storage tank with one or more conditions identified under 20.5.116.1601 NMAC prior to affixing a red tag to the fill pipe(s) of the storage tank.

B. Certificate. In order to prevent the delivery, deposit or acceptance of product at or to a storage tank or a facility that has been classified by the department as ineligible under 20.5.116.1601 NMAC, the department shall post a certificate, conspicuously displayed at the facility, clearly prohibiting the delivery, deposit or acceptance of product at every storage tank at the facility to which the department has affixed a red tag.

C. Red tag tampering prohibited. It shall be unlawful for any person, other than an authorized representative of the department, to remove, tamper with, destroy or damage a red tag affixed to any storage tank or a certificate posted at a storage tank facility by department personnel.

D. Performance standards. Owners and operators shall continue to adhere to all performance standards of 20.5 NMAC after placement of one or more red tags and a certificate at a facility, including but not limited to leak detection, corrosion protection and monthly inspections.

[20.5.116.1603 NMAC - N, 07/24/2018]

20.5.116.1604 REGULATED SUBSTANCE REMOVAL: Owners and operators shall empty all regulated substances from storage tanks that have been affixed with a red tag if the violations have not been corrected within 30 days of the placement of the red tag. This section shall not limit or supersede the application of 20.5.118 NMAC in the event of a suspected or confirmed release. If no suspected or confirmed release exists, owners and operators shall:

A. empty all regulated substances from each storage tank at the facility that has been affixed with a red tag in accordance with 20.5.115 NMAC, and shall provide written notice to the inspector who issued the red tag when each tank has been emptied, with the name, address, telephone number and email address of the person who removed the regulated substances from the tank; and

B. continue to meet all requirements for temporary closure in 20.5.115.1501 NMAC, including operation of cathodic protection and release detection equipment and payment of the annual fee, or shall permanently close the storage tank system in accordance with 20.5.115.1502 NMAC.

[20.5.116.1604 NMAC - N, 07/24/2018]

20.5.116.1605 PERMANENT CLOSURE: Owners and operators shall permanently close a storage tank system that has been affixed with a red tag if the violations associated with the red tag have not been corrected within 12 months of the placement of the red tag. Permanent closure must meet the requirements in 20.5.115.1502 NMAC, including notification requirements.

[20.5.116.1605 NMAC - N, 07/24/2018]

20.5.116.1606 RED TAG PLACEMENT AND NOTIFICATION PROCESSES FOR STORAGE TANK OWNERS AND OPERATORS AND PRODUCT DELIVERERS:

A. Owners and operators. Notification of red tag placement, including a tank's status as being ineligible for deliveries, shall be provided to an owner or operator in the following manner:

(1) Owner or operator present. If the owner or operator is present on the site, the department shall provide to the owner or operator the notice of red tag placement and ineligibility for delivery.

(2) Owner and operator not present. If neither the owner nor operator is present on the site, the department shall immediately notify an employee in charge of the facility, if such employee is present, of red tag placement and ineligibility for delivery and shall send a copy of the written notice to the owner and operator within 24 hours of notifying the employee in charge of the facility or of affixing a red tag and certificate.

B. Product deliverers. The department shall notify all product deliverers 48 hours before the department affixes a red tag to the fill pipes of each storage tank with one or more conditions identified under 20.5.116.1601 NMAC by posting the name and address of the facility on the department's website list of facilities that contain storage tanks which are ineligible for delivery. Product deliverers shall be responsible for checking the website or contacting the department prior to any product delivery.

[20.5.116.1606 NMAC - N, 07/24/2018]

[The department provides a list of storage tank facilities containing storage tanks with delivery prohibitions. The list is available on the petroleum storage tank bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.116.1607 RECLASSIFYING INELIGIBLE STORAGE TANKS OR FACILITIES AS ELIGIBLE TO RECEIVE PRODUCT:

A. Statement of compliance from owner or operator. In order for an owner or operator of a storage tank or facility which has been determined by the department as ineligible under this rule to have the storage tank or facility reclassified by the department as eligible to receive delivery of product, the owner or operator shall provide a written statement of compliance to the department and the inspector listed in the notice that the conditions listed in the notice of intent to red tag have been corrected. The written statement shall contain the date, owner or operator's name, how the conditions have been corrected, by whom, and the date of correction.

B. Department confirmation. The department shall, in its sole discretion, determine whether the conditions listed in the notice of intent to red tag have been corrected as soon as practicable but within no more than three business days after receipt of the owner's written statement of compliance. If the conditions have not been corrected, the department shall notify the owner or operator in the manner prescribed by 20.5.116.1606 NMAC.

C. Removal of red tag and notice of ineligibility. Upon verification of compliance, department personnel shall:

(1) immediately remove each red tag and certificate at the facility, and document the level of product in each tank; and

(2) as soon as practicable, but in no event longer than three business days, remove the facility from the department's website list of facilities that contain storage tanks which are ineligible for delivery.

[20.5.116.1607 NMAC - N, 07/24/2018]

[The department provides an optional form for compliance with Subsection A. The form is available on the petroleum storage tank bureau's pages on the department's website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.116.1608 DELIVERY PROHIBITION DEFERRAL IN RURAL AND REMOTE AREA AND FOR MATTERS OF NATIONAL SECURITY: The department shall defer classifying a storage tank or facility as ineligible for delivery, deposit or acceptance of product if such classification would jeopardize the availability of, or access to, motor fuel in a rural and remote area as defined in 20.5.101.7 NMAC, or where the United States department of defense operates a storage tank and notifies the department that continued operation of the tank is a matter of national security. The department may only defer application of delivery prohibition for up to 180 days from the date of the issuance of the notice of intent to red tag pursuant to Subsection A of 20.5.116.1602 NMAC or Paragraph (3) of Subsection B of 20.5.116.1602 NMAC.

[20.5.116.1608 NMAC - N, 07/24/2018]

20.5.116.1609 DELIVERY AUTHORIZATION IN EMERGENCY SITUATIONS OR FOR TANK TESTING:

A. Emergency situations. The department may authorize delivery or deposit of product to an emergency generator tank that is otherwise ineligible for delivery or deposit if the owner or operator can demonstrate to the satisfaction of the department that:

(1) a commercial power failure or other declared state of emergency exists; and

(2) the emergency generator tank:

(a) provides power supply;

(b) stores petroleum; and

(c) is used solely in connection with an emergency system, legally required standby system or optional standby system.

B. Tank testing. The department may authorize delivery or deposit of product to a storage tank that is otherwise ineligible for delivery or deposit if the owner or operator can demonstrate to the satisfaction of the department that delivery or deposit is necessary to test or calibrate a tank.

[20.5.116.1609 NMAC - N, 07/24/2018]

20.5.116.1610 ADDITIONAL REQUIREMENTS:

A. Storage tank equipment tampering prohibited. It shall be unlawful for any person, including product deliverers, to remove, tamper with, destroy, damage or disable storage tank equipment, including but not limited to release detection and other safety mechanisms, in the course of delivery of any product.

B. Compliance with rules. A product deliverer shall be responsible for ensuring that all deliveries are made in compliance with 20.5 NMAC.

[20.5.116.1610 NMAC - N, 07/24/2018]

20.5.116.1611 ADMINISTRATIVE APPEALS: Any owner or operator of a facility that contains storage tanks to which the department has affixed a red tag prohibiting delivery pursuant to this part may appeal to the secretary by submitting a written request for hearing.

A. Timelines. The request must be made in writing to the secretary by the owner or operator within five business days after the notice of red tag placement has been issued or the decision of the department shall be final. If an appeal is received within the five-business day time limit, the secretary shall hold a hearing within seven business days after receipt of the request, unless the parties agree to an alternate timeframe. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail.

B. Burden of proof. In the appeal hearing, the burden of proof is on the person who requested the hearing.

C. Procedures.

(1) Appeal hearings shall be held at a place designated by the secretary, unless other mutually agreed upon arrangements are made. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

(2) The department shall make an audio recording of the hearing. If either party wants the hearing transcribed, that party shall bear the costs of transcription.

(3) In appeal hearings, the rules governing civil procedure and evidence in district court shall not apply. Hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary shall decide and announce if the hearing record will remain open, for how long, and for what reason it will be left open.

D. Secretary's decision. Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within seven business days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice.

E. No stay of action. The filing of an administrative appeal shall not stay any action, compliance or corrective action required by the red tag issued by the department.

F. Judicial review. Judicial review of the secretary's final order shall be as provided by law. The filing of a judicial appeal shall not stay any action, compliance or corrective action required by the secretary's decision.

[20.5.116.1611 NMAC - N, 07/24/2018]

HISTORY of 20.5.116 NMAC:

Pre-NMAC History: none

History of Repealed Material:

20.5.19 NMAC, Petroleum Storage Tanks, Delivery Prohibition (filed 3/17/12), repealed 7/24/18.

Other History:

20.5.19 NMAC, Petroleum Storage Tanks, Delivery Prohibition (filed 3/17/12), was renumbered, reformatted, and replaced by 20.5.116 NMAC, Petroleum Storage Tanks, Delivery Prohibition, effective 7/24/18.