

2002 AUG 30 PM 3: 12

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 22 WOODBURNING

20.11.22.1 ISSUING AGENCY: Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
[11/27/91. . .12/1/95; 20.11.22.1 NMAC – Rn, 20 NMAC 11.22.I.1, 10/1/02]

20.11.22.2 SCOPE: This Part is applicable to woodburning sources within Bernalillo County.

A. Exempt: This Part does not apply to sources within Bernalillo County, which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control lacks jurisdiction.

B. Case-by-Case Exceptions: The following exemptions may be granted by the Director.

(1) A sole source exemption if the Director determines that a solid fuel heating device is the sole source of heat for the building in which it is situated. New sole source exemptions shall not be issued after December 31, 1990 unless approved in writing by the Director for good cause. Sole source exemptions issued prior to December 31, 1990 may be renewed annually.

(2) A temporary exemption for a specified period in the event of failure of the oil, natural gas, electricity or propane heating system.

(3) An economic or health exemption for economic or health reasons if the Director determines that the applicant qualifies for financial assistance according to the economic guidelines established under the Food Stamps, Medicaid or low income energy assistance programs as administered by the Income Support Division of the New Mexico Human Services Department, or equivalent program, as determined by the Director, or if the Director determines that failure to grant an exemption would endanger the health of the applicant.

C. Exemption Conditions: In no event shall an exemption be issued for more than 150 days. All exemptions shall be effective for only one no-burn season, unless a different period is specified in the exemption. An exemption only exempts a person from the requirements of Section 20.11.22.13 NMAC; a person holding an exemption must comply with all other provisions of this Part. An exemption may include conditions, which will be established by the Director and will be stated in the exemption. A violation of an exemption condition is a violation of this Part and also may be cause for revocation of the exemption by the Director. Each person seeking an exemption shall do so by filing an acceptable written application with the Director on the form required by the Director. Applications shall include:

(1) the applicant's name and mailing address;

(2) the address for which the exemption is sought;

(3) the reasons for seeking the exemption; and

(4) the supporting documentation required by the Director to verify the applicant's qualification for an exemption.

D. Following receipt of the application for exemption, the Director shall either grant the exemption, grant the exemption subject to conditions, or deny the exemption. The applicant shall be notified in writing of the decision of the Director.

E. In the event an applicant for an exemption is not satisfied with the Director action, the decision may be appealed to the Board. Such appeal shall be in writing and shall be submitted to the Director within 15 days after the Director mails or delivers the decision letter to the applicant of the Director's decision. The appeal shall be considered by the Board at the next regularly scheduled business meeting at which a quorum is present. The decision of the Board shall be final.

[11/27/91. . .12/1/95; 20.11.22.2 NMAC – Rn, 20 NMAC 11.22.I.2, 10/1/02]

20.11.22.3 STATUTORY AUTHORITY: This Part is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.

[11/27/91. . .12/1/95; 20.11.22.3 NMAC – Rn, 20 NMAC 11.22.I.3, 10/1/02]

20.11.22.4 DURATION: Permanent.

[12/1/95; 20.11.22.4 NMAC – Rn, 20 NMAC 11.22.I.4, 10/1/02]

20.11.22.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section.
[12/1/95; 20.11.22.5 NMAC – Rn, 20 NMAC 11.22.I.5, & A, 10/1/02]

20.11.22.6 OBJECTIVE: The objective of this Part is to reduce the levels of carbon monoxide and particulate matter in the ambient air during atmospheric conditions that the Director concludes may not adequately disperse wood smoke, and to minimize the adverse health effects and nuisance effects that result from woodburning.
[11/27/91. . .12/1/95; 20.11.22.6 NMAC – Rn, 20 NMAC 11.22.I.6, 10/1/02]

20.11.22.7 DEFINITIONS: In addition to the definitions in Section 20.11.22.7 NMAC the definition in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this Part shall govern.

A. **“Burn Down”** means that period of time, not to exceed three (3) hours, after a no-burn period is announced by the Director, within which period a person operating a solid fuel heating device must cease combustion within any solid fuel heating device by withholding fuel or modifying the air-to-fuel ratio.

B. **“Inappropriate Fuel”** includes but is not limited to: leaves, grass clippings, green plants, refuse, paper, rubbish, books, magazines, fiberboard, packaging, rags, fabrics, animal waste, waste oil, liquid or gelatinous hydrocarbons, tar, paints and solvents, chemically soaked wood, wood with a moisture content or greater than 30%, plastic or rubber, office records, sensitive or classified wastes, or other materials which are difficult to burn without producing vast amounts of noxious and toxic fumes or dense smoke.

C. **“New Wood Heater”** means:

(1) a wood heater that is sold at retail; is obtained as a result of a bargain or exchange; or is new and is given away for the first time by the manufacturer, the manufacturer's dealer or agency, or a retailer; and

(2) a wood heater which has not been used to an extent which as resulted in the heater being considered "used" or "second hand" within the ordinary meaning of those terms.

D. **“Sole Source”** means one or more solid fuel heating devices installed for the purpose of space heating and which constitute the only source of heat in a building. No solid fuel heating device(s) shall be the sole source of heat in a building if the building is equipped with a furnace or heating system which was designed to utilize oil, natural gas, electricity or propane to heat the building and the furnace or heating system at one time was permanently installed in the building, whether or not the furnace or system presently is connected with or disconnected from its energy source.

E. **“Solid Fuel Heating Device”** means any fireplace, wood heater, wood stove, wood fired boiler, coal fired furnace, coal stove or similar device burning any solid fuel and used inside a building for aesthetic, cooking (excluding commercial cooking) or heating purposes.

F. **“Wood Heater”** means an enclosed woodburning appliance, including a fireplace insert, capable of and intended for space heating or domestic water heating that meets all of the following criteria:

(1) an air-to-fuel ratio in the combustion chamber averaging less than 35-to-1 as determined by the test procedure described in 40 CFR Part 60.534,

(2) a usable firebox volume of less than 0.56 cubic meters,

(3) a minimum burn rate less than 5 kg/hr as determined by the test procedure described in 40 CFR Part 60.534, and

(4) a maximum weight of 800 kg, excluding devices and fixtures that are normally sold separately, such as flue pipe, chimney and masonry components that are not an integral part of the appliance or heat distribution ducting.

G. **“Wood smoke Impacted Area”** means that portion of Bernalillo County that is the most adversely affected by the burning of wood during atmospheric conditions that the Director concludes may not adequately disperse wood smoke. The wood smoke impacted area is delimited on the north and south by the Bernalillo County lines, on the west by the universal transverse meridian (UTM) line 337000mE and on the east by the UTM line 367000mE, Zone 13.

[11/27/91. . .12/1/95; 20.11.22.7 NMAC – Rn, 20 NMAC 11.22.I.7, 10/1/02]

20.11.22.8 VARIANCES: [Reserved]
[12/1/95; 20.11.22.8 NMAC - Rn, 20 NMAC 11.22.I.8, 10/1/02]

20.11.22.9 SAVINGS CLAUSE: Any amendment to 20.11.22 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, or Board Regulation 34,

or 20.11.22 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.
[12/16/94. . .12/1/95; 20.11.22.9 NMAC – Rn, 20 NMAC 11.22.I.9, 10/1/02]

20.11.22.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of this Part or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.
[12/16/94. . .12/1/95; 20.11.22.10 NMAC – Rn, 20 NMAC 11.22.I.10, 10/1/02]

20.11.22.11 DOCUMENTS: Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.
[12/1/95; 20.11.22.11 NMAC – Rn, 20 NMAC 11.22.I.11, & A, 10/1/02]

20.11.22.12 SALE OF NEW WOOD HEATERS - CERTIFICATION REQUIRED: No person shall sell, offer for sale, advertise for sale or barter for, exchange or give away any new wood heater unless the wood heater has been emission certified and labeled in accordance with 40 CFR Part 60.530 through 60.539b.
[11/27/91; 20.11.22.12 NMAC – Rn, 20 NMAC 11.22.II.1& Repealed, 10/1/02, Rn, 20 NMAC 11.22.II.1, 10/1/02]

20.11.22.13 NO-BURN PERIODS: From October 1 through February 28, following a burn down period, no person with authority or power to control the operation of a solid fuel heating device shall allow the operation of a solid fuel heating device within the wood smoke impacted area during a no-burn period which as declared by the Director unless an exemption has been obtained or unless the device is a wood heater that has been emission certified by the EPA. No-burn periods shall be declared by the Director upon review of available meteorological data and a determination that expected atmospheric conditions will not adequately disperse wood smoke.
[11/27/91; 20.11.22.13 NMAC – Rn, 20 NMAC 11.22.II.2, 10/1/02]

20.11.22.14 NOTICE REQUIRED: Notice of no-burn periods shall be sufficient if published in a newspaper of general circulation within Bernalillo County, or if presented orally at least three (3) times during a six (6) hour period by at least two (2) radio or television stations operating within Bernalillo County, or if presented to the general public in the form of a recorded telephone message, the telephone number for which is published in the telephone directory or newspaper of general circulation within Bernalillo County.
[11/27/91; 20.11.22.14 NMAC – Rn, 20 NMAC 11.22.II.3, 10/1/02]

20.11.22.15 VISIBLE EMISSION LIMITATIONS:

A. Certified wood heaters may be operated during a no-burn period provided that no visible emissions are produced after a twenty (20) minute period following start up or refueling. To determine compliance with this standard, the Director shall observe the point at which the certified wood heater releases emissions into the ambient air. If the emission point is producing any visible emissions twenty (20) minutes or longer after the initial observation, a violation of this Part has occurred.

B. During a period in which the Director has not declared a no-burn, no person shall operate a solid fuel heating device in a manner which produces emission into the atmosphere if the emissions exceed 30 % opacity twenty (20) minutes or longer after ignition or refueling of the solid fuel burning device. Visible emission opacity shall be determined by an observer certified by the Director. To determine opacity the observer shall:

- (1) Use the standard visual method listed in 40 CFR 60, Appendix A, Method 9; or
- (2) Use equipment approved by the Director and the EPA if, under the circumstances, the Director and the EPA determines the equipment is as accurate as, or is more accurate than use of the Method 9 procedure.
- (3) If condensed water vapor is visible in an exhaust plume, the opacity assessment shall be made at a point consistent with the procedure stipulated in 40 CFR 60, Appendix A, Method 9.

[11/27/91. . .20.11.22.15 NMAC – Rn, 20 NMAC 11.22.II.4, 10/1/02]

20.11.22.16 MISFUELING OF SOLID FUEL HEATING DEVICES PROHIBITED:

A. No person shall use a fuel in a solid fuel heating device unless the fuel is a fuel recommended by the solid fuel heating device manufacturer. The person using the solid fuel heating device shall comply with all the manufacturers' installation and operation instructions; failure to do so is a violation of this Part.

B. No person shall burn inappropriate fuel in a solid fuel heating device.

[11/27/91; 20.11.22.16 NMAC – Rn, 20 NMAC 11.22.II.5, 10/1/02]

HISTORY OF 20.11.22 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records – state records center and archives.

Regulation No. 34, Woodburning, 8/24/88

Regulation No. 34, Woodburning, 12/23/88

Regulation No. 34, Woodburning, 6/22/89

Regulation No. 34, Woodburning, 2/22/90

Regulation No. 34, Woodburning, 11/27/91

Regulation No. 34, Woodburning; 12/16/94.

History of Repealed Material: [Reserved]

Other History: Regulation No. 34, Woodburning; filed 12/16/94 was **renumbered and reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.22, Woodburning, filed 10/27/95.

20 NMAC 11.22, Woodburning, filed 10/27/95 was **renumbered, reformatted, amended and replaced** by 20.11.22 NMAC, Woodburning, effective 10/1/02.