

NEW MEXICO ADMINISTRATIVE CODE
TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)

Part 65 (20.2.65 NMAC) Smoke Management

As adopted by the New Mexico State Environmental Board effective December 31, 2003, and submitted to EPA December 1, 2003.

Approved by EPA November 27, 2012 (77 FR 70693) effective December 27, 2012 (NMd44)
Regulations.gov docket EPA-R06-OAR-2009-0050 [Short ID: NM031]

NMAC TRANSMITTAL FORM

2003 NOV 25 AM 11:19
[Sequence #]

1.24.10 NMAC

1. Issuing Agency Environmental Improvement Board	2. Agency Code (D/A) 667
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3. Agency Address P.O. Box 26110 1190 St. Francis Drive, Santa Fe, New Mexico 87502

4. Contact Person			
Name Tracy Hughes	Phone # (505) 827-2750	FAX (505) 827-1628	
E-mail tracy_hughes@nmenv.state.nm.us			

5. Type of Rule Action				
New <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Renumber <input type="checkbox"/>	Repeal <input type="checkbox"/>	Emergency <input type="checkbox"/>

6. Total number of pages 5	7. Hearing date 11/19/03	8. Effective date 12/31/03
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9. NMAC Number		
Title	Chapter	Part
20	2	65

10. NMAC Name		
Title	Chapter	Part
Environmental Protection	Air Quality	Smoke Management

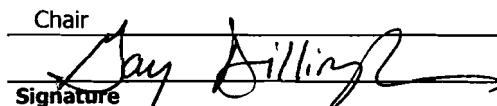
11. Amendment Description	12. Amended NMAC Number

13. Most recent filing date (if applicable)

14. Are there any materials incorporated by reference?	
No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	Reference / Internet site
Please list attachments and Internet site(s) if applicable	1. _____
	2. _____
	3. _____

15. If materials are attached, has copyright permission been received?		
No <input type="checkbox"/>	Yes <input type="checkbox"/>	Public domain <input type="checkbox"/>

16. Legal citation(s) that allows the Issuing Agency to regulate and the Issuing Authority to promulgate regulations on this subject (provide all citations)
74-1-8 NMSA 1978; Chapter 74, Article 2 NMSA 1978

17. Signature & Title of Issuing Authority (Agent's Authority must be shown)	
Name: Gay Dillingham	Check if delegated authority <input type="checkbox"/>
Title: Chair	
Signature: 	Date Signed: 11/19/03

2003 NOV 25 AM 11:19

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 65 SMOKE MANAGEMENT

20.2.65.1 ISSUING AGENCY: Environmental Improvement Board.
[20.2.65.1 NMAC - N, 12/31/03]

20.2.65.2 SCOPE: All geographic areas within the jurisdiction of the environmental improvement board.
[20.2.65.2 NMAC - N, 12/31/03]

20.2.65.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, Subsection 74-1-8(A) (4) and Air Quality Control Act, NMSA 1978, Sections 74-2-1 to -22, including specifically, Subsections 74-2-5(A), (B) and (C).
[20.2.65.3 NMAC - N, 12/31/03]

20.2.65.4 DURATION: Permanent.
[20.2.65.4 NMAC - N, 12/31/03]

20.2.65.5 EFFECTIVE DATE: December 31, 2003, except where a later date is cited at the end of a section.
[20.2.65.5 NMAC - N, 12/31/03]
[The latest effective date of any section in this part is December 31, 2003.]

20.2.65.6 OBJECTIVE: The objective of this part is to manage the air quality impacts of smoke from all sources of fire. This part does not preempt any more stringent controls on burning provided in:

- A. any other New Mexico statute or regulation or any local law, ordinance or regulation; or
- B. any lawfully issued restriction on burning such as may be issued for wildfire prevention.

[20.2.65.6 NMAC - N, 12/31/03]

20.2.65.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part:

A. **"alternatives to burning"** means treatments employing manual, mechanical, chemical, or biological methods to manage vegetation or fuel loads or land management practices that treat vegetation (fuel) without using fire; a treatment or practice may only be considered an alternative if it has successfully been used to take the place of fire for at least three years;

B. **"burn project"** means, in prescribed burning or in wildland fire use, a burn on an area that is contiguous and is being treated or managed for the same land management objectives;

C. **"burner"** means that person who is responsible for a prescribed fire project that is regulated under this part;

D. **"class I area"** means all international parks, national wilderness areas that exceed 5,000 acres in area, national memorial parks that exceed 5,000 acres in area, and national park areas that exceed 6,000 acres in area and that existed on the date of enactment of the Clean Air Act amendments of 1977; the extent of the areas designated as class I shall conform to any changes in the boundaries of such areas that occurred subsequent to the date of the enactment of the Clean Air Act amendments of 1977 or 1990;

E. **"emission reduction technique"** means a strategy for controlling smoke from prescribed fires that minimizes the amount of smoke output per unit of area treated or other objective unit of accomplishment; such strategy shall be used in conjunction with fire and shall not be a replacement for fire; for the purposes of this regulation, a technique used within three years of a burning operation is an emission reduction technique; if that same technique replaces fire for three years or more, the technique is considered an alternative to burning;

F. **"non-attainment area"** means an area which has been designated under section 107 of the federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by the federal environmental protection agency;

G. **"part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico administrative code, unless otherwise noted, as adopted or amended by the board;

H. **"pile"** means vegetative materials that have been relocated either by hand or machinery and

heaped together;

I. "pile volume" means a pile's gross volume, including the air space between solid constituents, as calculated from the pile's overall dimensions and shape;

J. "population" means the total of individuals occupying an area; locations for individuals within an area include, but are not limited to, open campgrounds, single family dwellings, hospitals, schools in use, villages, and open places of employment;

K. "prescribed fire" means any fire ignited by any person to meet specific land management objectives; for the purposes of this part, wildland fire use is considered prescribed fire; any fire ignited in an air curtain incinerator is not "prescribed fire" for purposes of this part;

L. "public notification" means any method that communicates burn information to the burners, air regulators, the local fire authority, and to the general public;

M. "SMP I" means burn projects that emit less than one ton per day of PM-10 emissions or burn less than 5,000 cubic feet pile volume of vegetative material per day;

N. "SMP II" means burn projects that emit greater than or equal to one ton of PM-10 emissions per day or greater than or equal to 5,000 cubic feet pile volume of vegetative material per day;

O. "vegetative material" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, shavings, grass, grass clippings, leaves, conifer needles, bushes, shrubs, clippings from bushes and shrubs, and agricultural plant residue;

P. "ventilation category" means that adjective describing the ventilation index conditions in terms of excellent, very good, good, fair, and poor;

Q. "ventilation index" means an index that describes the potential for smoke or other pollutants to ventilate away from their source;

R. "wildfire" means any unplanned, non-structural fire that occurs on wildland;

S. "wildland" means an area in which development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities; structures if any are widely scattered;

T. "wildland fire use" means the management of wildfire, which is naturally ignited (such as by lightning or volcanic eruption) fire, to accomplish specific pre-stated resource objectives in predefined geographic areas, also known as fire use, wildfire use, prescribed natural fire, and fire for resource benefit.

[20.2.65.7 NMAC - N, 12/31/03]

20.2.65.8 to 20.2.65.99 [RESERVED]

20.2.65.100 APPLICABILITY:

A. This part applies to all users of prescribed fire that:

- (1) exceeds ten acres in area or 1,000 cubic feet of pile volume per day of vegetative material; or
- (2) exceeds the daily burn area or pile volume thresholds specified in Subsection A of 20.2.60.111

NMAC (open burning).

B. This part also applies to burn projects otherwise subject to 20.2.60 NMAC (open burning) that users of prescribed fire voluntarily choose to register with the department under Subsection C of 20.2.65.102 NMAC or Subsection G of 20.2.65.103 NMAC.

C. In addition, portions of this part also apply to the land manager or owner of property on which a wildfire occurs.

[20.2.65.100 NMAC - N, 12/31/03]

20.2.65.101 MATERIALS ALLOWED TO BE BURNED: Only vegetative material shall be burned, with the following exceptions.

A. Auxiliary fuel or incendiary devices may be used to ignite the burning authorized by this section, provided that:

- (1) no oil heavier than no. 2 diesel shall be used; and
- (2) no more than the minimum amount of auxiliary fuel necessary to complete the burn shall be used.

B. Polyethylene sheeting may be burned with the vegetative materials, provided that:

- (1) the sheeting has been covering piled vegetative material for at least one month prior to burning;
- (2) the amount of sheeting burned is no more than the minimum necessary to cover the pile;
- (3) removal of the sheeting before burning is impractical; and
- (4) the burner is able to provide evidence, such as purchase records or package labeling, that the

sheeting is polyethylene and not some other form of plastic.
[20.2.65.101 NMAC - N, 12/31/03]

20.2.65.102 REQUIREMENTS FOR SMP I: For any burn project of less than one ton of PM-10 emissions per day or less than 5,000 cubic feet pile volume per day, all of the following requirements shall apply.

A. The burner shall burn only under appropriate dispersion conditions. In order to accomplish this objective, the burner shall follow one of the two options below.

(1) The burner shall:

(a) ignite burns only during the hours from one hour after sunrise until one hour before sunset; the burner may apply for a waiver of this requirement in writing from the department no later than two weeks prior to the planned burn project; the burner shall document the reasons for waiver application on the appropriate form provided by the department; the department shall notify the burner no later than one week prior to the planned burn project of whether the waiver is granted or denied; the department shall consider such waiver requests on a case-by-case basis; and

(b) conduct burn projects at least 300 feet from any occupied dwelling, workplace, or place where people congregate, which is on property owned by, or under possessory control of, another person; the burner may apply for a waiver of this requirement in writing from the department no later than two weeks prior to the planned burn project; the burner shall document the reasons for waiver application on the appropriate form provided by the department; the department shall notify the burner no later than one week prior to the planned burn project of whether the waiver is granted or denied; the department shall consider such waiver requests on a case-by-case basis; or

(2) the burner shall:

(a) only burn during times when the ventilation category is good or better; the burner may apply for a waiver of this requirement in writing from the department no later than 10:00 a.m. one business day prior to the planned burn project; the burner shall document the reasons for waiver application on the appropriate form provided by the department; the department shall notify the burner no later than 3:00 p.m. one business day prior to the planned burn project of whether the waiver is granted or denied; the department shall consider such waiver requests on a case-by-case basis; and

(b) conduct visual monitoring and shall document the results; the burner shall maintain records of those results for a period of one year; for any burn project planned to be conducted within a one mile radius of a population, the department may require that the burner notify the department no later than two business days prior to the planned burn project so that the department may determine whether to conduct instrument monitoring in addition to visual monitoring conducted by the burner; the need for instrument monitoring shall be determined by the department on a case-by-case basis.

B. The burner shall notify the local fire authority prior to igniting a burn.

C. The burner shall register the burn project with the department on a registration form provided by the department no later than 10:00 a.m. one business day prior to the planned ignition of the burn project. The department shall provide the burner with a registration number for the burn project. Prior to igniting the burn project, if the burner has not received the registration number, the burner shall make a good faith effort to contact the department to obtain the registration number. For burn projects longer than seven days, the burner shall notify the department separately for each seven days of burning to be conducted under that burn project registration. The burner shall not burn more area or volume than the burner has included in the notification or registration.

D. The burner shall submit a completed burn project tracking form to the department on a tracking form provided by the department no later than two weeks following completion of the burn project.

E. For burn projects conducted within a one-mile radius of a population, the following requirements shall apply in addition to all other requirements in this section (20.2.65.102 NMAC):

(1) the burner shall conduct visual monitoring and document the results; and

(2) the burner shall conduct public notification of populations within a one-mile radius of the burn project no later than two days prior to, and no earlier than thirty days in advance of, igniting a burn project.

F. The burner shall maintain all records of actions performed pursuant to the requirements of this section for a period of at least one year.

[20.2.65.102 NMAC - N, 12/31/03]

20.2.65.103 REQUIREMENTS FOR SMP II: For any burn project with emissions greater than or equal to one ton of PM-10 emissions per day or greater than or equal to 5,000 cubic feet pile volume per day, all of the following requirements shall apply.

- A. The burner shall review smoke management educational material supplied by the department or complete an approved smoke management training program prior to initiating burning.
 - B. The burner shall consider alternatives to burning and shall document this consideration and rationale for not using alternatives on the form provided by the department.
 - C. The burner shall implement at least one emission reduction technique and shall document this implementation on the forms provided by the department. The burner may apply for a waiver of this requirement in writing from the department no later than two weeks prior to the planned burn project. The burner shall document the reasons for waiver application on the appropriate form provided by the department. The department shall notify the burner no later than 10:00 a.m. one week prior to the planned burn project of whether the waiver is granted or denied. The department shall consider such waiver requests on a case-by-case basis, taking into consideration the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impact.
 - D. The burner shall only burn during times when the ventilation category is "good" or better. The burner may apply for a waiver of this requirement in writing from the department no later than 10:00 a.m. one business day prior to the planned burn. The burner shall document the reasons for waiver application on the appropriate form provided by the department. The department shall notify the burner no later than 3:00 p.m. one business day prior to the planned burn of whether the waiver is granted or denied. The department shall consider such waiver requests on a case-by-case basis.
 - E. The burner shall conduct visual monitoring and shall document the results.
 - F. The burner shall notify the local fire authority prior to igniting a burn.
 - G. The burner shall register a burn project with the department on forms provided by the department no later than two weeks prior to planned ignition of the burn.
 - H. The burner shall notify the department of the intent to burn on a specific date no later than 10:00 a.m. one business day prior to the planned burn project. The notification may be made for up to a seven-day advance period. The department shall notify the burner of the receipt of the notification by 11:00 a.m. If the department has not notified the burner by 11:00 a.m., the burner shall make a good faith effort to contact the department to verify that the department received the notification prior to igniting the burn. The burner shall not burn more area or volume than the burner has included in the notification. The department shall notify the burner no later than 3:00 p.m. one business day prior to the burn project if a modification of the burn is required.
 - I. The burner shall complete and submit to the department on a form provided by the department a fire activity tracking form no later than two weeks following the end of the burn project.
 - J. For burns planned to be conducted with the wind blowing toward a population, or within a fifteen mile radius of a population if wind direction is not considered, the following requirements shall apply in addition to all other requirements in this section (20.2.65.103 NMAC).
 - (1) The department may require that the burner notify the department no later than two business days prior to the planned burn so that the department may determine whether to conduct instrument monitoring in addition to visual monitoring conducted by the burner. The need for instrument monitoring shall be determined by the department on a case-by-case basis; and
 - (2) The burner shall conduct public notification no later than two days prior to, and no sooner than thirty days in advance of, igniting a burn.
 - K. The burner shall maintain all records of actions performed pursuant to the requirements of this section for a period of at least one year.
- [20.2.65.103 NMAC - N, 12/31/03]

20.2.65.104 WILDLAND FIRE USE: For wildland fire use exceeding ten acres in area, the following requirements shall apply.

- A. The burner shall register a burn project with the department on forms provided by the department no later than one business day following the decision to manage a wildland fire use burn. The burner shall notify the department daily by 10:00 a.m. of the status of the burn.
- B. The burner shall notify the appropriate authorities of the decision to manage a wildland fire use burn. For burns within a fifteen mile radius of a population, the burner shall conduct public notification no later than one calendar day of the decision to manage the burn as a wildland fire use.
- C. The burner shall conduct visual monitoring and shall document the results.
- D. The burner shall complete and submit to the department a fire activity tracking form no later than two weeks following the end of the burn project.
- E. The burner shall maintain all records of actions performed pursuant to the requirements of this

section for a period of at least one year.
[20.2.65.104 NMAC - N, 12/31/03]

20.2.65.105 WILDFIRE UNDER SUPPRESSION: The land manager or owner of property on which a wildfire exceeding 100 acres in area occurs shall complete and submit to the department a fire activity tracking form no later than six weeks or by November 1 of that year, whichever is earlier, following the cessation of fire fighting activities on the wildfire.
[20.2.65.105 NMAC - N, 12/31/03]

HISTORY OF 20.2.65 NMAC:
Pre-NMAC History: None.

History of Repealed Material: [RESERVED]

Other History: [RESERVED]