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TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 100 GREENHOUSE GAS REDUCTION PROGRAM

20.2.100.1 ISSUING AGENCY: Environmental Improvement Board.
[20.2.100.1 NMAC - N, 01/01/13]

20.2.100.2 SCOPE: All persons who own, operate or control a source, as defined in this part.
[20.2.100.2 NMAC - N, 01/01/13]

20.2.100.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, Sections 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including Sections 74-2-5(A) and (B).
[20.2.100.3 NMAC - N, 01/01/13]

20.2.100.4 DURATION: Permanent.
[20.2.100.4 NMAC - N, 01/01/13]
[Sunsetting of this rule is provided in Section 20.2.100.15 NMAC, and mandatory board consideration of revisions and reauthorization is provided in Section 20.2.100.16 NMAC.]

20.2.100.5 EFFECTIVE DATE: January 1, 2013, or six months after 20.2.350 NMAC is no longer in force, whichever date is later.
[20.2.100.5 NMAC - N, 01/01/13]

20.2.100.6 OBJECTIVE: The objective of this part is to establish greenhouse gas emission reduction requirements for sources, as defined herein.
[20.2.100.6 NMAC - N, 01/01/13]

20.2.100.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part the following definitions shall apply; provided, however, that in the event of a conflict, the definition provided in this part shall prevail for purposes of this part.

A. "Baseline emissions" means the actual or estimated carbon dioxide emissions from a source in 2010, as approved by the department. For new sources, it is the emissions set forth in 20.2.100.10 NMAC during the first year of regulation of the new source, as approved by the department. The department shall allow the use of a different time period or output level upon a determination that it is more representative of normal source operations.

B. "Board" means the environmental improvement board.

C. "CO₂e" means carbon-dioxide equivalent, which is the global warming potential of a gas calculated in terms of metric tons of carbon dioxide, as provided in 40 CFR 98.6.

D. "Carbon dioxide maximum expenditure price" shall be fifty dollars (\$50.00) per metric ton carbon dioxide, which dollar amount shall increase by one dollar (\$1.00) every year thereafter.

E. "Credit" means the amount of a reduction of carbon dioxide emissions from a source beginning in 2012 in excess of that required by these regulations that has been reviewed and approved by the department.

F. "Department" means the New Mexico environment department.

G. "Early action" means specific, measured, enforceable, permanent and verifiable steps voluntarily taken at a source at any time in 2005 through 2011 that reduced the source's carbon dioxide emissions below that which it would have emitted had such steps not been taken.

H. "Early action credit" means the amount of a reduction in carbon dioxide emissions from early action.

I. "Existing source" means a source whose carbon dioxide emissions in 2010 equaled or exceeded the threshold amount.

J. "Greenhouse gas" means a gas, except water vapor, with a global warming potential.

K. "New source" means a source whose carbon dioxide emissions equal or exceed the threshold amount after 2010, but not during 2010. A new source includes output capacity added to a source after 2010.

L. “Offset” means a CO₂e reduction in greenhouse gas emissions in New Mexico not at a source, or a non-carbon dioxide reduction in greenhouse gas emissions at a source. An offset must be approved and determined by the department to be accurately measured, verifiable, enforceable, voluntary, additional and permanent. The department shall approve New Mexico offsets certified by the climate action reserve, or certified by any other protocol authorized by the department.

M. “Source” means a petroleum refining facility (SIC code 2911), gas processing or treatment facility (SIC codes 1321 or 1389), gas compression facility (SIC codes 4922, 1389 or 1311) or electric generating facility (SIC code 4911) located in New Mexico whose carbon dioxide emissions equal or exceed the threshold amount. Emissions from oil and gas well sites and associated gathering and transportation systems shall not be aggregated or otherwise considered in determining whether a facility is a source. A source that has been retired or is no longer being operated shall continue to be a source for three years from the date of retirement or ceased operation.

N. “Threshold amount” means carbon dioxide emissions of 25,000 metric tons per year or such lesser amount as the facility owner selects.
[20.2.100.7 NMAC - N, 01/01/13]

20.2.100.8 PREAMBLE: Human activity has increased the global concentration of greenhouse gases in the atmosphere. Science informs us that these increased concentrations have and will warm the climate globally and that, unless abated, will have significant, adverse impacts to the health and welfare of New Mexicans. Currently, scientists believe that greenhouse gas emission reductions to 25 percent below 1990 levels by 2020, and 80 percent below 1990 levels by 2050, or more, are needed to avoid the most severe of these adverse impacts. These regulations are intended to reduce greenhouse gas emissions in New Mexico in a manner consistent with this scientific view, and in proportion to New Mexico’s contribution to global warming. Although the science underlying the connection between anthropogenic greenhouse gas emissions and climate change is well-established, the global climate system is complex, and science’s ability to predict future impacts and recommend avoidance strategies has and will evolve and improve over time. Accordingly, these regulations should be reviewed in 2014, and thereafter as necessary, to assure they remain consistent with the most current scientific knowledge and understanding.
[20.2.100.8 NMAC - N, 01/01/13]

20.2.100.9 EXISTING SOURCES:

A. Within thirty days of the effective date, existing sources shall accurately report their baseline emissions to the department. The report shall include a detailed description of the source, quantities of all carbon dioxide emissions from the source, and a description of how the 2010 emissions were measured or estimated for the source. Emission monitoring and calculation methods provided in 40 CFR Part 98 may be used to meet this requirement. The department shall approve or disapprove the source’s baseline emissions. In the event of disapproval, the source may correct the report or appeal the department’s decision to the board.

B. Unless otherwise provided in this part, an existing source shall emit no more than its approved baseline emissions one year after the effective date, and thereafter it shall reduce those emissions by at least three percent each year. For example, two years after the effective date an existing source shall emit no more than 97 percent of its approved baseline emissions, and three years after the effective date no more than 94 percent of its approved baseline emissions.

C. Beginning two years from the effective date, existing sources shall accurately report their annual carbon dioxide emissions for the prior year to the department, on or before March 1. The report shall include a detailed description of the source, quantities of all carbon dioxide emissions from the source, and a description of how the annual emissions were measured or estimated for the source. The department shall approve or disapprove the source’s annual carbon dioxide emissions report. In the event of disapproval, the source may appeal the department’s decision to the board.
[20.2.100.9 NMAC - N, 01/01/13]

20.2.100.10 NEW SOURCES:

A. The baseline emissions for new sources that generate electricity shall equal 0.5 metric tons of carbon dioxide per megawatt-hour times the expected output per year of that facility during normal operating conditions. The 0.5 metric tons shall be reduced by 0.015 metric tons each year after the effective date.

B. The baseline emissions for new sources that refine oil, process or treat natural gas, or compress natural gas shall equal the metric tons of carbon dioxide that would be emitted annually during normal operating

conditions using best available control technology. The baseline shall assume natural gas is the fuel source for all combustion at the facility.

C. Unless otherwise provided in this part, a new source shall emit no more than its approved baseline emissions during its first full calendar year of operation, and thereafter it shall reduce those emissions by at least three percent each year. For example, in the second year a new source shall emit no more than 97 percent of its approved baseline emissions, and in the third year no more than 94 percent of its approved baseline emissions.
[20.2.100.10 NMAC - N, 01/01/13]

20.2.100.11 CREDITS, OFFSETS, BANKING AND BORROWING:

A. Credits. Any person may apply to the department for approval of a credit. A person with an approved credit may use it to comply with any emission requirement of this part as to any source that is owned, operated or controlled by the same person.

B. Early action credits. Any person may apply to the department for an early action credit. A person with an approved early action credit may use it to comply with any emission requirement of this part as to any source that is owned, operated or controlled by the same person. The amount of an approved early action credit at a source during the first twelve months after the early action was completed shall be added to that source's baseline carbon dioxide emissions.

C. Offsets. Any person may apply to the department for an offset. As applicable, the department may require execution of an enforceable contract between the person, the department and the owner of the offsetting source. A person with an approved offset may use it to comply with any emission requirement of this part as to any source that is owned, operated or controlled by the same person, or may transfer the offset to a third party.

D. Banking. Approved credits, early action credits and offsets may be held indefinitely until they are submitted to the department for the purpose of lowering a source's carbon dioxide reduction requirement for a given year on a one-to-one basis.

E. Borrowing. A source that for any reason cannot meet its carbon dioxide reduction requirement in a given year may defer meeting all or part of such requirement for one additional year; provided, however, that the source shall meet the next year's carbon dioxide reduction requirement plus one hundred and ten percent of the quantity of emissions deferred from the previous year. If a source defers compliance in a year, the unused portion of any 20.2.100.12 NMAC expenditure limit for that year shall carry forward with any deferred reductions.
[20.2.100.11 NMAC - N, 01/01/13]

20.2.100.12 COMPLIANCE LIMIT: Notwithstanding any other provision of this part, a source shall have no further obligation to meet its carbon dioxide reduction requirement in a given year if it has demonstrated to the department that: (1) a good faith effort was made to reasonably and effectively either reduce carbon dioxide emissions at the source or obtain offsets; and (2) the amount of direct expenditures on such good faith effort equals or exceeds the carbon dioxide price times the metric tons of carbon dioxide reduction required in that year. A source shall also be excused from compliance in a given year to the extent that the source demonstrates to the department that sufficient offset and reduction opportunities do not exist, or that compliance would threaten the financial integrity and continued operation of the source.
[20.2.100.12 NMAC - N, 01/01/13]

20.2.100.13 NON-COMPLIANCE: Failure to comply with the carbon dioxide emission limitations established by this part shall be subject to a penalty or other enforcement action as determined by the secretary.
[20.2.100.13 NMAC - N, 01/01/13]

20.2.100.14 VARIANCES: Any person may seek a variance from this part pursuant to 20.2.1.114 NMAC.
[20.2.100.14 NMAC - N, 01/01/13]

20.2.100.15 SUNSET: This part shall sunset if a regional or federal greenhouse gas reduction program is in place or ten years after the effective date.
[20.2.100.15 NMAC - N, 01/01/13]

20.2.100.16 REVISIONS: Three years after the effective date, the department shall petition the board to amend these regulations to modify the definitions of source and threshold, change the covered emissions, adjust the reduction requirements to compensate for emissions from new sources, or make other changes as necessary to assure that New Mexico is reducing its greenhouse gas emissions in a manner that is consistent with the best available

information and advice from climate change scientists. Within nine years of the effective date, the board shall conduct a reauthorization hearing of this rule.
[20.2.100.16 NMAC - N, 01/01/13]

HISTORY OF 20.2.100 NMAC: [RESERVED]