

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

§ 20.2.100.1. ISSUING AGENCY

Environmental Improvement Board.

§ 20.2.100.2. SCOPE

All persons who own, operate or control a source, as defined in this Part.

§ 20.2.100.3. STATUTORY AUTHORITY

Environmental Improvement Act, NMSA 1978, §§ 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, §§ 74-2-1 *et seq.*, including §§ 74-2-5(A) and (B).

§ 20.2.100.4. DURATION

Permanent.

§ 20.2.100.5. EFFECTIVE DATE

_____, 2010.

§ 20.2.100.6. OBJECTIVE

The objective of this Part is to establish greenhouse gas emission reduction requirements for sources, as defined herein.

§ 20.2.100.7. 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 (CO₂) emissions from a source in 2010, as approved by the department. For new sources, it is the 2012 emissions limitations set forth in §20.2.100.10 times the output 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, output level or emissions level upon a determination that it is more representative of normal source operations.

1 B. “board” means the Environmental Improvement Board.

2
3 C. “CO₂e” means carbon-dioxide equivalent, which is the global warming potential
4 of a gas calculated in terms of metric tons of carbon dioxide, as provided in 40 CFR 98.6.

5
6 D. “credit” means the amount of a reduction of CO₂ emissions from a source
7 beginning in 2012 in excess of that required by these regulations that has been reviewed and
8 approved by the department.

9
10 E. “department” means the New Mexico Environment Department.

11
12 F. “early action” means specific, measured, enforceable, permanent and verifiable
13 steps voluntarily taken at a source at any time in 2005 through 2011 that reduced the source’s
14 CO₂ emissions below that which it would have emitted had such steps not been taken.

15
16 G. “early action credit” means the amount of a reduction in CO₂ emissions from
17 early action.

18
19 H. “existing source” means a source whose CO₂ emissions in 2010 equaled or
20 exceeded the threshold amount.

21
22 I. “greenhouse gas” means a gas, except water vapor, with a global warming
23 potential.

24
25 J. “CO₂ price” shall be \$50.00 per metric ton (mton) CO₂ in 2012, which dollar
26 amount shall increase by \$1.00 every year thereafter. For example, in 2013, the CO₂ price shall
27 be \$51.00.

28
29 K. “source” means a petroleum refining facility (SIC Code 2911), gas processing or
30 treatment facility (SIC Codes 1321 or 1389), gas compression facility (SIC Codes 4922, 1389 or
31 1311) or electric generating facility (SIC Code 4911) located in New Mexico whose CO₂
32 emissions equal or exceed the threshold amount. A source that has been retired or is no longer
33 being operated shall continue to be a source for three (3) years from the date of retirement or
34 ceased operation.

35
36 L. “new source” means a source whose CO₂ emissions equal or exceed the threshold
37 amount after 2010, but not during 2010. A new source includes output capacity added to a source
38 after 2010.

39
40 M. “offset” means a CO₂e reduction in greenhouse gas emissions in New Mexico not
41 at a source, or a non-CO₂ reduction in greenhouse emissions at a source. An offset must be
42 approved and determined by the department to be accurately measured, verifiable, enforceable,
43 voluntary, additional and permanent. The department shall approve New Mexico offsets certified
44 by the Climate Action Reserve, or certified by any other protocol authorized by the department.

1 N. “threshold amount” means CO2 emissions of 25,000 mtons per year or such
2 lesser amount as the facility owner selects.

3
4 **§ 20.2.100.8. PREAMBLE**

5
6 Human activity has increased the global concentration of greenhouse gases in the atmosphere.
7 Science informs us that these increased concentrations have and will warm the climate globally
8 and that, unless abated, will have significant, adverse impacts to the health and welfare of New
9 Mexicans. Currently, scientists believe that greenhouse gas emission reductions to 25% below
10 1990 levels by 2020, and 80% below 1990 levels by 2050, or more, are needed to avoid the most
11 severe of these adverse impacts. These regulations are intended to reduce greenhouse gas
12 emissions in New Mexico in a manner consistent with this scientific view, and in proportion to
13 New Mexico’s contribution to global warming. Although the science underlying the connection
14 between anthropogenic greenhouse gas emissions and climate change is well-established, the
15 global climate system is complex, and science’s ability to predict future impacts and recommend
16 avoidance strategies has and will evolve and improve over time. Accordingly, these regulations
17 should be reviewed in 2014, and thereafter as necessary, to assure they remain consistent with
18 the most current scientific knowledge and understanding.

19
20 **§ 20.2.100.9. EXISTING SOURCES**

21
22 A. On or before December 31, 2011, existing sources shall accurately report their
23 baseline emissions to the department. The report shall include a detailed description of the
24 source, quantities of all CO2 emissions from the source, and a description of how the 2010
25 emissions were measured or estimated for the source. Emission monitoring and calculation
26 methods provided in 40 CFR Part 98 may be used to meet this requirement. The department
27 shall approve or disapprove the source’s baseline emissions. In the event of disapproval, the
28 source may correct the report or appeal the department’s decision to the board.

29
30 B. Unless otherwise provided in this Part, an existing source shall emit no more than
31 its approved baseline emissions in 2012, and thereafter it shall reduce those emissions by at least
32 three percent (3%) each year. For example, in 2013 an existing source shall emit no more than
33 97% of its approved baseline emissions, and in 2014 no more than 94% of its approved baseline
34 emissions.

35
36 C. Beginning in 2013, existing sources shall accurately report their annual CO2
37 emissions for the prior year to the department, on or before March 1. The report shall include a
38 detailed description of the source, quantities of all CO2 emissions from the source, and a
39 description of how the annual emissions were measured or estimated for the source. The
40 department shall approve or disapprove the source’s annual CO2 emissions report. In the event
41 of disapproval, the source may appeal the department’s decision to the board.

1 **§ 20.2.100.10. NEW SOURCES**

2
3 A. The baseline emissions for new sources that generate electricity shall equal 0.5
4 mtons of CO₂ per MWh times the expected output per year of that facility during normal
5 operating conditions. The 0.5 mtons shall be reduced by 0.015 mtons each year after 2012.
6

7 B. The baseline emissions for new sources that refine oil, process or treat natural gas,
8 or compress natural gas shall equal the mtons of CO₂s that would be emitted in the first year of
9 operation using best available control technology.
10

11 C. Unless otherwise provided in this Part, a new source shall emit no more than its
12 approved baseline emissions during its first full calendar year of operation, and thereafter it shall
13 reduce those emissions by at least three percent (3%) each year. For example, in the second year
14 a new source shall emit no more than 97% of its approved baseline emissions, and in the third
15 year no more than 94% of its approved baseline emissions.
16

17
18 **§ 20.2.100.11. CREDITS, OFFSETS, BANKING AND BORROWING**

19
20 A. Credits. Any person may apply to the department for approval of a credit. A
21 person with an approved credit may use it to comply with any emission requirement of this Part
22 as to any source that is owned, operated or controlled by the same person.
23

24 B. Early action credits. Any person may apply to the department for an early action
25 credit. A person with an approved early action credit may use it to comply with any emission
26 requirement of this Part as to any source that is owned, operated or controlled by the same
27 person. The amount of an approved early action credit at a source during the first twelve months
28 after the early action was completed shall be added to that source's baseline CO₂ emissions.
29

30 C. Offsets. Any person may apply to the department for an offset. As applicable, the
31 department may require execution of an enforceable contract between the person, the department
32 and the owner of the offsetting source. A person with an approved offset may use it to comply
33 with any emission requirement of this Part as to any source that is owned, operated or controlled
34 by the same person, or may transfer the offset to a third party.
35

36 D. Banking. Approved credits, early action credits and offsets may be held
37 indefinitely until they are submitted to the department for the purpose of lowering a source's
38 CO₂ reduction requirement for a given year on a one-to-one basis.
39

40 E. Borrowing. A source that for any reason cannot meet its CO₂ reduction
41 requirement in a given year may defer meeting all or part of such requirement for one additional
42 year; provided, however, that the source shall meet the next year's CO₂ reduction requirement
43 plus one hundred and ten percent (110%) of the quantity of emissions deferred from the previous
44 year. If a source defers compliance in a year, the unused portion of any §20.2.100.12 expenditure
45 limit for that year shall carry forward with any deferred reductions.
46

1 **§ 20.2.100.12. MAXIMUM EXPENDITURE**

2
3 Notwithstanding any other provision of this Part, a source shall have no further obligation to
4 meet its CO2 reduction requirement in a given year if it has demonstrated to the department that:
5 (1) a good faith effort was made to reasonably and effectively either reduce CO2 emissions at the
6 source or obtain offsets; and (2) the amount of direct expenditures exceeding the prior year's
7 level of expenditure on such good faith effort equals or exceeds the CO2 price times three
8 percent (3%) of the source's baseline CO2 emissions.

9
10 **§ 20.2.100.13. NON-COMPLIANCE**

11
12 Failure to comply with the CO2 emission limitations established by this Part shall be subject to a
13 penalty and/or other enforcement action as determined by the Secretary.

14
15 **§ 20.2.100.14. VARIANCES**

16
17 Any person may seek a variance from this Part pursuant to NMAC §20.2.1.114.

18
19 **§ 20.2.100.15. SUNSET**

20
21 This Part shall no longer apply to a source beginning in the year that it begins reducing
22 greenhouse gas emissions pursuant to multi-jurisdictional or national mandatory greenhouse gas
23 emission caps, or 2020, whichever comes first.

24
25 **§ 20.2.100.16. REVISIONS**

26
27 On or before July 1, 2014, the department shall petition the board to amend these regulations to
28 modify the definitions of source and threshold, change the covered emissions, adjust the
29 reduction requirements to compensate for emissions from new sources, or make other changes
30 as necessary to assure that New Mexico is reducing its greenhouse gas emissions in a manner
31 that is consistent with the best available information and advice from climate change scientists.