

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

Part 1 (20.2.1 NMAC) General Provisions, NMd61

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TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 1 GENERAL PROVISIONS

20.2.1.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[09/05/95; 20.2.1.1 NMAC - Rn, 20 NMAC 2.1.100, 10/31/02]

20.2.1.2 SCOPE: The provisions of this part apply to all parts of this chapter.
[09/05/95; 20.2.1.2 NMAC - Rn, 20 NMAC 2.1.101, 10/31/02]

20.2.1.3 STATUTORY AUTHORITY: Statutory authority comes from the *Environmental Improvement Act*, NMSA 1978, Sections 74-1-1 et seq., and the *Air Quality Control Act*, NMSA 1978, Sections 74-2-1 et seq.
[09/05/95; 20.2.1.3 NMAC - Rn, 20 NMAC 2.1.102, 10/31/02]

20.2.1.4 DURATION: Permanent.
[09/05/95; 20.2.1.4 NMAC - Rn, 20 NMAC 2.1.103, 10/31/02]

20.2.1.5 EFFECTIVE DATE: October 27, 1995, unless a later date is cited at the end of a section.
[09/05/95, 10/27/95; 20.2.1.5 NMAC - Rn, 20 NMAC 2.1.104, 10/31/02; A, 06/01/10]
[The latest effective date of any section in this part is 02/27/15]

20.2.1.6 OBJECTIVE: The purpose of this Part (20.2.1 NMAC) is to establish general provisions which apply to all parts of this chapter (20.2.1 through 20.2.99 NMAC).
[09/05/95; 20.2.1.6 NMAC - Rn, 20 NMAC 2.1.105, 10/31/02]

20.2.1.7 DEFINITIONS: [RESERVED]

20.2.1.8 to 20.2.1.105 [RESERVED]

20.2.1.106 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS:

A. This part amends and supersedes Air Quality Control Regulations (AQCRs):

- (1) 110, *Confidential Information Protection*, last filed May 29, 1990;
- (2) 701, *Procedures for Requesting a Variance Hearing*, last filed Oct. 7, 1975;
- (3) 1001, *Sampling Equipment*, last filed Jan. 27, 1970;
- (4) 1101, *Severability*, last filed Jan. 27, 1970;
- (5) 1201, *Effective Date*, last filed Jan. 27, 1970;
- (6) 1301, *Conflicts*, last filed Jan. 27, 1970.

B. All references to AQCRs 110, 701, 1001, 1101, 1201 and 1301 in any other rule shall be understood as a reference to this part.

[09/05/95, 10-27-95; 20.2.1.106 NMAC - Rn, 20 NMAC 2.1.106, 10/31/02]

20.2.1.107 SEVERABILITY: If any provision or application of any part under Chapter 2 of Title 20 is held invalid, the remainder, or its application to other situations or persons, shall not be affected.
[09/05/95; 20.2.1.107 NMAC - Rn, 20 NMAC 2.1.107, 10/31/02]

20.2.1.108 SAVING CLAUSE: Supersession of any Air Quality Control Regulation (AQCR) shall not affect any administrative or judicial enforcement action pending on the effective date of any part under Chapter 2 of Title 20, nor the validity of any permit issued pursuant to any AQCR.
[09/05/95; 20.2.1.108 NMAC - Rn, 20 NMAC 2.1.108, 10/31/02; A, 02/27/15]

20.2.1.109 CONSTRUCTION: Any part under Chapter 2 of Title 20 shall be liberally construed to effectuate the purpose of the *Environmental Improvement Act*, NMSA 1978, 74-1-1 et seq. and the *Air Quality Control Act*, NMSA 1978, 74-2-1 et seq.
[09/05/95; 20.2.1.109 NMAC - Rn, 20 NMAC 2.1.109, 10/31/02]

20.2.1.110 COMPLIANCE WITH OTHER REGULATIONS: Compliance with any part under Chapter 2 of Title 20 does not relieve a person from the obligation to comply with other applicable state and federal regulations.
[09/05/95; 20.2.1.110 NMAC - Rn, 20 NMAC 2.1.110, 10/31/02]

20.2.1.111 AVAILABILITY OF MATERIALS INCORPORATED BY REFERENCE: Materials incorporated by reference into any part under Chapter 2 of Title 20 may be viewed at the state records center or at the New Mexico environment department, air quality bureau.
[09/05/95; 20.2.1.111 NMAC - Rn, 20 NMAC 2.1.111, 10/31/02; A, 02/27/15]
[As of 02/27/15, the State Records Center is located at 1205 Camino Carlos Rey, Santa Fe, NM 87505; and the New Mexico Environment Department, Air Quality Bureau, is located at 525 Camino de los Marquez, Suite 1, Santa Fe, NM, 87505]

20.2.1.112 EFFECT OF STAY OR INVALIDATION OF INCORPORATED FEDERAL REGULATIONS: If a federal court stays, invalidates or otherwise renders unenforceable by the environmental protection agency (EPA), in whole or in part, any federal regulation incorporated by reference in any part under Chapter 2 of Title 20, such incorporated federal regulation shall be enforceable by the department only to the extent it is enforceable by EPA.
[09/05/95; 20.2.1.112 NMAC - Rn, 20 NMAC 2.1.112, 10/31/02]

20.2.1.113 SAMPLING EQUIPMENT: When directed by the environment department, or its designated representative, the necessary openings for sampling equipment shall be provided on stacks or other openings through which emissions are released to the atmosphere.
[09/05/95; 20.2.1.113 NMAC - Rn, 20 NMAC 2.1.113, 10/31/02]

20.2.1.114 PETITION PROCEDURES FOR REQUESTING A VARIANCE HEARING:
A. Definition: As used in this section (part), “**petitioner**” means a person seeking a variance from a regulation of the environmental improvement board or limitation prescribed under the *Air Quality Control Act* pursuant to NMSA 1978, Section 74-2-8.

B. Petition procedures:

(1) Any person seeking a variance from a regulation of the environmental improvement board, or a permit condition imposed by the department, or from the limitations prescribed under the *Air Quality Control Act* pursuant to Section 74-2-8 NMSA 1978, shall do so by filing a written petition with the secretary. Petition forms may be obtained from the environment department.

(2) Petitions shall:

- (a) state the petitioner’s name and address;
- (b) state the date of the petition;
- (c) describe the facility or activity for which the variance is sought;
- (d) state the address or description of the property upon which the facility is located;
- (e) identify the regulation of the board or limitation prescribed under the *Air Quality*

Control Act from which the variance is sought;

(f) state in detail the extent to which the petitioner wishes to vary from the regulation or limitations;

(g) state why the petitioner believes the variance is justified; and

(h) state the period of time for which the variance is desired.

(3) The petitioner may submit with the petition any relevant documents or material which the petitioner believes would support the petition.

C. The environment department’s response and any further action and proceedings shall be in accordance with general adjudicatory procedures of the environmental improvement board.

[10/27/95; 20.2.1.114 NMAC - Rn, 20 NMAC 2.1.114, 10/31/02]

20.2.1.115 CONFIDENTIAL INFORMATION PROTECTION:

A. Definitions: As used in this section:

- (1) “**Claimant**” refers to a person or business who makes a claim of confidentiality.

(2) **“Confidential business information”** refers broadly to information that, if made public, would harm a business’ competitive position. This includes trade secrets and may include data relating to the profits and costs of the owner or operator which have not previously been released to the public.

(3) **“Nature and amount of emissions”** means information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant emission and includes a general description of the location and nature of the source.

(4) **“Source”** or **“stationary source”** means any building, structure, equipment, facility, installation (including temporary installations), operation or portable stationary source which emits or may emit any air contaminant. Any research facility may group its sources for the purpose of this section, at the discretion of the secretary.

(5) **“Trade secret”** refers to a secret plan or process, tool or mechanism unique to the owner or operator of a business.

B. Confidentiality determinations: The environment department shall keep confidential trade secrets or confidential business information under applicable legal principles to the extent that:

(1) business information furnished to or obtained by the environment department concerning air contaminant sources shall be considered for confidential treatment if specifically marked as confidential at the time such information is submitted;

(2) the department is not required to disclose this information pursuant to a statutory provision; and

(3) the following conditions are satisfied:

(a) the claimant has asserted a claim of confidentiality which has not been waived, withdrawn or denied;

(b) the claimant has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;

(c) the information is not, and has not been, reasonably obtainable without the business’ consent; and

(d) the claimant has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business’ competitive position.

C. This Section (20.2.1.115 NMAC) shall not be construed to prohibit disclosure of records and information:

(1) to other officers, employees or authorized representatives of the department, the local agency, the environmental improvement board, or the local board concerned with carrying out the *Air Quality Control Act*;

(2) to officers, employees or authorized representatives of the United States environmental protection agency concerned with carrying out the federal act;

(3) when relevant, in any proceeding under the *Air Quality Control Act* or the federal act;

(4) of data concerning the nature and amount of emissions from any source; or

(5) limit the use of such records or information in any civil or criminal action, subject to such protection as the court may give.

D. Procedures for handling requests for confidentiality:

(1) The department’s office of general counsel (OGC) in each case shall determine whether and to what extent the information qualifies for confidential treatment under this section.

(2) If the department determines it will need additional information in order to decide whether information submitted by the claimant qualifies for confidential treatment, the department shall send the claimant a written notice requesting additional information.

(a) The claimant shall submit the requested additional information within thirty (30) days of receiving the department’s request. The department shall keep the claimant’s information confidential and not disclose it to the public during that thirty (30) day time period.

(b) If the claimant does not submit the requested additional information within the thirty (30) day time period, then the department shall assume that the claimant has abandoned or withdrawn the claim of confidentiality, and may release the information to the public upon request (following the expiration of the thirty (30) day period).

(3) Within thirty (30) days of receiving material marked as confidential or within thirty (30) days of receiving any additional information the department requested, the department shall determine whether and to what extent the information qualifies for confidential treatment under this section.

(4) Once a decision is reached, the department shall send the claimant a written notice of the decision by certified mail.

(5) If the department notifies a claimant that his or her claim of confidentiality will not be honored, the department shall not make the information available for public inspection or copying for thirty (30) days in order to give the claimant an opportunity to request administrative review of the decision. The department shall not make the information available for public inspection or copying while an administrative review, or legal action to prevent disclosure, is pending.

(6) Business information that has been determined to be confidential shall not be made a part of any public record unless the claimant expressly agrees to its publication.

E. Administrative review: Every claimant has the right to request additional review of any denial of a request for confidential treatment of business information or documents. The secretary shall be responsible for conducting reviews of denials made by department personnel. The secretary shall use his or her best efforts to review denials within thirty (30) days of receiving the request for review.

[10/27/95; 20.2.1.115 NMAC - Rn, 20 NMAC 2.1.115, 10/31/02]

20.2.1.116 SIGNIFICANT FIGURES:

A. All emissions standards are deemed to have at least two significant figures, but not more than three significant figures.

B. At least five significant figures shall be retained in all intermediate calculations.

C. In calculating emissions to determine compliance with an emission standard, the following rounding off procedures shall be used:

(1) if the first digit to be discarded is less than the number five, the last digit retained shall not be changed;

(2) if the first digit discarded is greater than the number five, or if it is the number five followed by at least one digit other than the number zero, the last figure retained shall be increased by one unit; and

(3) if the first digit discarded is exactly the number five, followed only by zeros, the last digit retained shall be rounded upward if it is an odd number, but no adjustment shall be made if it is an even number.

D. The final result of the calculation shall be expressed in the units of the standard.

[20.2.1.116 NMAC - N, 06/01/10; A, 02/27/15]

20.2.1.117 ELECTRONIC REPORTING AND PERMIT APPLICATIONS:

A. Applicability. Pursuant to the *Cross-Media Electronic Reporting Rule* (CROMERR) as defined by Title 40 of the Code of Federal Regulations (CFR) Part 3, and the *Uniform Electronic Transactions Act*, NMSA 1978, Sections 14-16-1 to -21 (2001 as amended through 2013), any submittal to the department required by any part under Chapter 2, *Air Quality (Statewide)*, of Title 20, *Environmental Protection*, of the New Mexico administrative code, for which the department has notified persons subject to the applicable requirement that it is accepting specified electronic documents in lieu of paper, shall be submitted electronically, provided that the method of submittal complies with applicable federal and state standards for electronic submissions. The department may grant a waiver of this requirement on a case-by-case basis if requested by the regulated source.

B. Deadline extension due to computer system failure.

(1) If electronic submittal capability is in place, but the department's electronic document receiving system is temporarily unavailable, then the department may grant a deadline extension to the regulated source.

(2) If electronic submittal capability is in place, but the regulated source's computer system or its internet service provider is temporarily unavailable, then the source may request a deadline extension. The department may grant a deadline extension to the regulated source.

[20.2.1.117 NMAC - N, 02/27/15]

HISTORY OF 20.2.1 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.

HSSD 70-1, Ambient Air Quality Standards And Air Quality Control Regulations, 01/27/70.

EIB/AQCR 110, Air Quality Control Regulation 110 - Confidential Information Protection, 05/29/90.

History of Repealed Material: [RESERVED]

Other History:

HSSD 70-1, Ambient Air Quality Standards And Air Quality Control Regulations, (relating to those portions numbered 1001-Sampling Equipment; 1101-Severability; 1201-Effective Date; 1301-Conflicts) filed 01/27/70; (AQCR) 701, Procedure For Requesting A Variance Hearing, filed 10/07/75; and EIB/AQCR 110, Air Quality Control Regulation 110 - Confidential Information Protection, 05/29/90 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.1, General Provisions, filed 08/03/95.

20 NMAC 2.1, General Provisions, filed 08/03/95 was **replaced** by 20 NMAC 2.1, General Provisions, filed 09/27/95.

20 NMAC 2.1, General Provisions, filed 09/27/95 was **renumbered, reformatted and replaced** by 20.2.1 NMAC, General Provisions, effective 10/31/02.