

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 87 GREENHOUSE GAS EMISSIONS REPORTING

20.2.87.1 ISSUING AGENCY: Environmental Improvement Board.
[20.2.87.1 NMAC - N, 01/01/08]

20.2.87.2 SCOPE: All persons who own or operate an applicable source of greenhouse gas emissions in the geographic areas within the jurisdiction of the Environmental Improvement Board.
[20.2.87.2 NMAC - N, 01/01/08]

20.2.87.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically Sections 74-2-5(B)(1) & 74-2-5(C)(5)(d) & (e).
[20.2.87.3. NMAC - N, 01/01/08]

20.2.87.4 DURATION: Permanent.
[20.2.87.4 NMAC - N, 01/01/08]

20.2.87.5 EFFECTIVE DATE: January 1, 2008 except where a later date is cited at the end of a section or paragraph.
[20.2.87.5 NMAC - N, 01/01/08]

20.2.87.6 OBJECTIVE: The objective of this Part is to establish requirements for the reporting of third-party verified greenhouse gas emissions to the Department.
[20.2.87.6 NMAC - N, 01/01/08]

20.2.87.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC, the following definitions shall apply to terms used in this Part.

A. “carbon dioxide” means the compound with a molecular formula of one carbon atom and two oxygen atoms.

B. “carbon dioxide equivalent” means quantity of a given greenhouse gas multiplied by its total global warming potential, as defined by the intergovernmental panel on climate change [which assessment?].

C. “de minimis emissions” means the quantity of greenhouse gas emissions, expressed as carbon dioxide equivalent, from any combination of sources and/or gases, which, when summed equal less than three percent of the total greenhouse gas emissions which are required to be reported for the reporting year. *(BP: Per discussion at the May 24 meeting in Santa Fe, there was concern regarding why “de minimis” for New Mexico will be 3% of total GHG, while under CCAR “de minimis” is 5% of total GHG. Do we want to maintain consistency with CCAR? Provision should also be made for a “one time demonstration” of no or de-minimis emissions of GHG’s which the entity does not have – such as SF6. Annual proof of the negative should not be required and does not add value.)*

D. “direct emissions” means emissions from sources at the facility.

E. “emission report or inventory” means a listing, by source, of the amount of air pollutants discharged into the atmosphere. *(BP: This provision needs to be reworded to enable reporting by source type of category rather than individual source. For dispersed field operations reporting by individual source is neither workable nor reasonable. For example reporting of pneumatic controller emissions for a field would have several thousand lines of “individual sources” which would simply add complexity without value. The structure of the reporting should be part of the protocol to be developed rather than dictated by the above provision copied from existing regulation.)*

F. “equity share” means the extent of economic interest held in an operation, which is typically the same as ownership percentage.

G. “facility” means any building, structure, facility, or installation that emits or may emit any greenhouse gas. *(BP: The Department should add a definition of “entity” for GHG reporting purposes. This would be defined for the applicable sector in the protocols to be developed/adopted as the program develops. For example,*

this could enable reporting of field-wide emissions for dispersed sources rather than facility by facility which would simply add complexity with no value.)

H. "greenhouse gas" means a substance that is released into the air as a result of human activity and the presence of which in the atmosphere inhibits the release of outgoing terrestrial radiation. For purposes of this part, greenhouse gases include any of the following: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons or sulfur hexafluoride.

I. "greenhouse gas emissions reporting year" means the calendar year in which reported data is required to be collected under this Part.

J. "hydrofluorocarbons" means gases containing hydrogen, carbon, and fluorine and for which global warming potential values have been established under the united nations framework convention on climate change.

K. "indirect emissions" means emissions that are a consequence of the operations under the operational control of the reporting entity, but which occur at sources owned or controlled by another entity. *(BP: Indirect emissions are commonly thought of as those from import of heat/steam and/or electricity. The way this provision is written could be construed as requiring reporting of the emissions associated with purchase of goods and services – such as desks. This concept of forcing “green procurement” has been discussed several times in the past and not considered workable. The definition of “indirect emissions” should be tightened up and defined as those emissions associated with direct import of heat/steam and/or electricity by a facility.)*

L. "methane" means the compound with a molecular formula of one carbon atom and four hydrogen atoms.

M. "metric ton" means 2204.62 pounds

N. "nitrous oxide" means the compound with a molecular formula of two nitrogen atoms and one oxygen atom.

O. "operational control" means having the authority to introduce and implement operating policies at the facility or operation. *(BP: Introducing “operational control” as a criteria may cause confusion. It is probably better to use the common definitions of “owner or operator” or be much better clarified.)*

P. "perfluorocarbons" means gases containing carbon and fluorine and for which global warming potential values have been established under the united nations framework convention on climate change.

Q. "sulfur hexafluoride" means the compound with a molecular formula of one carbon atom and six fluorine atoms.

[20.2.87.7 NMAC - N, 01/01/08]

20.2.87.8 SEVERABILITY. If any provision of this Part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.87.8 NMAC - N, 01/01/08]

20.2.87.9 CONSTRUCTION. This Part shall be liberally construed to carry out its purpose.

[20.2.87.9 NMAC - N, 01/01/08]

20.2.87.10 SAVINGS CLAUSE. Repeal or supersession of prior versions of this Part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.87.10 NMAC - N, 01/01/08]

20.2.87.11 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this Part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.87.11 NMAC - N, 01/01/08]

20.2.87.12 to 20.2.87.199 [RESERVED]

20.2.87.200 APPLICABILITY *(BP: See the comments above relating to “operational control” and the applicability section).*

A. The following shall report greenhouse gases under this Part, with 2008 as the first greenhouse gas reporting year.

(1) Any owner or operator of a facility at which the sum of the nameplate capacity of all electrical generating units is equal to or greater than twenty five megawatts of electricity.

(2) Any owner or operator of a petrochemical refining facility with a NAICS code 32411.

(3) Any owner or operator of a cement manufacturing facility with a NAICS code 32731.

B. Owners or operators required to report greenhouse gas emissions under this Part may register and third-party verify their greenhouse gas emissions with [the voluntary program of the multi-state registry]. Owners or operators that have registered and verified their greenhouse gas emissions in accordance with the procedures of the [the multi-state registry] for the greenhouse gas emissions reporting year shall be deemed to be in compliance with this Part for that reporting year if:

(1) the greenhouse gas emissions reported for each reporting year include, at a minimum, the emissions that would be reported for that owner or operator for that year under this Part; and

(2) the department has access to, at a minimum, the emissions information that would be provided by that owner or operator under this Part.

C. Entities that are not required to report greenhouse gas emissions under this Part may do so voluntarily.

D. Owners or operators that are required to report greenhouse gas emissions under this Part may voluntarily include additional emissions that are not required under this Part.

[20.2.87.200 NMAC - N, 01/01/08]

20.2.87.201 GREENHOUSE GAS EMISSIONS REPORTING REQUIREMENTS

A. Requirements for the first reporting year. The owner or operator shall report at a minimum all direct emissions of carbon dioxide from the facility. The owner or operator is not required to include emissions from mobile sources at the facility. (BP: This provision needs to be broadened to enable reporting by “entity” (to be defined for each sector in the protocols to be developed/adopted) rather than restricting it specifically to facility. For example, reporting of field wide GHG emissions, consistent with the protocol to be developed, should be enabled rather than well by well reporting which would add complexity with no value.)

B. Requirements for the second and subsequent reporting years. The owner or operator shall report at a minimum:

(1) all direct emissions of carbon dioxide from the facility. The owner or operator is not required to include emissions from mobile sources at the facility; and (BP: This provision needs to be broadened to enable reporting by “entity” (to be defined for each sector in the protocols to be developed/adopted) rather than restricting it specifically to facility. For example, reporting of field wide GHG emissions, consistent with the protocol to be developed, should be enabled rather than well by well reporting which would add complexity with no value.)

(2) indirect greenhouse gas emissions from all electricity, steam, and heat purchased and consumed at the facility. (BP: Again, enable “entity” reporting rather than facility by facility)

C. De minimis emissions may be omitted from the emissions report, provided that the third party verifier has verified that the de minimis emissions meet the definition in this Part.

[20.2.87.201 NMAC - N, 01/01/08]

20.2.87.202 GREENHOUSE GAS EMISSIONS REPORTING PROCEDURES

A. Owners or operators that meet the applicability requirements in section 20.2.87.200 NMAC shall submit annual greenhouse gas emissions reports under this Part. Greenhouse gas emissions reports shall apply to a calendar year.

B. Reporting shall be conducted using the greenhouse gas emissions reporting tool and procedures provided by the department. Such tool and procedures shall:

(1) be made available by the Department to the public for review and comment at least sixty days prior to the beginning of a greenhouse gas emission reporting year. Department notifications of the availability of the tool and procedures for review may be made electronically or in writing;

(2) be consistent with generally accepted protocols for estimation of greenhouse gas emissions;

(3) include recommended methods for estimation of greenhouse gas emissions from equipment and processes for which emissions calculations are required, and the supporting data that is required for use of such methods;

(4) include alternate methods for estimation of greenhouse gases, where such alternate methods are available;

(5) include provisions to report:

(a) the name and address of the reporting owner or operator;

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- (b) the name and telephone number of the person to contact regarding the emissions report;
- (c) for emissions from facilities within the jurisdiction of the Environmental Improvement Board, the county in which the facilities are located;
- (d) for emissions from facilities located on Tribal Lands, if reported, the Tribe or Pueblo;
- (e) for emissions from facilities located in another state or territory of the United States, if reported, the state or territory;
- (f) for emissions from facilities located in another country, if reported, the country;
- (g) fuel use, including amounts and specifications of each fuel type, directly related to reported emissions; *(BP: Reporting of fuel use and specification should not be required. Companies would be required to maintain the information and methodologies used to estimate/calculate reported GHG emissions and make this available to the Department and/or the verifiers upon request.)*
- (h) the means to document methods utilized to make emissions calculations, if different from the methods incorporated into the tool; *(BP: See previous comments.: The Department should adopt/approve standard protocols – such as the API compendium or better – that have been widely reviewed and recognized globally. There should not be a need to regurgitate these methodologies nor should the department craft a “custom” set of methodologies or protocols which are not reciprocally acceptable across jurisdictional boundaries.)*
- (i) calculations for emissions of each reported greenhouse gas and the means to sum all reported greenhouse gases, in units of tons of carbon dioxide equivalent, including emissions occurring during regular operation, maintenance, start-ups, shutdowns, upsets, and malfunctions; *(BP: Since reporting will in conformance with protocols to be developed/adopted and be verified by a third party, why would calculations for emissions be required? This would seem to require repetition of the protocols for no value.)*
- (j) a description of de minimis emissions not reported; and
- (k) a listing, including percentages, of the owners of equity shares of the emissions reported. *(BP: The methodology of determining “equity share” should be developed during the protocol development and should be consistent with the WRI and IPIECA guidelines/protocols. This provision should also be rationalized with the concept of operational control and owner/operator)*

C. All emissions reporting under this Part shall be verified according to the certification protocol approved by the department. The verification shall be conducted by a third party certifier that has met the department’s approval with regards to:

- (1) technical expertise regarding the reporting and verification of greenhouse gas emissions; and
- (2) the absence of potential for conflict of interest with regards to providing third party verification for the reporting owner or operator.

D. Reporting owners or operators shall submit unverified reports required under this Part by July 1 [?] of the year following the greenhouse gas emissions reporting year and verified reports required under this Part by July 1 [?] of the second year following the greenhouse gas reporting year.
[20.2.87.202 NMAC - N, 01/01/08]

***Additional comment:** The rule needs to address selection of a base year for reporting to achieve baseline protection and early action credit. There are several options for doing this but a consistent baseline year should be agreed for each sector and incorporated. According to the May 24 meeting handout (Element 2), a statement on this handout says “Company may select base year and adjust baseline accordingly.” This concept does not seem to be addressed in the rule.*