

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 2 AIR QUALITY (STATEWIDE)**
3 **PART 1 GENERAL PROVISIONS**
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6 **20.2.1.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.
7 [09/05/95; 20.2.1.1 NMAC - Rn, 20 NMAC 2.1.100 10/31/02]
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9 **20.2.1.2 SCOPE:** The provisions of this Part apply to all Parts of this Chapter.
10 [09/05/95; 20.2.1.2 NMAC - Rn, 20 NMAC 2.1.101 10/31/02]
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12 **20.2.1.3 STATUTORY AUTHORITY:** Statutory authority comes from the Environmental Improvement
13 Act, NMSA 1978, sections 74-1-1 et seq., and the Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq.
14 [09/05/95; 20.2.1.3 NMAC - Rn, 20 NMAC 2.1.102 10/31/02]
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16 **20.2.1.4 DURATION:** Permanent.
17 [09/05/95; 20.2.1.4 NMAC - Rn, 20 NMAC 2.1.103 10/31/02]
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19 **20.2.1.5 EFFECTIVE DATE:** October 27, 1995.
20 [09/05/95, 10-27-95; 20.2.1.5 NMAC - Rn, 20 NMAC 2.1.104 10/31/02]
21 [The latest effective date of any section in this Part is 10/31/02.]
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23 **20.2.1.6 OBJECTIVE:** The purpose of this Part (20.2.1 NMAC) is to establish general provisions which
24 apply to all Parts of this Chapter (20.2.1 through 20.2.99 NMAC).
25 [09/05/95; 20.2.1.6 NMAC - Rn, 20 NMAC 2.1.105 10/31/02]
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27 **20.2.1.7 DEFINITIONS:** [RESERVED]
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29 **20.2.1.8 to 20.2.1.105** [RESERVED]
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31 **20.2.1.106 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS:**

32 **A.** This Part amends and supersedes Air Quality Control Regulations (AQCRs):

- 33 (1) 110, Confidential Information Protection, last filed May 29, 1990;
- 34 (2) 701, Procedures for Requesting a Variance Hearing, last filed Oct. 7, 1975;
- 35 (3) 1001, Sampling Equipment, last filed Jan. 27, 1970;
- 36 (4) 1101, Severability, last filed Jan. 27, 1970;
- 37 (5) 1201, Effective Date, last filed Jan. 27, 1970;
- 38 (6) 1301, Conflicts, last filed Jan. 27, 1970.

39 **B.** All references to AQCRs 110, 701, 1001, 1101, 1201, and 1301 in any other rule shall be
40 understood as a reference to this Part.
41 [09/05/95, 10-27-95; 20.2.1.106 NMAC - Rn, 20 NMAC 2.1.106 10/31/02]
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43 **20.2.1.107 SEVERABILITY:** If any provision or application of any Part under Chapter 2 of Title 20 is held
44 invalid, the remainder, or its application to other situations or persons, shall not be affected.
45 [09/05/95; 20.2.1.107 NMAC - Rn, 20 NMAC 2.1.107 10/31/02]
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47 **20.2.1.108 SAVING CLAUSE:** Supersession of any Air Quality Control Regulation (AQCR) shall not
48 effect any administrative or judicial enforcement action pending on the effective date of any Part under Chapter 2 of
49 Title 20, nor the validity of any permit issued pursuant to any AQCR.
50 [09/05/95; 20.2.1.108 NMAC - Rn, 20 NMAC 2.1.108 10/31/02]
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52 **20.2.1.109 CONSTRUCTION:** Any Part under Chapter 2 of Title 20 shall be liberally construed to
53 effectuate the purpose of the Environmental Improvement Act, NMSA 1978, 74-1-1 et seq. and the Air Quality
54 Control Act, NMSA 1978, 74-2-1 et seq.
55 [09/05/95; 20.2.1.109 NMAC - Rn, 20 NMAC 2.1.109 10/31/02]
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1 **20.2.1.110 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with any Part under Chapter 2
2 of Title 20 does not relieve a person from the obligation to comply with other applicable state and federal
3 regulations.

4 [09/05/95; 20.2.1.110 NMAC - Rn, 20 NMAC 2.1.110 10/31/02]

6 **20.2.1.111 AVAILABILITY OF MATERIALS INCORPORATED BY REFERENCE:** Materials
7 incorporated by reference into any Part under Chapter 2 of Title 20 may be viewed at the State Records Center (404
8 Montezuma, Santa Fe, NM 87503) [1205 Camino Carlos Rey, Santa Fe, NM 87505] or at the New Mexico
9 Environment Department, Air Quality Bureau (Harold Runnels Building, 1190 St. Francis Dr., Santa Fe, NM
10 87503) [2048 Galisteo St., Santa Fe, NM 87505].

11 [09/05/95; 20.2.1.111 NMAC - Rn, 20 NMAC 2.1.111 10/31/02]

13 **20.2.1.112 EFFECT OF STAY OR INVALIDATION OF INCORPORATED FEDERAL
14 REGULATIONS:** If a federal court stays, invalidates or otherwise renders unenforceable by the Environmental
15 Protection Agency (EPA), in whole or in part, any federal regulation incorporated by reference in any Part under
16 Chapter 2 of Title 20, such incorporated federal regulation shall be enforceable by the Department only to the extent
17 it is enforceable by EPA.

18 [09/05/95; 20.2.1.112 NMAC - Rn, 20 NMAC 2.1.112 10/31/02]

20 **20.2.1.113 SAMPLING EQUIPMENT:** When directed by the Environment Department, or its designated
21 representative, the necessary openings for sampling equipment shall be provided on stacks or other openings
22 through which emissions are released to the atmosphere.

23 [09/05/95; 20.2.1.113 NMAC - Rn, 20 NMAC 2.1.113 10/31/02]

25 **20.2.1.114 PETITION PROCEDURES FOR REQUESTING A VARIANCE HEARING:**

26 **A.** Definition: As used in this section [part], "petitioner" means a person seeking a variance from a
27 regulation of the Environmental Improvement Board or limitation prescribed under the Air Quality Control Act
28 pursuant to NMSA 1978, section 74-2-8.

29 **B.** Petition Procedures:

30 (1) Any person seeking a variance from a regulation of the Environmental Improvement Board, or a
31 permit condition imposed by the Department, or from the limitations prescribed under the Air Quality Control Act
32 pursuant to section 74-2-8 NMSA 1978, shall do so by filing a written petition with the Secretary. Petition forms
33 may be obtained from the Environment Department.

34 (2) Petitions shall:

35 (a) State the petitioner's name and address;

36 (b) State the date of the petition;

37 (c) Describe the facility or activity for which the variance is sought;

38 (d) State the address or description of the property upon which the facility is located;

39 (e) Identify the regulation of the board or limitation prescribed under the Air Quality Control
40 Act from which the variance is sought;

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

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

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

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

47 **C.** The Environment Department's response and any further action and proceedings shall be in
48 accordance with general adjudicatory procedures of the Environmental Improvement Board.

49 [10/27/95; 20.2.1.114 NMAC - Rn, 20 NMAC 2.1.114 10/31/02]

51 **20.2.1.115 CONFIDENTIAL INFORMATION PROTECTION:**

52 **A.** Definitions: As used in this section:

53 (1) "Claimant" refers to a person or business who makes a claim of confidentiality.

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

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

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

8 (5) "Trade secret" refers to a secret plan or process, tool or mechanism unique to the owner or
9 operator of a business.

10 **B.** Confidentiality Determinations: The Environment Department shall keep confidential trade
11 secrets or confidential business information under applicable legal principles to the extent that:

12 (1) Business information furnished to or obtained by the Environment Department concerning air
13 contaminant sources shall be considered for confidential treatment if specifically marked as confidential at the time
14 such information is submitted;

15 (2) The Department is not required to disclose this information pursuant to a statutory provision; and

16 (3) The following conditions are satisfied:

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

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

21 (c) The information is not, and has not been, reasonably obtainable without the business'
22 consent; and

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

25 **C.** This section (20.2.1.115 NMAC) shall not be construed to prohibit disclosure of records and
26 information:

27 (1) To other officers, employees or authorized representatives of the Department, the local agency,
28 the Environmental Improvement Board, or the local board concerned with carrying out the Air Quality Control Act;

29 (2) To officers, employees or authorized representatives of the United States Environmental
30 Protection Agency concerned with carrying out the federal act;

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

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

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

35 **D.** Procedures for Handling Requests for Confidentiality:

36 (1) The Department's Office of General Counsel (OGC) in each case shall determine whether and to
37 what extent the information qualifies for confidential treatment under this section.

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

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

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

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

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

53 (5) If the Department notifies a claimant that his or her claim of confidentiality will not be honored,
54 the Department shall not make the information available for public inspection or copying for thirty (30) days in
55 order to give the claimant an opportunity to request administrative review of the decision. The Department shall not

1 make the information available for public inspection or copying while an administrative review, or legal action to
2 prevent disclosure, is pending.

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

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

9 [10/27/95; 20.2.1.115 NMAC - Rn, 20 NMAC 2.1.115 10/31/02]

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11 **20.2.1.116 SIGNIFICANT FIGURES:**

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

14 B. At least 5 significant figures shall be retained in all intermediate calculations.

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

17 (1) If the first digit to be discarded is less than the number 5, the last digit retained shall not be
18 changed;

19 (2) If the first digit discarded is greater than the number 5, or if it is the number 5 followed by at least
20 one digit other than the number zero, the last figure retained shall be increased by one unit; and

21 (3) If the first digit discarded is exactly the number 5, followed only by zeros, the last digit retained
22 shall be rounded upward if it is an odd number, but no adjustment shall be made if it is an even number.

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

24 [XX/XX/XX]

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26 **HISTORY OF 20.2.1 NMAC:**

27 **Pre-NMAC History:** The material in this part was derived from that previously filed with the Commission of
28 Public Records-State Records Center and Archives.

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

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

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32 **History of Repealed Material:** [RESERVED]

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34 **Other History:**

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

40 20 NMAC 2.1, General Provisions, filed 08/03/95 was **replaced** by 20 NMAC 2.1, General Provisions, filed
41 09/27/95.

42 20 NMAC 2.1, General Provisions, filed 09/27/95 was **renumbered, reformatted and replaced** by 20.2.1 NMAC,
43 General Provisions, effective 10/31/02.