

TECHNICAL SUMMARY
New Mexico Environment Department
Proposed Greenhouse Gas Emission Reporting and Verification Rules
20.2.300 NMAC – Reporting of Greenhouse Gas Emissions
20.2.301 NMAC – Greenhouse Gas Reporting – Verification Requirements
Revised August 2, 2010

Purpose of the rules

These new rules are intended to provide the data needed for New Mexico's participation in a regional Greenhouse Gas (GHG) cap-and-trade program. For emissions allowances to be traded across jurisdictions and to ensure market integrity, accurate data must be obtained by standardized methods across all the participating jurisdictions. Third-party verification is intended to ensure that audits of emissions data reports are conducted with a uniformly high standard of rigor across all jurisdictions.

Emissions Reporting

1. Overview of the reporting rule 20.2.300 NMAC ("Part 300")

Part 300 is largely based on the Western Climate Initiative's (WCI) Essential Requirements for Mandatory Reporting, which have been harmonized with the U.S. EPA greenhouse gas reporting rule (40 CFR 98). New Mexico is a member of the WCI and has actively participated in the development of the WCI Essential Requirements.

The WCI harmonized Essential Requirements are formatted as a markup of the EPA rule, with changes indicated. Because most of the text of the lengthy EPA rule is unchanged, Part 300 incorporates by reference the relevant Subparts of the EPA rule (see Section 20.2.300.100 NMAC), and then sets forth specific exceptions, modifications and omissions to the federal rule in Sections 20.2.300.102 NMAC through 20.2.300.106 NMAC. A markup of 40 CFR 98 Subparts A (General Provisions) and C (General Stationary Fuel Combustion) showing the changes made by proposed Part 300 is available on the NMED web site.

Part 300 specifies by incorporation of Subparts of 40 CFR 98 or in the text of the rule:

- the emissions threshold for reporting
- which GHG emissions are required to be reported (source category, unit type and/or process, GHG chemical species)
- which reported GHG emissions are covered under the cap, as implemented in proposed 20.2.350 NMAC – Greenhouse Gas Cap and Trade Provisions
- the methods that facilities must use to determine their GHG emissions (monitoring, metering, measurement, emissions factors, calculation method)
- report content
- schedule for reporting
- recordkeeping requirements

2. Source categories included

Part 300 requires reporting of emissions from only the following source categories, as defined in the EPA rule except as noted:

- General Stationary Fuel Combustion (40 CFR 98 Subpart C)
- Electricity Generation (40 CFR 98 Subpart D)
- Cement Production (40 CFR 98 Subpart H)
- Hydrogen Production (40 CFR 98 Subpart P)
- Lead Production (40 CFR 98 Subpart R)
- Lime Manufacturing (40 CFR 98 Subpart S)
- Nitric Acid Production (40 CFR 98 Subpart V)
- Petrochemical Production (40 CFR 98 Subpart X)
- Petroleum Refineries (40 CFR 98 Subpart Y)
- Zinc Production (40 CFR 98 Subpart GG)
- CO2 emissions from acid gas removal (AGR) vent stacks at gas processing plants

Some source categories that we currently do not have in NMED Air Quality Bureau's jurisdiction or in the state are included in this list, because New Mexico does have at least some quantity of the necessary raw materials and there is at least a remote possibility that a facility in one of these categories might start up in New Mexico in the next three years.

The rule does not include many source categories that are in the EPA reporting rule. Some of these source categories are not included because they have never been in New Mexico and are highly unlikely to be in the foreseeable future (e.g., aluminum manufacturing). Other excluded source categories are not currently in or anticipated to be in the scope of the WCI cap and trade program as cap emissions, such as manure management or fugitive methane emissions from landfills.

Carbon dioxide emissions from acid gas removal (AGR) vent stacks is an emissions stream proposed by EPA to be included in Subpart W of the federal reporting rule. We are including this emissions stream because it is a significant contributor to the state's total GHG emissions, and we anticipate that the emissions quantification method in the final EPA rule, to be promulgated later this year, will not differ in substance from that proposed by EPA. Section 20.2.300.107 NMAC and definitions in Section 20.2.300.7 NMAC relevant to this emissions stream are derived from EPA's proposed Subpart W – Oil and Natural Gas Systems (75 FR 18608, April 12, 2010). Other emissions streams in EPA's proposed Subpart W, primarily vented and fugitive methane sources, are not included in this proposed rulemaking because it is uncertain whether the quantification methods in the final rule will provide cap-and-trade quality data, and if not, what modifications might be needed to achieve this goal.

3. Threshold for reporting

The threshold for reporting is 10,000 metric tons CO₂e per year. All of the emissions required to be reported under 20.2.300 NMAC count toward the threshold. Determining applicability of 20.2.300 NMAC will be a simple task for facilities already required to report to EPA, because the EPA rule has a higher threshold. Many of the facilities not required to report 2010 emissions to EPA will be those with General Stationary Fuel Combustion as their only source category. Such sources may easily determine if their emissions are over the 10,000 metric ton threshold of the New Mexico rule by using EPA's online [Applicability Tool](#), where the only input required is annual fuel use.

4. Greenhouse gases to be reported

All of the GHG gas species in the EPA rule (Table A-1 of Subpart A of 40 CFR 98) are covered by 20.2.300 NMAC. However, for each particular unit, process, or source category, only a subset of these gases must be reported, as specified in the measurement and reporting requirements for each source category. For example, general stationary fuel combustion units must report only carbon dioxide, methane, and nitrous oxide emissions.

The EPA rule includes some fluorinated GHGs which are not in the designed scope of the WCI cap and trade program (e.g., fluorinated ethers). NMED is proposing that these emissions be reporting-only. Emissions that are reporting-only are not subject to the cap-and-trade provisions under Part 350, and are not required to be verified (see #2 under Verification below).

5. EPA changes to the federal GHG reporting rule (40 CFR 98)

Since October 2009 when 40 CFR 98 was first promulgated, EPA has proposed or finalized amendments, and additional amendments are expected later this year. In rules governing the New Mexico Administrative Code, "References to U.S. law shall be deemed to be references to the current version of such law, including subsequent amendments, unless otherwise expressly stated in the rule" (1.24.10.22 NMAC).

However, NMED does not intend to include in this rulemaking any source categories that have been or may be added to the federal rule by amendments made after October 2009. Although some of these additional source categories are under consideration for inclusion in the regional cap and trade program, harmonization of reporting requirements must be completed for these additional categories before they can be included. We do intend to include the minor EPA amendments to Subpart A (General Provisions) which were published on July 12, 2010 (75 FR 39736). We also intend to include the finalized version of proposed technical corrections which were published June 15, 2010 (75 FR 33950).

We believe that the language in the current proposal accomplishes the goals described above. However, if additional EPA rulemaking this year should cause the current language to no longer have the intended effect, then NMED will adjust the draft wording of the language incorporating 40 CFR 98 if necessary to accomplish the intentions stated above.

6. Modifications to EPA emissions quantification methods made by this rule

For some of the included source categories, the emissions quantification methods in the EPA rule would not yield data of sufficient accuracy for a cap and trade program. Sections 20.2.300.102 through 20.2.300.106 NMAC include modifications to the EPA methods to enhance the accuracy of the reported data, through such means as increasing fuel or feedstock sampling frequency or requiring that a higher-tier method in the EPA rule be used. No modifications to quantification methods were needed for several source categories (Electricity Generation, Cement Production, Lead Production, Lime Manufacturing, Nitric Acid Production, Petrochemical Production, and Zinc Production).

These modifications are ones which New Mexico and other WCI jurisdictions have agreed upon after considering public comment, and which will be released by WCI in August.

A summary of significant modifications to the EPA rule is attached.

7. Report submittal

EPA is building an online reporting tool and database to support reporting under their rule. EPA has stated their intention to support state GHG reporting programs by allowing facilities required to report by a state but not by EPA to report using the EPA tool and database, and by incorporating additional data fields. EPA also intends to make the non-confidential reported data available to states in a timely fashion through a data exchange network.

Therefore, we expect that reporters under the New Mexico rule will be able to submit their reports via the EPA reporting tool, and those required to report to EPA under their rule will not have to enter the same data twice. New Mexico will continue to closely monitor the development of the EPA tool and database and make every effort to ensure that the burden of submitting reports required by the New Mexico rule is minimized.

8. Phase-out of reporting if annual emissions drop below the threshold

Reporting may be phased out after annual emissions drop below the 10,000 metric ton CO₂e threshold (see Subsection J of 20.2.300.102 NMAC). If the facility did not previously have to verify emissions, the only submission required is a certified statement that annual emissions were below the threshold in the previous year. When such statements have been submitted for three consecutive years, no further submittals by the facility are required.

If the facility was previously required to verify emissions (e.g., annual emissions were greater than 25,000 metric tons) and then emissions drop below the reporting threshold, the facility may discontinue reporting only after full emissions reports showing emissions were below 10,000 metric tons CO₂e have been submitted for three consecutive years.

Facilities that have chosen to opt in to the cap-and-trade program under Part 350 will be subject to reporting regardless of their emissions level. This provision is in the cap-and-trade rule, in Subsection C of 20.2.350.300 NMAC.

9. Existing NMED GHG reporting rules

Existing regulation 20.2.87 NMAC applies to large electricity generating facilities, cement plants, and refineries. NMED is proposing that this regulation be repealed, as it is now duplicative of both the EPA reporting rule and the proposed 20.2.300 NMAC.

NMED is not proposing changes to the GHG reporting provisions of 20.2.73 NMAC at this time. We intend to request GHG emissions reporting under Part 73 only as needed for emissions not covered by proposed 20.2.300 NMAC, for the purpose of filling any gaps in the GHG emissions inventory. Proposed guidelines for reporting under 20.2.73 NMAC will be released later this fall.

10. Changes from the June 8 informal draft

Several important changes were made as a result of stakeholder comments on the earlier draft:

- Use of Tier 1 and Tier 3 combustion emissions methodologies is now allowed for units at facilities subject to verification (subject to EPA limitations), for specified fuel types which are relatively uniform in composition.
- Time to respond for requests for information has been lengthened to 20 days.
- Designated representative provisions have been clarified.
- Calibration deadlines for flow meters and other measurement devices have been modified.

Verification

1. Overview of the verification rule

Third party verification is needed to ensure the integrity of emissions data for capped sources, for which the data will directly translate into financial obligations or benefits. EPA has stated that their reporting rule, including their system of verification based on internal consistency of the reported emissions and production data, was not designed to support a cap and trade system.

The verification rule sets forth the requirements for:

- which emissions reports or portions of emissions reports must have third-party verification
- conduct of the verification process and standards to be applied
- accreditation of verifier bodies and recognition by NMED
- determinations of conflict of interest between a particular verifier and facility owner/operator

Content of the proposed verification rule is derived from requirements cooperatively developed by New Mexico and other WCI jurisdictions. Adoption of common verification standards is important to ensure that emissions allowances can be traded across all jurisdictions participating in a cap and trade program.

2. Threshold and scope of verification

Facilities with covered emissions equal to or greater than 25,000 metric tons CO₂e per year must obtain verification, as well as any facilities that are otherwise obligated to surrender compliance instruments under the proposed cap and trade rule (20.2.350 NMAC). Emissions designated in the reporting rule as "reporting-only" (see Section 20.2.300.7 NMAC, Definitions) do not count toward this threshold and do not need to be included in the scope of verification activities.

3. Schedule for submission of verification statements

For the first year of the program (reports submitted in 2012 for 2011 emissions), verification statements are due August 1, 2012. This is four months after the emissions report deadline of April 1, which provides owner/operators extra time in this program startup year to arrange for verification services and to learn how the verification process works. In subsequent years, the verification report is due on April 1, the same data as the emissions report deadline.

4. Steps for verifiers

The first step for a company planning to provide verification services is to obtain accreditation from an accreditation body that is a member of the International Accreditation Forum, Inc.

NMED is planning to develop a Memorandum of Understanding with the American National Standards Institute (ANSI) under which they would provide accreditation to verifiers of New Mexico emissions reporters. ANSI already provides such services to The Climate Registry.

The verifier must then obtain recognition from NMED by demonstrating knowledge of the New Mexico reporting and verification requirements.

Prior to verifying an emissions report, the verifier must submit to NMED a self-evaluation of potential conflicts of interest in relation to the owner/operator of the facility. Conflict of interest is rated as low, medium, or high. A high potential for conflict of interest precludes the verifier from providing verification services for that particular facility. If potential conflict of interest is medium, the verifier may outline the steps that will be taken to mitigate this potential. If NMED determines that the conflict of interest is low, or that sufficient steps will be taken to mitigate a medium level of conflict of interest, the verifier may proceed with verification services for that facility.

5. Less intensive verification

Full verification services must be performed the first year that a given verifier audits the emissions report of a facility. Less intensive verification services (see definition, 20.2.301.7 NMAC) may be performed the second and third years that the same verifier provides these services for a given facility. This avoids the need to develop a new verification plan each year, and reduces the cost of verification in the second and third years. A new verification plan and full verification must be performed in the fourth year that the same verifier provides these services for a given facility. Facility owner/operators may not use the same verifier for more than six consecutive years, to ensure independence of the verifier.