

**STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED 20.2.91 NMAC –  
NEW MOTOR VEHICLE EMISSION STANDARDS**

**No. EIB 21 - \_\_\_ (R)**

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**STATEMENT OF REASONS**

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**I. Authority and Scope**

1. This Part 91 sets emission standards for new passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty motor vehicles, and motor vehicle engines beginning with model year 2026.

2. This regulation responds to the Governor's Executive Order 2019-03 – *Addressing Climate Change and Energy Waste Prevention*, which directs the state’s Climate Change Task Force to “evaluate policies and regulatory strategies to achieve reductions in greenhouse gas pollution . . . across all categories of emission sources.” See Executive Order 2019-03, ¶ 5.

3. The Executive Order directs that such regulatory strategies shall include “Adoption of approaches to reduce greenhouse gas and criteria pollutant emissions from light-duty vehicles sold in state, including Low Emission Vehicle (LEV) emission standards and Zero Emission Vehicle (ZEV) performance standards.” *Id.*, ¶ 5(b).

4. As set forth in the New Mexico Greenhouse Gas Emissions Inventory and Forecast, the transportation sector is the second greatest source of greenhouse gas emissions in the state, contributing approximately 15.8 million metric tons of carbon dioxide equivalent in 2018. The Forecast report identifies increasing ZEV sales as one of two strategies to achieve reductions in

emissions in the transportation sector (pg. 25). The LEV tailpipe standards included in Part 91 will achieve further reductions. See New Mexico GHG Inventory and Forecast Report 2020-10-27\_final (colostate.edu), p.7.

5. Part 91 is the second formal rulemaking of the Department's Ozone Attainment Initiative to develop a series of rules and voluntary measures to mitigate the emissions of ozone precursor pollutants. Because emissions from motor vehicles are a source of anthropogenic oxides of nitrogen and volatile organic compounds, reducing emissions of these ozone precursor pollutants will improve ozone levels in the State.

6. The statutory authority of the Environmental Improvement Board (EIB or Board) to adopt new motor vehicle emissions standards, including standards for greenhouse gases, is found in the Air Quality Control Act, NMSA 1978, §74-2-5.B, which authorizes the Board to adopt regulations to "prevent or abate air pollution."

7. Part 91 applies to the sale, delivery, purchase, rent, lease, and registration of new light and medium-duty motor vehicles within the jurisdiction of the State of New Mexico, and to vehicles individually registered with the New Mexico Motor Vehicle Division.

8. Part 91 does not apply to motor vehicles operated exclusively within tribal lands, for which air quality regulations are promulgated by the tribes or EPA.

9. A parallel regulation to Part 91 will be considered by the Albuquerque-Bernalillo County Air Quality Control Board, which has jurisdiction under the Air Quality Control Act over air quality within the non-tribal areas of Bernalillo County.

10. "Air pollution" is defined as "the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may

with reasonable probability injure human health or animal or plant life as may unreasonably interfere with the public welfare, visibility or the reasonable use of property." §74-2-2.B.

11. "Air contaminant" is defined as "any substance, including but not limited to any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay or reaction product thereof." §74-2-2.A.

12. Under this definition, common pollutants, such as nitrogen oxides, particulate matter, and carbon monoxide, as well as greenhouse gases, such as carbon dioxide, are "air contaminants" whose emission constitutes "air pollution" because they may injure human health and animal and plant life and unreasonably interfere with public welfare.

13. Section 177 of the federal Clean Air Act (CAA), 42 U.S.C. §7507, authorizes New Mexico to adopt California motor vehicle emissions standards, provided that those standards are "identical" to the California motor vehicle emission standards. See 42 U.S.C. §7507(1).

14. This "identity" requirement is intended to prevent a state from adopting standards that have the effect of creating a "third vehicle", e.g., a vehicle other than one required to satisfy the federal or California motor vehicle emission standards. See 42 U.S.C. §7507(2).

15. Section 177 of the CAA does, however, allow states to adopt provisions "for administration and enforcement" that are different than California, provided that these provisions are not so onerous that they create an "undue burden" on the manufacturers. See EPA Opinion on Issues Raised by *AAMA v. Massachusetts Dept of Environmental Protection*, 163 F.3d 74 (1st Cir.).

16. The emission standards contained in Part 91 are identical to the California motor vehicle emission standards.

17. The administration and enforcement provisions of Part 91 are identical to the California provisions in many respects, but to the extent that they differ, they do not create an undue burden for manufacturers.

18. Part 91 applies new motor vehicle emission standards beginning with model year 2026, which complies with the CAA requirement that the manufacturers be given at least two full model years to prepare their fleets to meet the standards.

19. By incorporating definitions from California Code of Regulations, Part 91 ensures compliance with the "identity" requirement in Section 177 of the CAA.

## **II. General Provisions of the Rule**

20. Under the provisions of Part 91, beginning with model year 2026 all new motor vehicles imported, sold, or leased, within the jurisdiction of the EIB, or new motor vehicles registered with the New Mexico Motor Vehicle Division, must comply with the California motor vehicle emissions standards.

21. Under the provisions of Part 91, starting with model year 2026, vehicle manufacturers must deliver for sale a fleet of vehicles that complies with fleet average non-methane organic gas (NMOG) plus oxides of nitrogen exhaust emission standards, fleet average greenhouse gas standards, and per-vehicle particulate matter (PM) standards.

22. Part 91 establishes a requirement for motor vehicle dealers and rental car agencies to comply with inspection and information requests issued by the Department to verify their compliance with Part 91.

23. Part 91 exempts certain categories of new motor vehicles, including vehicles for which the standards would be technically or economically infeasible, conflict with national security or public safety, have been transferred from one person to another person under legal settlements, or

would not provide a substantive benefit to the program. The exemptions are consistent with those adopted by California and other states.

24. Part 91 contains two mechanisms for determining compliance with the emission standards: (1) a credit banking system through which vehicle manufacturers must equalize accrued credits and debits over a specified time period; and (2) reporting requirements for manufacturers.

25. Part 91 establishes a requirement, beginning with model year 2026, that vehicle manufacturers deliver for sale vehicles that earn a specified number of ZEV credits, and report delivery details to the department and to the ZEV credit bank. The ZEV credit bank allows manufacturers to accumulate credits that can be banked for future use or be traded or sold to other manufacturers who require additional credits for compliance. This requirement is identical to the California ZEV credit requirements.

26. Under the provisions of Part 91, a manufacturer may earn early action credits for the delivery for sale of motor vehicles that qualify for ZEV credits for model years 2023, 2024 and 2025 by reporting the total delivery of such ZEVs to the department by March 1 following the end of each of these three model years. These early action credits can be subsequently used for meeting ZEV requirements in model year 2026 and subsequent model years.

27. Under the provisions of Part 91, the Department shall provide all manufacturers onetime credits by scaling the manufacturer's California credit balance in model year 2025 to the ratio of New Mexico model year 2025 vehicle sales to California model year 2025 vehicle sales. These onetime credits are available for use beginning in model year 2027.

28. The ZEV early action and onetime credits are consistent with the provisions established by other states adopting the California ZEV standards and are distinct from the NMOG plus oxides of nitrogen emission credit system.

29. Part 91 contains recordkeeping and reporting requirements for manufacturers to ensure compliance with the requirements established in this regulation.

30. Part 91 establishes a registration and fee system for manufacturers covered by this regulation. The cumulative fees for intermediate and large-volume manufacturers will defray the Department's cost for implementing the emissions standards program. These costs include two (2) employees, database development and software, compliance verification and related administrative costs.

31. The Department proposes to compare the reported data from manufacturers with new vehicle registration data, and if necessary, conduct inspections and review records at the facilities of dealers and rental agencies in order to confirm the reports submitted by the manufacturers.

### **III. Effective Date of Rule Provisions**

32. New Mexico may adopt the requirements of Part 91 now for the effective date of August 1, 2022. However, Part 91 will not become effective until the EPA grants an emissions standards waiver to California pursuant to the CAA.

33. The EPA recently stated that it intends to rule on California's waiver request for the greenhouse gas emissions standards. Because California has satisfied the criteria for obtaining the waiver, the Department believes that the EPA will approve the waiver request.

34. The provisions of Part 91 subject to the waiver requirement will automatically become effective on August 1, 2022, or when EPA has granted the waiver to California, whichever is later.

### **IV. Projected Benefits of Part 91**

35. Reducing toxic and smog-forming pollutants will improve air quality and public health in New Mexico.

36. Compliance modeling conducted by Shulock Consulting projects that the adoption and implementation of Part 91 will result in the following annual criteria pollutant emission reductions, listed by pollutant:

Pollutant	Annual Reductions	
	(Tons)	
	2030	2040
Volatile Organic Compounds	153	398
Oxides of Nitrogen	41	128
Carbon Monoxide	170	774
PM 2.5	10	46
PM 10	19	47
Sulfur Dioxide	2	61

37. These emission reductions will, in turn, reduce ambient concentrations of the affected pollutants.

38. Compliance modeling conducted by Shulock Consulting projects that the adoption and implementation of Part 91 will result in reductions in annual emissions of the following hazardous air pollutants:

Pollutant	Annual Reductions (Tons)	
	2030	2040
Benzene	1.2	3.7
Formaldehyde	0.3	1.0

39. A screening analysis conducted by Shulock Consulting using the USEPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA) projects that the adoption and implementation of Part 91 will provide health benefits to New Mexico Citizens. COBRA calculates the impact of user-specified emission reductions on ambient particulate matter (PM) concentrations, provides high and low estimates of the health impacts of reduced ambient PM, and monetizes the results. Health impacts from PM exposure include mortality, heart attacks, chronic lung disease, bronchitis, and asthma. The monetized health benefits in New Mexico as calculated by COBRA are as follows:

	2028		2035	
	Low	High	Low	High
Annual Health Benefits (\$Millions)	\$0.18	\$0.25	\$1.1	\$2.5

40. Compliance modeling conducted by Shulock Consulting projects that adoption and implementation of Part 91 will reduce greenhouse gas emissions in New Mexico, including carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O). Weighted by the global warming potential of each pollutant, the total greenhouse gas emission reductions are:

	Annual Reductions (Million Tons)		Cumulative Reduction (Million Tons)	
	2030	2040	2030	2040
Greenhouse Gases	.27	.70	0.81	6.11



41. The emission reductions associated with Part 91 are expected to improve visibility and compliance with Regional Haze requirements.

**V. Compliance with Statutory Rulemaking Requirements**

42. In compliance with NMSA 1978, Section 74-2-5.E, Part 91 is at least as stringent as federal laws relating to control of motor vehicle emissions.

43. In compliance with NMSA 1978, Section 74-2-5.G, Part 91 is more protective of public of public health and the environment than current federal standards.

44. Adoption of Part 91 is in the public interest when considering the social and economic value of the sources of air contaminants and the subjects of the regulation.

45. Part 91 is both technically practicable and economically reasonable in the methods it employs to reduce air contaminants from the sources involved.

46. Part 91 will be more protective of public health and the environment than current New Mexico emission standards for the vehicles it regulates.