

**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)**

**PETITION FOR REGULATORY CHANGE TO ADOPT NEW MOTOR
VEHICLE EMISSION STANDARDS**

The New Mexico Environment Department (“Department”), pursuant to 20.1.1 NMAC, *Rulemaking Procedures*, hereby petitions the Environmental Improvement Board (“Board”) to adopt the proposed 20.2.91 NMAC, *New Motor Vehicle Emission Standards*. A Statement of Reasons is included as **Attachment 1** to this Petition and the text of the proposed regulation is included as **Attachment 2**.

The proposed regulation is similar to one that the Board adopted during a joint hearing with the Albuquerque Bernalillo County Air Quality Control Board (“AQCB”) in 2007 and later repealed. These proposed standards are also related to a rulemaking petition filed with the Board by Climate Advocates in June 2021. To assure that the rule would apply to the jurisdictions of both the Board and of the AQCB, and also meet the identity requirements of Section 177 of the Clean Air Act, the Department requests that, once again, the Board and the AQCB hold a joint hearing to adopt this regulation.

The Department requests that the Board consider this petition during its December 17, 2021 meeting and schedule a joint hearing with the AQCB beginning on May 2, 2022. The Department anticipates that a hearing in this matter would take approximately two days with an additional day for joint deliberation by both boards.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
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No. EIB 21 - ____ (R)

STATEMENT OF REASONS

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 (CO₂), methane (CH₄) and nitrous oxide (N₂O). 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.

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 91 NEW MOTOR VEHICLE EMISSION STANDARDS

20.2.91.1 ISSUING AGENCY: Environmental Improvement Board.
[20.2.91.1 NMAC - N, 8/1/2022]

20.2.91.2 SCOPE: All manufacturers, dealers, rental car agencies, the United States, state and local governments, or other persons who deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register model year 2026 and subsequent model year passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, or motor vehicle engines.
[20.2.91.2 NMAC - N, 8/1/2022]

20.2.91.3 STATUTORY AUTHORITY: Paragraph (4) of Subsection A of the Environmental Improvement Act, NMSA 1978, Section 74-1-8, and the Air Quality Control Act, NMSA 1978, Sections 74-2-1 through 74-2-17.
[20.2.91.3 NMAC - N, 8/1/2022]

20.2.91.4 DURATION: Permanent.
[20.2.91.4 NMAC - N, 8/1/2022]

20.2.91.5 EFFECTIVE DATE: August 1, 2022, except where a later date is cited at the end of a section.
[20.2.91.5 NMAC - N, 8/1/2022]

20.2.91.6 OBJECTIVE: To adopt and implement the California vehicle emission standards and requirements pursuant to Section 177 of the federal Clean Air Act.
[20.2.91.6 NMAC - N, 8/1/2022]

20.2.91.7 DEFINITIONS: The definitions in the Air Quality Control Act, NMSA 1978, Section 74-2-2, shall apply in this part. If a term is defined in 74-2-2 NMSA and this part, the definition in this part shall apply. The definitions in 20.2.2.7 NMAC shall not apply in this part. When a term in a provision of the California code of regulations (CCR), Title 13, or the California health and safety code (CHSC) incorporated by reference is given a different meaning than the term defined for general purposes in this part, the specific CCR or CHSC section's meaning and application of the term shall control, except that all references in the incorporated sections of the CCR and CHSC to "California" shall, whenever appropriate, mean "New Mexico"; all references in the incorporated sections of the CCR and CHSC to the "California Air Resources Board," "CARB," "state board", or "board" shall, whenever appropriate, mean the environmental improvement board or department, depending on context; all references in the incorporated sections of the CCR and CHSC to "Executive Officer" shall, whenever appropriate, mean the secretary; provided, however, the terms in the CCR and CHSC definitions incorporated by reference in 20.2.91.7 NMAC shall not be changed. For registration of a motor vehicle, when a term defined herein is also defined in the Motor Vehicle Code, NMSA 1978, Articles 1 through 8 of Chapter 66, and is given a different meaning than the term defined for general purposes in this part, the Motor Vehicle Code meaning and application of the term shall control.

- A. "Certification"** means the same in this part as it is defined in CHSC, Section 39018.
- B. "Dealer"** means the same in this part as it is defined in NMSA 1978, Section 57-16-3(B).
- C. "Emission standards"** means the same in this part as it is defined in CHSC, Section 39027, which New Mexico is authorized to adopt pursuant to 42 U.S.C. § 7507.
- D. "Emergency vehicle"** means the same in this part as it is defined in CCR, Title 13, Section 1961.3(10).
- E. "Environmental improvement board"** means the same in this part as it is defined in NMSA 1978, Section 74-1-3(A).
- F. "Greenhouse gas"** means the same in this part as it is defined in CCR, Title 13, Section 1961.3(18).
- G. "Independent low volume manufacturer"** means the same in this part as it is defined in CCR, Title 13, Section 1900(b)(8).

- H.** “**Intermediate volume manufacturer**” means the same in this part as it is defined in CCR, Title 13, Section 1900(b)(9).
- I.** “**Large volume manufacturer**” means the same in this part as it is defined in CCR, Title 13, Section 1900(b)(10).
- J.** “**Light-duty truck**” means the same in this part as it is defined in CCR, Title 13, Section 1900(b)(11).
- K.** “**Manufacturer**” means the same in this part as it is defined in NMSA 1978, Section 57-16-3(J), and shall include small, independent low, intermediate, or large volume manufacturers as defined herein.
- L.** “**Medium-duty**” means the same in this part as it is defined in CHSC, Section 39037.5.
- M.** “**Medium-duty passenger vehicle**” means the same in this part as it is defined in CCR, Title 13, Section 1900(b)(12).
- N.** “**Medium-duty vehicle**” means the same in this part as it is defined in CCR, Title 13, Section 1900(b)(13).
- O.** “**Methane**” means the chemical compound containing one atom of carbon and four atoms of hydrogen.
- P.** “**Model year**” means the same in this part as it is defined in CHSC, Section 39038.
- Q.** “**Motor vehicle**” means the same in this part as it is defined in CHSC, Section 39039.
- R.** “**Non-methane organic gas**” means the same in this part as it is defined in CCR, Title 13, Section 1961.2.
- S.** “**Particulate matter**” means the same in this part as it is defined in CCR, Title 13, Section 1961.2.
- T.** “**Passenger car**” means the same in this part as it is defined in CCR, Title 13, Section 1900(b)(17).
- U.** “**Passenger vehicle**” means the same in this part as it is defined in CHSC, Section 39046.
- V.** “**Recall**” means the same in this part as it is defined in CCR, Title 13, Section 1900(b)(19).
- W.** “**Register**” means to register a motor vehicle with the New Mexico motor vehicle division.
- X.** “**Sale**” or “**sell**” means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate purchaser.
- Y.** “**Small volume manufacturer**” means the same in this part as it is defined in CCR, Title 13, Section 1900(b)(22).
- Z.** “**Truck**” means the same in this part as it is defined in CHSC, Section 39054.
- AA.** “**Ultimate Purchaser**” means the same in this part as it is defined in CHSC, Section 39055.5.
- BB.** “**Vehicle**” means the same in this part as it is defined in CHSC, Section 39059.
- CC.** “**Zero emission vehicle**” means the same in this part as it is defined in CCR, Title 13, Section 1962.2(a).
- DD.** “**ZEV credit bank**” means a zero emission vehicle credit bank set up by the California air resources board or the department that records and tracks the generation, verification, transfer, voluntary retirement, use, and invalidation of zero emission vehicle credits.
[20.2.91.7 NMAC - N, 8/1/2022]

20.2.91.8 DOCUMENTS: Documents incorporated and cited in this part may be viewed on the department’s website and at the New Mexico environment department air quality bureau.
[20.2.91.8 NMAC - N, 8/1/2022]

[As of April 2013, the air quality bureau is located at 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico 87505.]

20.2.91.9 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.
[20.2.91.9 NMAC - N, 8/1/2022]

20.2.91.10 CONSTRUCTION: This part shall be liberally construed to carry out its purpose.
[20.2.91.10 NMAC - N, 8/1/2022]

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

[20.2.91.11 NMAC - N, 8/1/2022]

20.2.91.12 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.

[20.2.91.12 NMAC - N, 8/1/2022]

20.2.91.13 LIMITATION OF DEFENSE: The existence of a valid registration or certification under this part shall not constitute a defense to a violation of this part, except the requirement for obtaining a registration or certification.

[20.2.91.13 NMAC - N, 8/1/2022]

20.2.91.14 to 20.2.91.99 [RESERVED]

20.2.91.100 APPLICABILITY: Except as provided in 20.2.91.103 NMAC (Exemptions) and in compliance with the Motor Vehicle Dealers Franchising Act, NMSA 1978, Sections 57-16-1 through 16, no manufacturer, dealer, rental car agency, the United States, state or local government, or other person shall deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register a model year 2026 or subsequent model year passenger car, light-duty truck, medium-duty passenger vehicle, medium-duty vehicle, or motor vehicle engine unless the motor vehicle or motor vehicle engine has been certified by CARB and received a CARB executive order.

[20.2.91.100 NMAC - N, 8/1/2022]

20.2.91.101 GENERAL REQUIREMENTS:

A. Except as otherwise required, this part shall apply to new motor vehicles, including passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles, where “new” means a model year 2026 or subsequent motor vehicle with 7,500 miles or fewer on the odometer, and for dealers the mileage at the time of sale is determined by the odometer statement when the dealer acquired the motor vehicle.

B. A manufacturer, dealer, rental car agency, the United States, state or local government, or other person shall not deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, or motor vehicle engines unless such motor vehicle or motor vehicle engine is certified to the California vehicle emission standards, as incorporated by reference pursuant to this part.

C. Each manufacturer shall comply with the motor vehicle emission standards, zero-emission motor vehicle requirements, reporting, warranty, labeling, recall campaign, and other applicable requirements contained in this part.

D. Each manufacturer, dealer, rental car agency, the United States, state and local government, and other person shall comply with the department’s inspection and information requests issued pursuant to 20.2.91.114 NMAC (Inspections and Information Requests).

E. Each person registering a motor vehicle in New Mexico shall comply with the registration requirements in this part.

F. The requirements in this part shall not be applicable if an exemption, as provided in 20.2.91.103 NMAC (Exemptions), applies.

[20.2.91.101 NMAC - N, 8/1/2022]

20.2.91.102 INCORPORATION BY REFERENCE:

A. Sections of the CCR and the CHSC incorporated by reference herein include the regulations as they existed on the effective date in 20.2.91.5 NMAC (Effective Date); incorporated sections of the CCR and the CHSC do not incorporate a later adoption or amendment of the regulation.

B. Each manufacturer of a passenger car, light-duty truck, medium-duty passenger vehicle, medium-duty vehicle, or motor vehicle engine shall comply with each applicable standard in Title 13 of the CCR as incorporated by reference herein.

C. The CCR sections incorporated by reference include:

(1) Section 1900: Definitions. California effective date 7/25/16.

(2) Section 1956.8(h): Exhaust Emission Standards and Test Procedures - 1985 and

Subsequent Model Heavy Duty Engines and Vehicles (medium-duty vehicle greenhouse gas emission standards only). California effective date 10/16/17.

- (3) Section 1961.2: Exhaust Emission Standards and Test Procedures - 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles. California effective date 4/1/19.
- (4) Section 1961.3: Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles. California effective date 12/12/18.
- (5) Section 1962.2: Zero-Emission Vehicle Standards for 2018 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles. California effective date 1/1/16.
- (6) Section 1962.3: Electric Vehicle Charging Requirements. California effective date 8/7/12.
- (7) Section 1965: Emission Control, Smog Index, and Environmental Performance Labels - 1979 and Subsequent Model Year Vehicles. California effective date 10/8/15.
- (8) Section 1968.2: Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines. California effective date 7/25/16.
- (9) Section 1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions. California effective date 10/8/15.
- (10) Section 1978: Standards and Test Procedures for Vehicle Refueling Emissions. California effective date 10/8/15.
- (11) Section 2035: Purpose, Applicability, and Definitions. California effective date 11/9/07.
- (12) Section 2037: Defects Warranty Requirements for 1990 and Subsequent Model Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, and Motor Vehicle Engines Used in Such Vehicles. California effective date 12/5/14.
- (13) Section 2038: Performance Warranty Requirements for 1990 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and Motor Vehicle Engines Used in Such Vehicles. California effective date 8/7/12.
- (14) Section 2039: Emission Control System Warranty Statement. California effective date 12/26/90.
- (15) Section 2040: Vehicle Owner Obligations. California effective date 12/26/90.
- (16) Section 2041: Mediation; Finding of Warrantable Condition. California effective date 12/26/90.
- (17) Section 2046: Defective Catalyst. California effective date 2/15/79.
- (18) Section 2062: Assembly-line Test Procedures - 1998 and Subsequent Model Years. California effective date 8/7/12.
- (19) Section 2109: New Vehicle Recall Provisions. California effective date 12/30/83.
- (20) Section 2111: Applicability. California effective date 12/8/10.
- (21) Section 2112: Definitions. California effective date 12/5/14. Appendix A to Article 2.1. California effective date 12/5/14.
- (22) Section 2113: Initiation and Approval of Voluntary and Influenced Emission-Related Recalls. California effective date 1/26/95.
- (23) Section 2114: Voluntary and Influenced Recall Plans. California effective date 11/27/99.
- (24) Section 2115: Eligibility for Repair. California effective date 1/26/95.
- (25) Section 2116: Repair Label. California effective date 1/26/95.
- (26) Section 2117: Proof of Correction Certificate. California effective date 1/26/95.
- (27) Section 2118: Notification. California effective date 1/26/95.
- (28) Section 2119: Recordkeeping and Reporting Requirements. California effective date 11/27/99.
- (29) Section 2120: Other Requirements Not Waived. California effective date 1/26/95.
- (30) Section 2121: Penalties. California effective date 1/26/95.
- (31) Section 2122: General Provisions. California effective date 12/8/2010
- (32) Section 2123: Initiation and Notification of Ordered Emission-Related Recalls. California effective date 1/26/95.
- (33) Section 2124: Availability of Public Hearing. California effective date 1/26/95.
- (34) Section 2125: Ordered Recall Plan. California effective date 1/26/95.
- (35) Section 2126: Approval and Implementation of Recall Plan. California effective date 1/26/95.

- (36) Section 2127: Notification of Owners. California effective date 1/26/95.
 - (37) Section 2128: Repair Label. California effective date 1/26/95.
 - (38) Section 2129: Proof of Correction Certificate. California effective date 1/26/95.
 - (39) Section 2130: Capture Rates and Alternative Measures. California effective date 11/27/99.
 - (40) Section 2131: Preliminary Tests. California effective date 1/26/95.
 - (41) Section 2132: Communication with Repair Personnel. California effective date 1/26/95.
 - (42) Section 2133: Recordkeeping and Reporting Requirements. California effective date 1/26/95.
 - (43) Section 2135: Extension of Time. California effective date 1/26/95.
 - (44) Section 2139: Testing. California effective date 8/22/2002.
 - (45) Section 2141: General Provisions. California effective date 12/8/10.
 - (46) Section 2142: Alternative Procedures. California effective date 2/23/90.
 - (47) Section 2143: Failure Levels Triggering Recall. California effective date 11/27/99.
 - (48) Section 2144: Emission Warranty Information Report. California effective date 11/27/99.
 - (49) Section 2145: Field Information Report. California effective date 8/7/12.
 - (50) Section 2146: Emissions Information Report. California effective date 11/27/99.
 - (51) Section 2147: Demonstration of Compliance with Emission Standards. California effective date 12/5/14.
 - (52) Section 2148: Evaluation of Need for Recall. California effective date 11/27/99.
 - (53) Section 2149: Notification and Subsequent Action. California effective date 2/23/90.
 - (54) Section 2235: Requirements. California effective date 8/8/12.
- [20.2.91.102 NMAC - N, 8/1/2022]

20.2.91.103

EXEMPTIONS: The following motor vehicles shall not be subject to this part.

- A.** Military tactical vehicles, which shall mean the same in this section as in CCR, Title 13, Section 1905.
- B.** Motor vehicles sold for registration in a state that is not New Mexico.
- C.** Motor vehicles that have greater than 7,500 miles on the odometer.
- D.** Motor vehicles available for rent to a final destination outside of New Mexico.
- E.** Motor vehicles transferred from one person to another person due to: death, inheritance, devise or bequest; divorce, dissolution, annulment or legal separation; merger or consolidation; bankruptcy; court judgment or decree; or possessory lien, seizure or foreclosure.
- F.** Emergency vehicles when demonstrated to the department's satisfaction that an appropriate vehicle is not otherwise reasonably available.
- G.** A motor vehicle acquired by a resident of New Mexico to replace a motor vehicle registered to such resident that was stolen, damaged, or failed beyond reasonable repair while out of state, provided that such replacement motor vehicle is acquired out of state when the previously owned motor vehicle was stolen, damaged, or failed beyond reasonable repair.
- H.** A motor vehicle with a right-hand drive configuration that is not available in a California-certified model, purchased by a rural route postal carrier and used primarily for work.
- I.** Motor vehicles purchased by a nonresident before establishing residency in New Mexico, regardless of the mileage on the odometer.
- J.** Motor vehicles purchased by a resident of New Mexico while assigned to active government service outside New Mexico.
- K.** Custom and assembled motor vehicles that:
 - (1) are maintained for occasional transportation, exhibitions, club activities, parades, tours, testing of operation, repair, maintenance, and similar uses; and
 - (2) are not used for general daily transportation.
- L.** A vehicle sold for the purpose of being wrecked or dismantled.
- M.** Motor vehicles used exclusively in the conduct of agricultural operations, like implements of husbandry not including a vehicle whose existing design is primarily for the transportation of persons or property on a highway, or road machinery not regularly operated on public streets and highways.

[20.2.91.103 NMAC - N, 8/1/2022]

20.2.91.104 FLEET AVERAGE NON-METHANE ORGANIC GAS PLUS OXIDES OF NITROGEN EXHAUST EMISSION STANDARDS, REPORTING AND COMPLIANCE:

A. Each manufacturer subject to this part shall comply with fleet average non-methane organic gas plus oxides of nitrogen exhaust emission standards for passenger cars, light-duty trucks, and medium-duty vehicles, and other requirements set forth in CCR, Title 13, Section 1961.2. Compliance shall be based on the motor vehicles subject to 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico.

B. Each manufacturer subject to Subsection A of 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) shall accrue fleet average non-methane organic gas plus oxides of nitrogen exhaust emission standard credits and debits and may use credits in accordance with CCR, Title 13, Section 1961.2. Each manufacturer shall accrue and use debits and credits based on the number of motor vehicles subject to Subsection A of 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance).

C. Each manufacturer subject to Subsection A of 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) shall submit a report by March 1 of each year to the department that includes the fleet average non-methane organic gas plus oxides of nitrogen exhaust emission data for the model year just ended. The report shall be in accordance with the procedures in CCR, Title 13, Section 1961.2 and be in the same format used to report such information to CARB. If a manufacturer elects to report the information required pursuant to Subsection A of 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) using the pooling provision set forth in CCR, Title 13, Section 1961.2, the manufacturer shall report to the department the information for the entire pool as well as for the portion specific to New Mexico.
[20.2.91.104 NMAC - N, 8/1/2022]

20.2.91.105 PARTICULATE MATTER EXHAUST EMISSION STANDARDS, REPORTING AND COMPLIANCE:

Each manufacturer subject to this part shall comply with particulate exhaust emission standards for passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles, and other requirements set forth in CCR, Title 13, Section 1961.2. Compliance shall be based on the motor vehicles subject to Section 20.2.91.105 NMAC that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico.
[20.2.91.105 NMAC - N, 8/1/2022]

20.2.91.106 FLEET AVERAGE GREENHOUSE GAS EXHAUST EMISSION STANDARDS, REPORTING AND COMPLIANCE:

A. Each manufacturer subject to this part shall comply with fleet average greenhouse gas exhaust emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles, and other requirements set forth in CCR, Title 13, Section 1961.3. Compliance shall be based on the motor vehicles subject to 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico.

B. Each manufacturer subject to Subsection A of 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) shall accrue fleet average greenhouse gas exhaust emission standard credits and debits and may use credits in accordance with CCR, Title 13, Section 1961.3. Each manufacturer shall accrue and use debits and credits based on the number of motor vehicles subject to Subsection A of 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance).

C. Each manufacturer subject to Subsection A of 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) shall submit a report by March 1 of each year to the department that includes the fleet average greenhouse gas exhaust emission standard data for the model year just ended. The report shall include the number of motor vehicles in each test group, delineated by model type certified pursuant to CCR, Title 13, Section 1961.3, be in accordance with the procedures in CCR, Title 13, Section 1961.3, and be in the same format used to report such information to CARB. If a manufacturer reports the information required pursuant to Subsection A of 20.2.91.105 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) using option number 2 for the “Calculation of fleet average carbon dioxide value” set forth in CCR, Title 13, Section 1961.3(a)(5)(D), the manufacturer shall report the information for the entire pool as well as for the portion specific to New Mexico.
[20.2.91.106 NMAC - N, 8/1/2022]

20.2.91.107 REMEDIATION REPORT:

A. If the department determines that a report submitted by a manufacturer pursuant to 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) or 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) demonstrates that the manufacturer is not in compliance with the fleet average non-methane organic gas plus oxides of nitrogen exhaust emission standards or the fleet average greenhouse gas exhaust emission standards, respectively, the department shall require the manufacturer to submit a fleet average remediation report to the department.

B. A fleet average remediation report shall be submitted to the department within 60 calendar days after notice from the department.

C. The fleet average remediation report shall, at a minimum:

(1) describe how the manufacturer intends to equalize any accrued debits;

(2) identify all motor vehicle models and the percentage of each model delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico with their corresponding certification standards for New Mexico and California in relation to total fleet sales in each respective state; and

(3) describe how the manufacturer intends to achieve compliance with the fleet average non-methane organic gas plus oxides of nitrogen exhaust emission standards or the fleet average greenhouse gas exhaust emission standards, as applicable, in future model years.

[20.2.91.107 NMAC - N, 8/1/2022]

20.2.91.108 ZERO EMISSION VEHICLE CREDIT REQUIREMENT, REPORTING, AND COMPLIANCE:

A. Each manufacturer subject to this part shall deliver for sale, offer for sale, sell, import, deliver, or lease motor vehicles certified as zero emission vehicles in accordance with CCR, Title 13, Section 1962.2(a) in New Mexico.

B. Each manufacturer subject to this part shall comply with the ZEV credit percentage requirement set forth in CCR, Title 13, Section 1962.2(b).

C. Before May 1 of each year, each manufacturer subject to this part shall submit to the department a report detailing the credits generated or credits transferred to or from any manufacturer for each qualifying motor vehicle delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico during the previous model year in accordance with CCR, Title 13, Sections 1962.2(c), (d) and (g). The report shall be prepared in the same format used to report credit history to CARB. If the manufacturer intends to use credits for future compliance with the ZEV credit percentage requirement at CCR, Title 13, Section 1962.2(b), the manufacturer shall record and certify the transaction in the ZEV credit bank.

D. Each intermediate volume manufacturer and large volume manufacturer shall open an account in the ZEV credit bank and submit information to the department for banking credits generated in New Mexico. Small volume manufacturers and independent low volume manufacturers may open an account in the ZEV credit bank and submit information to the department for banking credits generated in New Mexico but are not required to do so. A manufacturer may deposit and earn ZEV credits for each qualifying motor vehicle delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico in accordance with 20.2.91.108 NMAC (Zero Emission Vehicle Credit Requirement, Reporting, and Compliance) and CCR, Title 13, Sections 1962.2(c), (d) and (g).

E. A manufacturer that fails to meet the credit obligation for delivery of zero emission motor vehicles in New Mexico in a given model year shall make up the credit deficit by submitting a commensurate amount of ZEV credits to the secretary in accordance with CCR, Title 13, Section 1962.2(g)(7).

[20.2.91.108 NMAC - N, 8/1/2022]

20.2.91.109 ZERO EMISSION VEHICLE EARLY ACTION AND ONETIME CREDITS:

A. A manufacturer may earn early action credits for any model year 2023, 2024, and 2025 motor vehicles that qualify towards the ZEV credit percentage requirement set forth in CCR, Title 13, Section 1962.2(b) that the manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico on or after August 1, 2022, by reporting the total delivery of such motor vehicles to the department before May 1 of the calendar year subsequent to the end of the model year.

B. For use for compliance beginning with model year 2026, the department shall deposit into the manufacturer's account in the ZEV credit bank any early action credits earned by the manufacturer pursuant to

Subsection A of 20.2.91.109 NMAC (Zero Emission Vehicle Early Action and Onetime Credits). The department shall follow CARB’s procedures for reporting, tracking and recording ZEV sales and credits.

C. For use for compliance beginning with model year 2027, once the manufacturer has satisfied all credit obligations for model years 2025 and earlier in California as confirmed by CARB, the department shall deposit into the manufacturer’s account in the ZEV credit bank a number of onetime credits equal to the manufacturer’s model year 2025 starting California credit balance multiplied by the number of passenger cars and light-duty trucks the manufacturer delivered for sale in New Mexico in model year 2025 and divided by the number of passenger cars and light-duty trucks that the manufacturer produced and delivered for sale in California in model year 2025 as confirmed by CARB:

$\begin{array}{l} \text{manufacturer's} \\ \text{MY2027} \\ \text{onetime credit} \end{array} = \begin{array}{l} \text{manufacturer's} \\ \text{starting MY2025} \\ \text{California ZEV} \\ \text{credit balance} \end{array} \times \frac{\begin{array}{l} \text{manufacturer's MY2025 total New} \\ \text{Mexico motor vehicle sales} \end{array}}{\begin{array}{l} \text{manufacturer's MY2025 total} \\ \text{California motor vehicle sales} \end{array}}$
<p><i>where MY means model year</i></p>

D. Credits issued pursuant to 20.2.91.109 NMAC (Zero Emission Vehicle Early Action and Onetime Credits) may only be used in New Mexico for compliance with the ZEV credit percentage requirements subject to the same requirements and limitations on credit use set forth in CCR, Title 13, Section 1962.2.

E. A motor vehicle equivalent credit shall not constitute or convey a property right.
[20.2.91.109 NMAC - N, 8/1/2022]

20.2.91.110 ADDITIONAL REPORTING:

A. Within 30 calendar days of a request from the department, a manufacturer shall submit to the department:

- (1) A copy of the executive order.
- (2) Any documentation the department determines necessary for the effective administration and enforcement of this part, including without limitation certification materials submitted to CARB and documentation regarding the sale of each motor vehicle subject to this part.
- (3) Any emission warranty information reports prepared in accordance with CCR, Title 13, Section 2144.

B. If these records are available electronically, the manufacturer shall submit the records in an electronic format approved by the department.
[20.2.91.110 NMAC - N, 8/1/2022]

20.2.91.111 WARRANTIES:

A. Each manufacturer of a motor vehicle subject to this part shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle shall comply over its period of warranty coverage with all requirements of CCR, Title 13, Sections 2035 through 2038, 2040, and 2046. 20.2.91.103(C) NMAC shall not apply to this section.

B. Except as otherwise provided in Subsection B of 20.2.91.111 NMAC (Warranties), each manufacturer subject to this part shall include with each motor vehicle or motor vehicle engine, which means the same herein as it is defined in CHSC, Section 39042.5, the emission control systems warranty statement that complies with the requirements of CCR, Title 13, Section 2039, except:

- (1) A manufacturer shall modify the emission control systems warranty statement as necessary to inform motor vehicle owners of the applicability of the warranty in New Mexico.
- (2) For the purpose of the documents required pursuant to CCR, Title 13, Section 2039(c), a manufacturer is only required to submit such documents upon request of the department.

C. Upon the department’s request, a manufacturer of a motor vehicle subject to this part shall submit to the department within 30 calendar days any emission warranty information report submitted to CARB, as required in CCR, Title 13, Section 2144.
[20.2.91.111 NMAC - N, 8/1/2022]

20.2.91.112 LABELS: A manufacturer, dealer, rental car agency, the United States, state or local government, or other persons shall not deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, or motor vehicle engines in New Mexico if emission control labels and environmental performance labels have not been affixed in accordance with CCR, Title 13, Section 1965.
[20.2.91.112 NMAC - N, 8/1/2022]

20.2.91.113 RECALL CAMPAIGNS:

A. Any order issued or enforcement action taken by CARB to correct noncompliance that results in a recall campaign of a motor vehicle pursuant to CCR, Title 13, Sections 2111 through 2135 shall be prima facie evidence concerning noncompliance for a motor vehicle registered in New Mexico. If the manufacturer demonstrates to the department's satisfaction that the order or action is not applicable to a motor vehicle registered in New Mexico, the department shall not pursue a recall campaign of that motor vehicle.

B. If a manufacturer initiates a voluntary or influenced emission-related recall campaign pursuant to CCR, Title 13, Sections 2113 through 2121, the recall campaign shall include all affected motor vehicles registered in New Mexico.

C. For a motor vehicle subject to an order or action under Subsection A of 20.2.91.113 NMAC (Recall Campaigns), each manufacturer shall send to each owner of an affected motor vehicle registered in New Mexico a notice that complies with the requirements in CCR, Title 13, Sections 2118 and 2127, as applicable, including a telephone number for owners to obtain answers to questions regarding the recall.
[20.2.91.113 NMAC - N, 8/1/2022]

20.2.91.114 REGISTRATION AND FEES:

A. Effective January 1, 2025, each large-volume or intermediate-volume manufacturer delivering for sale, offering for sale, selling, importing, delivering, or leasing passenger cars, light-duty trucks, medium-duty passenger vehicles, or medium-duty vehicles subject to this part shall obtain a registration from the department. The department shall issue a registration for a period of 10 years subject to an annual fee. It shall be a violation of this part for a large-volume or intermediate-volume manufacturer to not obtain a registration in accordance with this subsection.

B. Effective January 1, 2025, each large-volume or intermediate-volume manufacturer subject to this part shall report to the department the number of passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico during the previous model year. The manufacturer shall submit the report to the department by March 1 of each year. Failure to timely submit the report shall be a violation of Subsection B of 20.2.91.114 NMAC (Registration and Fees) and cause for the department to revoke the manufacturer's registration.

C. The department shall assess an annual registration fee for the period beginning July 1 and ending June 30 of the subsequent year. Failure to timely pay the annual registration fee shall be a violation of Subsection C of 20.2.91.114 NMAC (Registration and Fees) and cause for the department to revoke the manufacturer's registration.

D. The department shall assess annual registration fees by apportioning the total registration fee among all registrants according to each manufacturer's reported market share for the previous model year.

E. Within 60 calendar days after the report required by 20.2.91.114 NMAC (Registration and Fees) is due, the department shall notify each registrant of the registration fee required for the next registration period. Within 30 calendar days of the department's notice of the required registration fee, each registrant shall remit the specified amount payable to the New Mexico environment department.

F. The total registration fee is \$200,000 and shall increase annually by the consumer price index.

G. Large-volume or intermediate-volume motor vehicle manufacturers seeking to earn ZEV early action credits under 20.2.91.109 NMAC (Zero Emission Vehicle Early Action and Onetime Credits) shall request a registration by October 1 during the first calendar year of each early action model year and shall pay a \$10,000 registration fee that is separate and apart from the annual registration fee.

[20.2.91.114 NMAC - N, 8/1/2022]

20.2.91.115 INSPECTIONS AND INFORMATION REQUESTS:

A. The department may inspect motor vehicles, and may inspect and copy relevant, non-financial records, including records documenting motor vehicle origin, certification, delivery, or sales, and any record of emission-related part repairs performed under warranty.

B. The department may require a manufacturer, dealer, rental car agency, the United States, state or local government, or other person to submit or may inspect and copy itself relevant, non-financial records related to a motor vehicle subject or potentially subject to this part, except that Subsection B of 20.2.91.115 NMAC (Inspections and Information Requests) shall not be construed to require the creation of a new record.
[20.2.91.115 NMAC - N, 8/1/2022]

20.2.91.116 RECORDKEEPING: All manufacturers, dealers, rental car agencies, the United States, state and local governments, or other persons shall retain records pertaining to compliance under this part.
[20.2.91.116 NMAC - N, 8/1/2022]

20.2.91.117 PROHIBITED: Failure to comply with the emission standards, recordkeeping, reporting, or other requirements of this part within the timeframes specified shall constitute a violation of this part subject to enforcement action under NMSA 1978, Section 74-2-12.
[20.2.91.117 NMAC - N, 8/1/2022]

HISTORY OF 20.2.91 NMAC [RESERVED]