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**NMAC****Transmittal Form**NEW MEXICO  
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Your Access to Public InformationVolume:  Issue:  Publication date:  Number of pages:  (ALD Use Only) Sequence No. Issuing agency name and address:  Agency DFA code: Contact person's name:  Phone number:  E-mail address: Type of rule action: New ☒ Amendment ☐ Repeal ☐ Emergency ☐ Renumber ☐ (ALD Use) Recent filing date: Title number:  Title name: Chapter number:  Chapter name: Part number:  Part name: 

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Yes ☐ No ☒

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes ☐ No ☐ Public domain ☐**Specific statutory or other authority authorizing rulemaking:**

STATUTORY AUTHORITY: Environmental Improvement Act, Section 74-1-1 to 74-1-16 NMSA 1978, including specifically Paragraph (4) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Sections 74-2-1 to 74-2-22 NMSA 1978, including specifically Subparagraph (b) of Paragraph (1) of Subsection B of Section 74-2-5 NMSA 1978.

Notice date(s):  Hearing date(s):  Rule adoption date:  Rule effective date:

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## Concise Explanatory Statement For Rulemaking Adoption:

### Findings required for rulemaking adoption:

#### Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

The Environmental Improvement Board ("Board") is authorized to adopt Part 101 pursuant to the New Mexico Air Quality Control Act, NMSA 1978, Sections 74-2-1 to -17 ("AQCA"). Section 74-2-5 (A) of the AQCA broadly provides that the Board "shall prevent or abate air pollution." Section 74-2-5(B)(1) states that the Board shall "adopt, promulgate, publish, amend, and repeal rules and standards consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution. NMSA 1978, § 74-2-2(B).

"Air contaminant" is defined as "a substance, including 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." NMSA 1978, § 74-2-2(A). Section 74-2-5(B)(1)(b) expressly mandates that the Board adopt, "Standards of performance that limit carbon dioxide emissions to no more than one thousand one hundred pounds per megawatt-hour on and after January 1, 2023 for a new or existing source that is an electric generating facility with an original installed capacity exceeding three hundred megawatts and that uses coal as a fuel source."

Like its authorizing statute, Part 101 is aimed at addressing carbon dioxide emissions from the power sector that contribute to greenhouse gas concentrations. Generating electricity from burning coal results in the release of carbon dioxide into the atmosphere. Carbon dioxide is an air pollutant under the definition set forth in the AQCA, and is a regulated greenhouse gas. The emissions standards, monitoring, recordkeeping and reporting requirements in Part 101 will reduce anthropogenic carbon dioxide emissions from this sector in New Mexico.

The Board adopted provisions that were not included in the proposed rule. These changes were proposed by parties that provided technical testimony to support their argument at the hearing. The changes comprise compliance determination parameters including the use of net generation instead of gross generation and using a 365-operating-day rolling average instead of 12 operating-month time frame. Conforming changes to the rule were also adopted.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Phoebe Suina

Check if authority has been delegated

☐

Title:

Chair, Environmental Improvement Board

Signature: (BLACK ink only OR Digital Signature)

Date signed:

Phoebe K. Suina

Digitally signed by Phoebe K. Suina  
Date: 2022.11.10 18:25:02 -07'00'

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