

**ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

IN THE MATTER OF PROPOSED NEW REGULATION,
20.11.105 NMAC: *Emission Standards for New Motor Vehicles—Model Year 2025 and
Subsequent*

No. _____

STATEMENT OF REASONS

Pursuant to 20.11.82.18 NMAC, Petitioners Center for Civic Policy, Conservation Voters New Mexico, Natural Resources Defense Council, Plug In America, Prosperity Works, Sierra Club, Southwest Energy Efficiency Project, and 350 New Mexico (“Climate Advocates”) provide the following Statement of Reasons in support of the Petition to adopt 20.11.105 NMAC: *Emission Standards for New Motor Vehicles—Model Year 2025 and Subsequent* (“Rulemaking”).

Purpose of Rulemaking. The Rulemaking is needed to update the AQCB’s Clean Car Standards to apply to model year 2025 and beyond. The standards will improve the health and welfare of Albuquerque and Bernalillo County residents by reducing emissions of criteria pollutants, air toxics, and greenhouse gases resulting from new passenger motor vehicles. Ozone pollution is a particular concern in Bernalillo County, which is currently exceeding the 2015 national ambient air quality standard (“NAAQS”) for ozone, based on the most recent three-year design values.¹ Motor vehicles are a major contributor to the ozone problem in Bernalillo County. For example, on-road mobile sources are responsible for 25% of the in-state contribution to ozone exceedances at the Foothills Monitor in Bernalillo County.² Statewide,

¹ <https://www.epa.gov/air-trends/air-quality-design-values> (Ozone Design Values, 2020 Report).

² https://www.wrapair2.org/pdf/NM_OAI_2028_AQTSD_v8.pdf at 164, Figure 10-30.

mobile sources were responsible for substantial amounts of ozone-precursor pollution—including over 75,000 tons of NOx emissions in 2014, or 23% of the state’s total.³

The transportation sector is the second largest source of greenhouse gas emissions in the state, behind the oil-and-gas sector but ahead of electricity generation.⁴ Governor Lujan Grisham has identified implementation of Clean Car Standards as one of the most impactful steps the state can take to reduce its contribution to the climate crisis. As the New Mexico Interagency Climate Change Task Force recently explained:

In September 2019, Governor Lujan Grisham announced that New Mexico will join 14 other states in adopting low emission vehicle (LEV) standards and 11 other states adopting zero-emission vehicle (ZEV) standards. NMED will hold initial informational public meetings on these regulations starting in spring 2021 and petition the Environmental Improvement Board (EIB) in July 2021 to hold a hearing on proposed rules later in 2021. If adopted, these standards will take effect in January 2023. The LEV rules would limit greenhouse gas and other pollutants from cars and light duty trucks and the ZEV rules would require a percentage of new vehicles for sale in New Mexico to be zero-emission vehicles.⁵

Statutory Authority. ACQB has authority pursuant to N.M. Stat. Ann. § 74-2-5(B) to “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” Subsection D of this provision goes on to provide: “Any regulation adopted pursuant to this section shall be consistent with federal law, if any, relating to control of motor vehicle emissions.”

³ https://www.wrapair2.org/pdf/NM_OAI_2028_AQTSD_v8.pdf at 32, Figure 4-3.

⁴ https://www.climateaction.state.nm.us/documents/reports/NMClimateChangeReport_2020.pdf at 6.

⁵ https://www.climateaction.state.nm.us/documents/reports/NMClimateChangeReport_2020.pdf at 14.

The Rulemaking is consistent with federal law. Under Section 177 of the federal Clean Air Act, “any State . . . may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines . . . if (1) such standards are identical to the California standards for which a waiver has been granted for such model year, and (2) California and such state adopt such standards at least two years before commencement of such model year” 42 U.S.C. § 7507. Because AQCB and EIB are jointly responsible for implementing the Clean Air Act in the state of New Mexico, these agencies may jointly adopt emission standards for new motor vehicles sold in the state, consistent with Section 177.⁶

AQCB previously adopted clean car regulations, which took effect in model year 2011. *See* 20.11.104 NMAC. This Rulemaking would build upon the existing regulations by incorporating the standards that California has adopted for model year 2025 and all subsequent model years. California received a waiver for these standards under the Obama Administration, 78 Fed. Reg. 2112 (Jan. 9, 2013), which the Biden Administration is in the process of reinstating, 86 Fed. Reg. 22,421 (Apr. 28, 2021). States are permitted to adopt California’s standards before a waiver is formally granted for those standards, as long as they do not attempt to enforce the standards until after the waiver is granted. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. New York State Dep’t of Env’t Conservation*, 17 F.3d 521, 534 (2d Cir. 1994). Accordingly, AQCB and EIB may adopt clean car standards for model year 2025 and beyond, consistent with federal law, and can enforce them once California’s waiver is reinstated.

⁶ A state seeking to adopt California’s vehicle emission standards must also have “plan provisions approved under” Part D of the Clean Air Act. 42 U.S.C. § 7507. EIB and AQCB have each adopted state implementation plan provisions that were approved pursuant to Part D. *See* 78 Fed. Reg. 4339 (Jan. 22, 2013) (EIB); 80 Fed. Reg. 52,401 (Aug. 31, 2015) (AQCB).

Summary of the Rulemaking. As explained, in order to comply with Section 177 of the federal Clean Air Act, vehicle emission standards adopted in the state of New Mexico must be “**identical**” to the standards adopted in California. The Rulemaking is intended to update AQCB’s existing regulations to establish LEV standards and ZEV credit requirements that are identical to those that California has adopted for model year 2025 and all subsequent model years. These standards will take effect upon adoption of identical standards by EIB and the reinstatement of the waiver applicable to the California standards.

Proposed 20.11.105.8 provides that, effective model year 2025 and each model year thereafter, no person may deliver a new motor vehicle for sale in Albuquerque-Bernalillo County unless (1) the vehicle has been certified by the California Air Resources Board (“CARB”) to comply with the California standards applicable to that model year as of the effective date of this rulemaking or (2) an exception applies. This provision further specifies that each manufacturer must comply with the substantive provisions of the rule, including the fleet average emission standards, the ZEV requirement, and the warranty, recall, reporting, and registration requirements.

Proposed 20.11.105.9 NMAC sets forth certain vehicles that are exempt from the Clean Car Standards. The exemptions are identical to those that apply in California and other Section 177 states. Proposed 20.11.105.10 NMAC establishes fleet average emission requirements for non-methane organic gases (“NMOG”) plus oxides of nitrogen, and for greenhouse gases. All of these emission standards are expressed as a fleet-wide average.

Proposed 20.11.105.11 NMAC establishes the ZEV Credit Requirement applicable to manufacturers. The minimum number of ZEV credits required for each manufacturer is derived from the applicable ZEV percentage set forth in the California Standards. This section allows

manufacturers to generate “early action” credits for certain model year 2023 and 2024 ZEVs that are delivered for sale in Albuquerque-Bernalillo. This section also allows manufacturers to deposit in their account a specified number of credits based on the manufacturer’s model year 2025 California credit balance, but such credits may not be used for compliance unless the regulations are amended in the future. Proposed 20.11.105.12 NMAC sets forth the crediting program that shall apply in the event New Mexico’s Clean Car Standards are updated after model year 2025.

Respectfully submitted,

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