

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

**IN THE MATTER OF  
PETITION TO REPEAL EXISTING RULE  
20.11.104 NMAC, *EMISSION STANDARDS  
FOR NEW MOTOR VEHICLES*, AND  
ADOPT PROPOSED REPLACEMENT  
RULE 20.11.104 NMAC, *NEW MOTOR  
VEHICLE EMISSION STANDARDS***

**AQCB PETITION NO. 2022-1\_\_\_\_\_**

**CITY OF ALBUQUERQUE  
ENVIRONMENTAL HEALTH  
DEPARTMENT,**

**PETITIONER.**

**PETITION TO REPEAL EXISTING RULE 20.11.104 NMAC, *EMISSION STANDARDS  
FOR NEW MOTOR VEHICLES*, AND ADOPT PROPOSED REPLACEMENT RULE  
20.11.104 NMAC, *NEW MOTOR VEHICLE EMISSION STANDARDS***

The City of Albuquerque Environmental Health Department (“EHD”) hereby petitions the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) to repeal existing rule 20.11.104 NMAC, *Emission Standards for New Motor Vehicles*, and adopt proposed replacement rule 20.11.104 NMAC, *New Motor Vehicle Emission Standards*. EHD’s Statement of Reasons in support of this Petition is attached hereto as Exhibit A. Existing rule 20.11.104 NMAC and proposed replacement rule 20.11.104 NMAC are attached hereto in legislative-edit format as Exhibits B and C, respectively.

**Authority**

The Air Quality Control Act, NMSA 1978, Sections 74-2-4 and 74-2-5 (as amended through Jan. 2021), the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 (“City Ordinance”), Sections 9-5-1-4 and 9-5-1-6, and Bernalillo County Code,

Article II, Sections 30-33 and 30-35, and 20.11.82 NMAC, *Rulemaking Procedures – Air Quality Control Board*, authorize the Air Board to adopt and replace regulations regarding air pollution.

Within 60 days of this Petition, the Air Board is required to determine whether it will hold a hearing on repealing existing rule 20.11.104 NMAC and adopting proposed replacement rule 20.11.104 NMAC. *See* NMSA 1978, § 74-2-6(A); City Ordinance, § 9-5-1-6(A); Bernalillo County Code, Art. II, § 30-35(a); 20.11.82.18(C) NMAC. However, as explained below, EHD is asking the Air Board to consider authorizing a hearing on the Petition at the Air Board’s February 9, 2022 meeting. EHD filed this Petition at least 15 days before the February 9, 2022 Air Board meeting. *See* 20.11.82.16(B)(4) NMAC.

### **Background**

The Air Board adopted existing rule 20.11.104 NMAC during a joint hearing with the New Mexico Environmental Improvement Board in 2007. The Environmental Improvement Board adopted a nearly identical rule, 20.2.88 NMAC, *Emission Standards for New Motor Vehicles*, during the same hearing. Both rules adopted California’s new motor vehicle emission standards for model year 2011 and subsequent model year passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, and motor vehicle engines, as allowed by Section 177 of the Clean Air Act. *See* 42 U.S.C. § 7507. When the Environmental Improvement Board repealed 20.2.88 NMAC in 2013, the Air Board’s existing rule 20.11.104 NMAC became legally invalid and unenforceable. This occurred by operation of law because the Clean Air Act does not provide for political subdivisions to adopt or enforce their own vehicle emission standards when not part of a statewide program. *See* 42 U.S.C. § 7543(a). Existing rule 20.11.104 NMAC is also obsolete because California adopted more stringent standards a few years after the Air Board

adopted the rule. This resulted in the standards in existing rule 20.11.104 NMAC no longer being identical to California's standards, as required by the Clean Air Act. *See* 42 U.S.C. § 7507.

EHD's proposed replacement rule 20.11.104 NMAC adopts California's current new motor vehicle emission standards for model year 2026 and subsequent model year passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, and motor vehicle engines. Proposed replacement rule 20.11.104 NMAC is nearly identical to the New Mexico Environment Department's ("NMED") proposed rule 20.2.91 NMAC, *New Motor Vehicle Emission Standards*.<sup>1</sup> Together, the rules will create a statewide program for statewide compliance.

### **Pre-Petition Stakeholder and Public Outreach**

EHD, in partnership with NMED, developed proposed replacement rule 20.11.104 NMAC over a period of eight months with extensive stakeholder engagement. In July through December 2021, EHD and NMED held numerous individual meetings with stakeholder groups and held three public listening sessions during which participants were encouraged to provide both verbal and written feedback. Additionally, prior to petitioning the Environmental Improvement Board, on October 27, 2021, NMED released a discussion draft of proposed rule 20.2.91 NMAC for the purpose of soliciting public and stakeholder input. After incorporating changes from that public comment period, on December 22, 2021, EHD released a discussion draft of proposed replacement rule 20.11.104 NMAC for the purpose of soliciting additional public and stakeholder input. EHD received a total of 21 written comments during the comment period. Feedback was collected from

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<sup>1</sup> The requirements in proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC are the same, but, to the extent that the rules differ, the small differences are necessary to reflect the different jurisdictions of the Air Board/EHD and the Environmental Improvement Board/NMED.

auto dealers, auto makers, the agriculture industry, community advocates, environmental organizations, and over 100 individual New Mexicans during the public comment periods, public meetings, and individual stakeholder meetings. EHD and NMED revised proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC, respectively, based on the input they received.

On December 1, 2021, NMED petitioned the Environmental Improvement Board to adopt proposed rule 20.2.91 NMAC. The Environmental Improvement Board considered NMED's petition during its December 17, 2021 meeting and authorized a joint hearing with the Air Board beginning on May 4, 2022, pending the Air Board's concurrence with the joint format and date.

#### **Hearing Date, Schedule, and Hearing Officer**

EHD requests that, once again, the Air Board and the Environmental Improvement Board hold a joint hearing to consider proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC, respectively. Such a process will ensure that the rules, if adopted, do not contain conflicting provisions, so that the rules meet the identity requirements of Section 177 of the Clean Air Act. *See* 42 U.S.C. § 7507.

EHD requests that the Air Board consider this Petition during its February 9, 2022 meeting and agree to hold a joint hearing with the Environmental Improvement Board beginning on May 4, 2022.<sup>2</sup> Due to statutory public notice requirements, February 9, 2022, is the deadline for the Air

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<sup>2</sup> The hearing may also be scheduled at such other time as the two boards mutually agree; however, on February 10, 2021, NMED is required to submit its public notice for publication in the New Mexico Register if the hearing is scheduled to begin on May 4, 2022. *See* Petition, n. 3. The notice must contain the hearing dates.

Board to act if a joint hearing is to take place on the date proffered by the Environmental Improvement Board.<sup>3</sup>

EHD estimates that two days will be needed to conduct the hearing in this matter, with an additional day for joint deliberation by both boards.

Due to the joint nature of the requested hearing and the complexity of the issues that are likely to arise in this rulemaking, EHD requests that the Air Board appoint an experienced administrative hearing officer to conduct the rulemaking proceeding, which will allow all Air Board members to devote their full attention to the substantive testimony and comment, and will help prevent potential procedural challenges to any final regulation adopted by the Air Board. *See* NMSA 1978, § 74-2-6(E); City Ordinance, § 9-5-1-6(E); Bernalillo County Code, Art. II, § 30-35(e); 20.11.82.11 NMAC.

WHEREFORE, EHD requests that the Air Board:

A. Include this Petition on the Air Board's February 9, 2022 meeting agenda with approximately 30 minutes for EHD to present on this Petition, with additional time for the Air Board to ask questions and deliberate;

B. Authorize a joint hearing with the Environmental Improvement Board and schedule it to begin on May 4, 2022 at 9 a.m. and continue through May 6, 2022, to consider the merits of this Petition;

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<sup>3</sup> Pursuant to 20.1.1.301 NMAC, the Environmental Improvement Board is required to provide notice to the public at least 60 days prior to a hearing. Notice must be published in the New Mexico Register, which is published by the Commission of Public Records twice a month. The last publication date that is at least 60 days prior to the proffered May 4, 2022 hearing date is February 22, 2022. The submittal deadline for publication in that edition of the register is February 10, 2022.

C. Appoint a hearing officer, in consultation with the Environmental Improvement Board, and authorize the hearing officer to manage the pre-hearing process, adopt procedural orders governing the proceedings, prepare any post-hearing recommendations for the Air Board at the Air Board's request, and take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in this matter; and

D. Until such time as a hearing officer is appointed, authorize the Air Board Chair, or her designee, to coordinate with the Environmental Improvement Board Chair, or her designee, to manage and resolve logistical matters for the hearing in this matter.

The Air Board is authorized to adopt the proposed regulatory changes under Air Quality Control Act, NMSA 1978, Sections 74-2-4 and 74-2-5(B)(1), Joint Air Quality Control Board Ordinance, ROA 1994, Section 9-5-1-4(B)(1), Bernalillo County Code, Article II, Section 30-33(b)(1), and 20.11.82.32 NMAC.

A proposed Notice of Hearing Determination and a proposed Pre-Hearing Order are attached hereto.

Respectfully submitted,

**CITY OF ALBUQUERQUE**  
**Esteban A. Aguilar Jr., City Attorney**  
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By: /s/ Kelsea E. Sona  
Kelsea E. Sona, Assistant City Attorney  
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## CERTIFICATION

I hereby certify that on January 25, 2022, which is at least 15 days before any hearing or meeting at which the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) will consider the document, an original and 15 copies of this Petition to Repeal Existing Rule 20.11.104 NMAC, *Emission Standards for New Motor Vehicles*, and Adopt Proposed Replacement Rule 20.11.104 NMAC, *New Motor Vehicle Emission Standards*, and its exhibits, were filed with the Air Board Hearing Clerk via hand delivery at:

Albuquerque-Bernalillo County Air Quality Control Board  
Attn: Stephanie Apodaca, Air Board Hearing Clerk  
Environmental Health Department  
One Civic Plaza  
Room 3023  
Albuquerque, New Mexico 87102

Digital copies were sent as a courtesy to Stephanie Apodaca at [seapodaca@cabq.gov](mailto:seapodaca@cabq.gov).

As of January 25, 2022, the Air Board does not have legal counsel; thus, a copy was not delivered in accordance with 20.11.82.16(B)(2) NMAC.

The City of Albuquerque Environmental Health Department is the only party in this matter; thus, no other copies were served in accordance with 20.11.82.16(B)(3) NMAC.

By: /s/ Kelsea E. Sona  
Kelsea E. Sona, Assistant City Attorney

ALBUQUERQUE-BERNALILLO COUNTY  
AIR QUALITY CONTROL BOARD

Received by:Stephanie Apodaca  
Date: 1/25/2022 Time: 4:33 pm

IN THE MATTER OF  
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AQCB PETITION NO. 2022-1

CITY OF ALBUQUERQUE  
ENVIRONMENTAL HEALTH  
DEPARTMENT,

PETITIONER.

**STATEMENT OF REASONS**

The City of Albuquerque (“City”) Environmental Health Department (“EHD”) hereby provides to the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) this Statement of Reasons, Exhibit A to EHD’s Petition to Repeal Existing Rule 20.11.104 NMAC, *Emission Standards for New Motor Vehicles*, and Adopt Proposed Replacement Rule 20.11.104 NMAC, *New Motor Vehicle Emission Standards* (hereinafter the “Petition”), in support of the proposed regulatory changes in the Petition. *See* 20.11.82.18(B) NMAC.

**I. AUTHORITY, HISTORY, BACKGROUND, AND IMPETUS**

***Clean Air Act Authority for Clean Car Regulation in New Mexico***

1. Section 209 of the Clean Air Act prohibits States or political subdivisions thereof from adopting or attempting “to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines.” 42 U.S.C. § 7543(a). Section 209 of the Clean Air Act states more fully in relevant part that:



No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

*Id.*

2. The State of California, and only California, is exempt from this general prohibition. 42 U.S.C. § 7543(b). California may adopt and enforce its own motor vehicle emission standards provided that (i) such standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, and (ii) a waiver of preemption has been granted by the U.S. Environmental Protection Agency (“EPA”). *Id.*

3. However, Section 177 of the Clean Air Act allows any state with nonattainment plan provisions in its EPA-approved State Implementation Plan to adopt and enforce its own motor vehicle emission standards, provided that such standards are (i) identical to the California motor vehicle emission standards for which a waiver has been granted and (ii) adopted at least two years before the start of the model year to which they apply. 42 U.S.C. § 7507. Section 177 of the Clean Air Act states in relevant part that:

Notwithstanding section 7543(a) of this title, any *State* which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—

(1) such standards are identical to the California [motor vehicle emission] 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 (as determined by regulations of the Administrator).

*Id.* (emphases added). A State may only adopt California’s motor vehicle emission standards; it may not set its own, independent standards.

4. The Clean Air Act definition for the term “State” does not include municipalities. 42 U.S.C. § 7602(d) (“The term ‘State’ means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.”); *compare* 42 U.S.C. § 7602(f) (the Clean Air Act defines municipality separately as “a city, town, borough, county, . . . or other public body created by or pursuant to State law.”).

5. Only a “State” meeting the requirements of Section 177 of the Clean Air Act can adopt California’s motor vehicle emission standards. 42 U.S.C. § 7507; *see* 42 U.S.C. § 7602(d); *compare* 42 U.S.C. § 7602(f). Thus, an entire State must adopt the California motor vehicle emission standards and political subdivisions are prohibited from adopting or enforcing their own vehicle emission standards when not part of a statewide program. In most states, this is relatively simple procedurally: a state board adopts the California motor vehicle emission standards for a single, statewide air quality jurisdiction. EPA approval is not required for States to adopt their own motor vehicle emission standards under the terms of Section 177 of the Clean Air Act. *See generally* 42 U.S.C. Ch. 85 (§§ 7401-7671q).

6. New Mexico has two separate air quality jurisdictions. One jurisdiction encompasses the City and Bernalillo County (“County”) (excluding tribal lands within the County). Air Quality Control Act, NMSA 1978, § 74-2-4(A); Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 (“City Ordinance”), § 9-5-1-3(A); Bernalillo County Code, Art. II (“County Code”), § 30-32(a). The other jurisdiction encompasses the rest of New Mexico (excluding tribal lands outside the County). NMSA 1978, § 74-2-3(B). The Air

Board is responsible for adopting rules for the City and the County. NMSA 1978, § 74-2-4(A)(1); § 74-2-5(B);<sup>1</sup> City Ordinance, § 9-5-1-4(B) (substantially similar); County Code, § 30-33(b)(1) (substantially similar to Air Quality Control Act; same as City Ordinance). The New Mexico Environmental Improvement Board is responsible for adopting rules for the rest of the state. NMSA 1978, § 74-2-3(B); § 74-2-5(B)(1).

7. The City and County, over which the Air Board has jurisdiction, are not a “State” under the Clean Air Act. *See* Statement of Reasons, ¶ 4. The City and County have local authority under the Air Quality Control Act, so the Environmental Improvement Board’s jurisdiction does not encompass the entire state. *See* Statement of Reasons, ¶ 6. Since the Clean Air Act requires that the entire state adopt California’s motor vehicle emission standards, Statement of Reasons, ¶ 5, for New Mexico to adopt California’s motor vehicle emission standards, both the Air Board and the Environmental Improvement Board must adopt the standards for a single, statewide motor vehicle emission program.

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<sup>1</sup> Section 74-2-5(B) of the Air Quality Control Act states in relevant part that:

The environmental improvement board or the local board shall (1) 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, including:

- (a) rules prescribing air standards within the geographic area of the environmental improvement board’s jurisdiction or the local board’s jurisdiction or any part thereof; and

\* \* \*

(2) adopt a plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions within the geographic area of the environmental improvement board’s jurisdiction or the local board’s jurisdiction or any part thereof.

*History of Clean Car Regulation in New Mexico, under EPA, and in California*

8. The Air Board and the Environmental Improvement Board adopted California's motor vehicle emission standards once before. During a joint hearing in 2007, the Air Board adopted existing rule 20.11.104 NMAC and the Environmental Improvement Board adopted nearly identical rule 20.2.88 NMAC. These rules adopted California's new motor vehicle emission standards for model year 2011 and subsequent model year passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles. At the time, the California motor vehicle emission standards were more stringent than federal standards, which did not include greenhouse gas or zero-emission vehicle standards.

9. In 2010, EPA adopted the first-ever federal light-duty vehicle greenhouse gas emission standards for model years 2012 to 2016. 75 Fed. Reg. 25324-25728 (May 7, 2010) (Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards). These standards were designed such that they achieved the same reductions by 2016 as the California motor vehicle emission standards, thereby enabling manufacturers to build a single light-duty national fleet that satisfied both the federal and California standards. In response, the Environmental Improvement Board amended 20.2.88 NMAC, adding a provision waiving the rule's requirements until 2016. The Air Board did not make the same change and its rule still read as going into effect for model year 2011. However, for the City and County, the Environmental Improvement Board's change made the requirements in existing rule 20.11.104 NMAC legally inoperable because the Clean Air Act bars political subdivisions from adopting or enforcing their own vehicle emission standards when not part of a statewide program. *See* Statement of Reasons, ¶ 5.

10. In 2012, the California Air Resources Board adopted Advanced Clean Cars, a

coordinated package of regulations that included more stringent criteria pollutant and greenhouse gas emission standards beginning in 2015 and 2017, respectively, and new zero-emission vehicle standards beginning in 2018. California Regulatory Notice Register 2012, No. 33-Z (August 17, 2012). Later that year, EPA adopted identical federal greenhouse gas emission standards beginning in 2017. 77 Fed. Reg. 62624-63200 (Oct. 15, 2012) (2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards).

11. In 2013, pursuant to Section 209 of the Clean Air Act, EPA granted a waiver of Clean Air Act preemption for California's Advanced Clean Car program. 78 Fed. Reg. 2112-2145 (Jan. 9, 2013) (California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's Advanced Clean Car Program and a Within the Scope Confirmation for California's Zero Emission Vehicle Amendments for 2017 and Earlier Model Years). Later that year, EPA proposed nearly identical federal "Tier 3" criteria pollutant emission standards, also beginning in 2017. 78 Fed. Reg. 29816-30191 (May 21, 2013) (Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards).

12. In late 2013, in response to EPA's regulatory action, the Environmental Improvement Board repealed 20.2.88 NMAC. The New Mexico Environment Department ("NMED") recommended the action, reasoning that the administrative burdens of implementing the rule outweighed the potential benefits given the harmonization that was then occurring between the federal and California motor vehicle emission standards. This action rendered 20.11.104 NMAC legally invalid and unenforceable as a matter of law, but 20.11.104 NMAC was never repealed and it remains on the books today.

### *Continued History of Clean Car Policy and Regulation*

13. In 2018, City Mayor Tim Keller signed a pledge joining the Mayors National Climate Action Agenda and committing the City to the goals of the Paris Climate Agreement. *See* CITY OF ALBUQUERQUE, *Mayor News Releases, Mayor Tim Keller Pledges to Meet Paris Climate Agreement Goals*, <https://www.cabq.gov/mayor/news/mayor-tim-keller-pledges-to-meet-paris-climate-agreement-goals> (last visited Jan. 18, 2022). Since then, Mayor Keller has pressed an ambitious climate agenda and taken various steps aimed at reducing transportation-related greenhouse gas emissions, including signing an Executive Instruction mandating that the City develop and implement a plan to transition its vehicle fleet to electric, hybrid, and alternative fuel vehicles, doubling the number of electric vehicle charging stations operated by the City, and purchasing the first electric buses for the City’s bus fleet. *See* Executive Instruction No. 34 (Sept. 7, 2019) (Reduced Emission Light and Heavy-Duty City Vehicles); *see also* CITY OF ALBUQUERQUE, *Environmental Health, News, City of Albuquerque Ribbon Cutting on 18 New Electric Vehicle Charging Stations*, <https://www.cabq.gov/environmentalhealth/news/city-of-albuquerque-ribbon-cutting-on-18-new-electric-vehicle-charging-stations> (last visited Jan. 19, 2022); CITY OF ALBUQUERQUE, *Transit, News, ABQ RIDE Debuts Electric Bus January 30, 2021*, <https://www.cabq.gov/transit/news/abq-ride-debuts-electric-bus-january-30-2021-1> (last visited Jan. 19, 2022).

14. In 2019, New Mexico Governor Michelle Lujan Grisham signed an Executive Order establishing an interagency Climate Change Task Force and directing it to “evaluate policies and regulatory strategies to achieve reductions in greenhouse gas pollution . . . across all categories of emission sources.” *See* Executive Order 2019-03 (Jan. 29, 2019) (Executive Order on Addressing Climate Change and Energy Waste Prevention). Executive Order 2019-03 further

directs that such policies and 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.”<sup>2</sup> *Id.*

15. Later in 2019, EPA withdrew the waiver it had previously provided to California for the greenhouse gas and zero-emission vehicle standards included in its Advanced Clean Car program. 84 Fed. Reg. 51310-51363 (Sept. 27, 2019) (The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program); *see* Statement of Reasons, ¶ 11.

16. In 2020, EPA rolled back federal greenhouse gas emission standards for model years 2021 to 2026. 85 Fed. Reg. 24174-25278 (April 30, 2020) (The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks). This action undid the harmonization between the federal and California motor vehicle emission standards.

17. As a result of this action, California’s motor vehicle emission standards were once again more stringent than federal standards but because EPA had revoked the waiver for California’s greenhouse gas and zero-emission vehicle standards, they could not be implemented or enforced. EPA’s regulatory change had no impact on California’s criteria pollutant motor vehicle emission standards.

18. On December 1, 2021, NMED petitioned the Environmental Improvement Board to adopt proposed rule 20.2.91 NMAC. The Environmental Improvement Board authorized a

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<sup>2</sup> Low emission vehicle emission standards limit emissions of criteria pollutants, certain hazardous air pollutants, and greenhouse gases. Zero-emission vehicle performance standards mandate the sale of an increasing number of zero-emission vehicles (*e.g.*, battery electric, plug-in hybrid, and fuel cell vehicles) over time.

hearing on NMED’s petition during its December 17, 2021 meeting.

***Most Recent EPA and California Action on Clean Cars***

19. California is currently developing new motor vehicle emission standards (*i.e.*, Advanced Clean Cars II or ACC II). CALIFORNIA AIR RESOURCES BOARD, *Advanced Clean Cars II Draft Regulation Language Posted* (Dec. 9, 2021), <https://content.govdelivery.com/accounts/CARB/bulletins/3002404> (last visited Jan. 25, 2022).

The motor vehicle emission standards contained in proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC are identical to the current California motor vehicle emission standards. *See* Statement of Reasons, ¶ 33, below. EHD and NMED are carefully tracking and analyzing this development, and EHD will advise the Air Board if California’s efforts impact the proposed rules.

20. On December 30, 2021, EPA reversed most of its rollback of federal greenhouse gas emission standards for light-duty vehicles model years 2023 to 2026. 86 Fed. Reg. 74434-74526 (Dec. 30, 2021) (Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards); *see* Statement of Reasons, ¶ 16. This regulatory change occurred after NMED submitted its petition to the Environmental Improvement Board asking it to adopt proposed rule 20.2.91 NMAC. *See* Statement of Reasons, ¶ 18. EPA’s regulatory change does not become effective until February 28, 2022,<sup>3</sup> which is after EHD’s filing of this Petition. *See* 86 Fed. Reg. 74434. Therefore, this Petition does not address EPA’s new greenhouse gas emission standards regulation. However, EHD and NMED are carefully tracking and analyzing this development, and EHD will advise the Air Board if EPA’s new regulation impacts the proposed rules.

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<sup>3</sup> Additionally, EPA’s regulatory change may be challenged 60 days from the date the final rule is published in the Federal Register. *See* 42 U.S.C. § 7607(b)(1). As of the date of filing this Petition, the final rule has not been challenged.



21. In support of Mayor Keller’s climate agenda and in response to Governor Lujan Grisham’s Executive Order, EHD and NMED are proposing rules adopting California’s current new motor vehicle emission standards for model year 2026 and subsequent model year passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles. EHD’s proposed replacement rule, 20.11.104 NMAC, *New Motor Vehicle Emission Standards*, would replace existing rule 20.11.104 NMAC, *Emission Standards for New Motor Vehicles*. NMED’s proposed rule, 20.2.91 NMAC, *New Motor Vehicle Emission Standards*, is a new rule.

***Impetus for Proposed Replacement Rule 20.11.104 NMAC***

22. The transportation sector is a major contributor to elevated ground-level ozone concentrations in the City and County. EPA data for the County indicates that on-road vehicles are the largest source of nitrogen oxides and the second-largest source of anthropogenic volatile organic compounds in the County. U.S. ENVIRONMENTAL PROTECTION AGENCY, *2017 National Emissions Inventory (NEI) Data*, <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data> (last updated Jan. 14, 2022) (on-road vehicle contributions are derived from the point, on-road, nonroad, and non-point inventories). Nitrogen oxides and volatile organic compounds are precursor pollutants that form ozone through chemical reactions that occur in the atmosphere in the presence of sunlight. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Ground-level Ozone Basics*, <https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics#formation> (last updated May 5, 2021). Reducing emissions of these ozone precursors will help improve ozone levels in the City and County.

23. The transportation sector is also a significant source of greenhouse gas emissions in the City, County, and State of New Mexico. According to the City’s 2020 Greenhouse Gas Inventory, transportation is the second largest source of greenhouse gas emissions in the City (after

stationary energy), with on-road travel producing the majority of all transportation-related emissions. See CITY OF ALBUQUERQUE, ENVIRONMENTAL HEALTH DEPARTMENT, 2020 *Greenhouse Gas Inventory* at 5, 10 (2020), available at <https://www.cabq.gov/sustainability/documents/city-of-albuquerque-ghg-inventory-3.pdf> (last visited Jan. 19, 2022). In 2017, on-road travel contributed nearly two million (2,000,000) metric tons of carbon dioxide equivalent in the City, eighty percent (80%) of transportation-related emissions, and thirty-three percent (33%) of all emissions that year. *Id.* at 10. Similarly, according to the New Mexico Greenhouse Gas Emissions Inventory and Forecast, the transportation sector is the second largest source of greenhouse gas emissions in the state (after oil and gas activities), contributing upwards of sixteen million (16,000,000) metric tons of carbon dioxide equivalent in 2018. See Energy and Environmental Economics, Inc., *New Mexico Greenhouse Gas Emissions Inventory and Forecast* at 4 (Oct. 27, 2020), available at [https://cnee.colostate.edu/wp-content/uploads/2021/01/New-Mexico-GHG-Inventory-and-Forecast-Report\\_2020-10-27\\_final.pdf](https://cnee.colostate.edu/wp-content/uploads/2021/01/New-Mexico-GHG-Inventory-and-Forecast-Report_2020-10-27_final.pdf) (last visited Jan. 19, 2022) (hereinafter the “NM Report”). The NM Report forecasts that adopting California’s zero-emission vehicle requirements would, on its own, reduce annual carbon dioxide equivalent emissions in New Mexico by almost one million (1,000,000) metric tons in 2030 and one and a half million (1,500,000) metric tons in 2050. *Id.* at 36, 45. The greenhouse gas exhaust emission standards included in the proposed rules will achieve further reductions in greenhouse gases.

#### ***Legal Authority under New Mexico Law***

24. The Air Board is authorized to repeal existing motor vehicle emissions standards and to adopt new motor vehicle emissions standards pursuant to its authority to repeal and adopt regulations to “prevent or abate air pollution.” NMSA 1978, § 74-2-5(B); see City Ordinance, §

9-5-1-4(B); County Code, § 30-33.

25. “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 or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property.” NMSA 1978, § 74-2-2(B) (emphasis added); City Ordinance, § 9-5-1-2; County Code, § 30-31; *see* 20.11.1.7(F) NMAC (substantially similar).

26. “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); *see* City Ordinance, § 9-5-1-2; County Code, § 30-31; *see also* 20.11.1.7(E) NMAC.

27. Under the definition of air contaminant, common pollutants, such as nitrogen oxides, particulate matter, carbon monoxide, and volatile organic compounds, as well as greenhouse gases, such as carbon dioxide, are “air contaminants.” Emission of these air contaminants constitutes “air pollution” because they may injure human health or animal or plant life or may unreasonably interfere with the public welfare.

28. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC regulate the emission of air contaminants from motor vehicles.

## **II. REQUIREMENTS UNDER SECTION 177 OF THE CLEAN AIR ACT ARE MET**

29. New Mexico has nonattainment plan provisions in its EPA-approved State Implementation Plan. *See* U.S. ENVIRONMENTAL PROTECTION AGENCY, *New Mexico EPA-Approved State Air Quality Implementation Plan (SIP)*, <https://www.epa.gov/sips-nm> (last updated June 15, 2021). Therefore, Section 177 of the Clean Air Act authorizes New Mexico to

adopt its own motor vehicle emission standards, provided that those standards are identical to California's standards and are adopted at least two years before the start of the model year to which they apply. 42 U.S.C. § 7507 ("any State which has plan provisions approved under this part may adopt and enforce" California's motor vehicle emission standards).

30. The provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC subject to the waiver requirement will not become effective until California has a valid waiver. *See* Statement of Reasons, ¶¶ 51-54, below.

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

32. Section 177 of the Clean Air Act does, however, allow states to adopt provisions "for administration and enforcement" that are different than California's, provided that these provisions are not so onerous that they create an "undue burden" on the manufacturers. *See* EPA Opinion on Issues Raised by *Am. Auto. Mfrs. Ass'n v. Massachusetts Dept of Evntl Protection*, 163 F.3d 74 (1st Cir. 1998); *see Am. Auto. Mfrs. Ass'n v. Cahill*, 152 F.3d 196, 197 (2d Cir. 1998).

33. The motor vehicle emission standards contained in proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC are identical to the current California motor vehicle emission standards, which is achieved by incorporating the relevant sections of the California Code of Regulations by reference.

34. The administration and enforcement provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC 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.

35. The motor vehicle emission standards contained in proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC apply to new vehicles beginning with model year 2026. If the Air Board adopts proposed replacement rule 20.11.104 NMAC and it becomes effective in the New Mexico Administrative Code before December 31, 2022, then the effective date complies with the requirement under Section 177 of the Clean Air Act that manufacturers be given at least two full model years to prepare their fleets to meet the standards. 42 U.S.C. § 7507 (“Notwithstanding section 7543(a) of this title, any State . . . may adopt and enforce for any model year standards . . . identical to the California [motor vehicle emission] standards . . . [provided that] such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator.)”); *see* NMSA 1978, § 74-2-6(F) (“No regulations or emission control requirement adopted by the environmental improvement board or the local board shall become effective until thirty days after its filing under the State Rules Act”); City Ordinance, § 9-5-1-6(F) (similar); County Code, § 30-35(f) (substantially similar to City Ordinance).

### **III. REPEAL OF EXISTING RULE 20.11.104 NMAC**

36. Existing rule 20.11.104 NMAC is an outdated regulation. When the Environmental Improvement Board repealed 20.2.88 NMAC in 2013, existing rule 20.11.104 NMAC became legally invalid and unenforceable. *See* Statement of Reasons, ¶ 12. This occurred by operation of law because the Clean Air Act does not provide for political subdivisions to adopt or enforce their own vehicle emission standards when not part of a statewide program. *See* Statement of Reasons, ¶ 1; 42 U.S.C. § 7507. Existing rule 20.11.104 NMAC is also obsolete because California adopted more stringent standards a few years after the Air Board adopted the rule. *See* Statement of Reasons, ¶¶ 10-11. This resulted in the standards in existing rule 20.11.104 NMAC no longer

being identical to California’s standards, as required by the Clean Air Act. *See* Statement of Reasons, ¶ 12.

37. The Air Board must repeal existing rule 20.11.104 NMAC before adopting proposed replacement rule 20.11.104 NMAC.

**IV. GENERAL PROVISIONS OF PROPOSED REPLACEMENT RULE 20.11.104 NMAC AND PROPOSED RULE 20.2.91 NMAC**

38. To meet the Section 177 of the Clean Air Act requirement that a “State” adopt the California motor vehicle emission standards, NMED is tasked with administration and enforcement of proposed replacement rule 20.11.104 NMAC to create a statewide program to ensure statewide compliance. *See* Statement of Reasons, ¶ 7. Thus, NMED will administer and enforce proposed replacement rule 20.11.104 NMAC within the City and County, with certain authorities reserved to EHD and the Air Board, as part of the statewide program to ensure statewide compliance.

39. Under the provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC, beginning with model year 2026, all new passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, and motor vehicle engines delivered for sale, offered for sale, sold, imported, delivered, purchased, rented, leased, or received within New Mexico, or registered with the New Mexico Motor Vehicle Division must comply with the California motor vehicle emission standards.

40. Under the provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC, starting with model year 2026, manufacturers must deliver for sale a fleet of passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles that complies with fleet average non-methane organic gas plus oxides of nitrogen exhaust emission

standards, fleet average greenhouse gas emission standards, and per-vehicle particulate matter emission standards.

41. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC exempt certain 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 processes, or would not provide a substantive benefit to the statewide program. The exemptions are consistent with those adopted by California and other Section 177 States.

42. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC contain two mechanisms for determining compliance with the emission standards: (1) a credit banking system through which manufacturers must equalize accrued credits and debits over a specified time period; and (2) reporting requirements for manufacturers.

43. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC establish a requirement, beginning with model year 2026, that manufacturers deliver for sale enough zero-emission vehicles to earn a specified number of zero-emission vehicle credits,<sup>4</sup> and report delivery details to NMED and to the zero-emission vehicle credit bank. The zero-emission vehicle 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 zero-emission vehicle credit requirements.

44. Under the provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC, a manufacturer may earn early action credits for the delivery for sale of

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<sup>4</sup> Zero-emission vehicles earn a varying number of credits depending on their all electric range. Credits are capped at four credits per vehicle.

vehicles that qualify for zero-emission vehicle credits for model years 2023, 2024, and 2025 by reporting the total delivery of such zero-emission vehicles to NMED by March 1 following the end of each of these three model years. These early action credits can be used for meeting zero-emission vehicle credit requirements in model year 2026 and subsequent model years.

45. Under the provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC, all manufacturers shall be provided onetime credits by scaling the manufacturer's California zero-emission vehicle 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 will be available for use for meeting zero-emission vehicle credit requirements beginning in model year 2027.

46. The zero-emission vehicle early action and onetime credits discussed above in paragraphs 44 and 45 are consistent with the provisions established by other states adopting the California zero-emission vehicle standards and are distinct from the non-methane organic gas plus oxides of nitrogen and greenhouse gas emission credit systems.

47. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC contain recordkeeping and reporting requirements for manufacturers to ensure compliance with the requirements established in the rules.

48. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC establish a registration and fee system for manufacturers covered by the rules. The cumulative fees for intermediate and large-volume manufacturers will defray NMED's costs for implementing the emissions standards statewide program. EHD bears no responsibility for implementing the statewide program and therefore will not receive any of the fee monies collected.

49. Proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC



allow EHD and NMED to request documentation necessary for the effective administration and enforcement of the rules and to inspect motor vehicles and relevant records related to motor vehicles subject or potentially subject to the rules.

## V. EFFECTIVE DATE OF RULE PROVISIONS

50. The Air Board must adopt proposed replacement rule 20.11.104 NMAC in time for it to become effective in the New Mexico Administrative Code before December 31, 2022, for the rule to apply to model year 2026 and thereafter motor vehicles. *See* Statement of Reasons, ¶ 35 (Section 177 of the Clean Air Act requires that States give manufacturers at least two full model years to prepare their fleets to meet the standards).

51. In 2019, EPA withdrew its waiver for California's current greenhouse gas emission standards and zero-emission vehicle standards. Statement of Reasons, ¶ 15. As a result, California and other states that have adopted the current California greenhouse gas emission standards and zero-emission vehicle standards are currently unable to enforce them.<sup>5</sup> Later that year, California and numerous other states and cities filed a petition for reconsideration.

52. In 2021, EPA published notice that it was reconsidering the prior action that withdrew the waiver for purposes of rescinding that action. 86 Fed. Reg. 22421-22430 (Apr. 28, 2021) (California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Opportunity for Public Hearing and Public Comment). Such action would reinstate the waiver granted in 2013. *See* Statement of Reasons, ¶ 11.

53. New Mexico (*i.e.*, the Air Board and the Environmental Improvement Board

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<sup>5</sup> The waiver revocation was specific to the California greenhouse gas emission standards and zero-emission vehicle standards, and, thus, has no bearing on California's motor vehicle emission standards for criteria pollutants, including particulate matter.

together) may adopt the requirements of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC now for the proposed effective date of July 1, 2022. However, the rules will not become effective until EPA rescinds the prior action that withdrew the waiver. *See* 42 U.S.C. § 7507.

54. The provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC subject to the waiver requirement will automatically become effective on July 1, 2022, or when EPA rescinds the prior action that withdrew the waiver, whichever is later.

**VI. PROJECTED BENEFITS OF THE RULES**

55. Reducing toxic and smog-forming pollutants will improve air quality and public health in the County, including the City, and New Mexico.

56. Compliance modeling conducted by Shulock Consulting projects that the adoption and implementation of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC will result in the following annual criteria pollutant emission reductions:

[continued on next page]

TABLE 1. County Projected Annual Criteria Pollutant Emission Reductions<sup>6</sup>

Pollutant	Annual Reductions (Tons)	
	2030	2040
Volatile Organic Compounds	32.1	83.6
Oxides of Nitrogen	8.6	26.9
Carbon Monoxide	35.7	162.5
Particulate Matter ≤2.5 microns	2.1	9.7
Particulate Matter ≤10 microns	4	9.9
Sulfur Dioxide	0.4	12.8

TABLE 2. Statewide Projected Annual Criteria Pollutant Emission Reductions

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

57. Compliance modeling conducted by Shulock Consulting projects that the adoption and implementation of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC will result in the following annual hazardous air pollutant emission reductions:

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<sup>6</sup> The projected County emission reductions shown in Tables 1, 3, and 5 are derived by attributing twenty-one percent (21%) of the projected statewide emission reductions shown in Tables 2, 4, and 6, respectively, to the County. This fraction was chosen based on (i) the County’s share of statewide vehicle miles travelled for calendar years 2016 through 2020, as provided by the New Mexico Department of Transportation (21.1%); and (ii) the EPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool projection of the County’s share of statewide tailpipe criteria pollutant emissions and electricity generation emissions for calendar year 2028 (17% to 23% depending on the pollutant).

TABLE 3. County Projected Annual Hazardous Air Pollutant Emission Reductions<sup>7</sup>

Pollutant	Annual Reductions (Tons)	
	2030	2040
Benzene	0.3	0.8
Formaldehyde	0.1	0.2

TABLE 4. Statewide Projected Annual Hazardous Air Pollutant Emission Reductions

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

58. These criteria pollutant and hazardous air pollutant emission reductions will, in turn, reduce ambient concentrations of the pollutants shown.

59. Compliance modeling conducted by Shulock Consulting projects that the adoption and implementation of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC will result in the following greenhouse gas emission reductions:<sup>8</sup>

[continued on next page]

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<sup>7</sup> See Statement of Reasons n. 6.

<sup>8</sup> Reductions of greenhouse gases include carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and nitrous oxide (N<sub>2</sub>O). These gases were weighted by their global warming potential to determine total projected greenhouse gas emission reductions.

TABLE 5. County Projected Greenhouse Gas Emission Reductions<sup>9</sup>

Pollutant	Annual Reductions (Tons)		Cumulative Reductions (Tons)	
	2030	2040	2030	2040
Greenhouse Gases	57,000	147,000	103,000	294,000

TABLE 6. Statewide Projected Greenhouse Gas Emission Reductions

Pollutant	Annual Reductions (Tons)		Cumulative Reductions (Tons)	
	2030	2040	2030	2040
Greenhouse Gases	270,000	700,000	490,000	1,400,000

60. A screening analysis conducted by Shulock Consulting using the EPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool projects that the adoption and implementation of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC will provide health benefits to City, County, and New Mexico residents. The EPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool calculates the impact of user-specified emission reductions on ambient particulate matter concentrations, provides high and low estimates of the health impacts of reduced ambient particulate matter, and monetizes the results. U.S. ENVIRONMENTAL PROTECTION AGENCY, *How Does COBRA Work?*, <https://www.epa.gov/cobra/how-does-cobra-work-0> (last updated April 12, 2021). Health impacts from particulate matter exposure include mortality, heart attacks, chronic lung disease, bronchitis, and asthma. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Health and Environmental Effects of Particulate Matter (PM)*, <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> (last updated May 26, 2021). The monetized health benefits in New

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<sup>9</sup> See Statement of Reasons n. 6.

Mexico, as calculated by the EPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool, are as follows:

**TABLE 7. County Monetized Health Benefits<sup>10</sup>**

	<b>2028</b>		<b>2035</b>	
	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>
Annual Health Benefits (\$Millions)	\$0.11	\$0.26	\$0.74	\$1.7

**TABLE 8. Statewide Monetized Health Benefits**

	<b>2028</b>		<b>2035</b>	
	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>
Annual Health Benefits (\$Millions)	\$0.18	\$0.40	\$1.1	\$2.5

61. The emission reductions associated with proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC are expected to improve visibility and compliance with federal Regional Haze requirements.

62. The provisions of proposed replacement rule 20.11.104 NMAC and proposed rule 20.2.91 NMAC will also lead to cost savings for individual vehicle purchasers and for the state as a whole. Manufacturers will comply with these provisions by selling more zero-emission vehicles and employing more-efficient powertrains in the gasoline-powered fleet. Compliance modeling conducted by Shulock Consulting projects that average lifetime savings per vehicle under the

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<sup>10</sup> The EPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool provides health impacts by county, so the results shown here are the modeled Bernalillo County results rather than a scaled fraction of statewide impacts. The County accounts for about sixty-seven percent (67%) of statewide monetized health benefits in 2028 and sixty-three percent (63%) in 2035, much larger than its twenty-one percent (21%) share of emission reductions. This disparity is due to the fact that population density is a key factor in the EPA Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool’s health impact estimates (a given ambient particulate matter level has more significant health impacts in an area with greater population density).

regulations will be about one thousand and three hundred dollars (\$1,300) in Model Year 2026 and one thousand and seven hundred dollars (\$1,700) in Model Year 2030.

#### **V. Compliance with Statutory Rulemaking Requirements**

63. Repeal of existing rule 20.11.104 NMAC will allow the Air Board to adopt proposed replacement rule 20.11.104 NMAC in accordance with the Air Quality Control Act, NMSA 1978, Sections 74-2-5(E) to (G). *See* City Ordinance, § 9-5-1-4(D)-(E); County Code, § 30-33(d)-(e); 20.11.82.32(A) NMAC.

64. Proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, is at least as stringent as federal law relating to control of motor vehicle emissions. *See* NMSA 1978, § 74-2-5(E); *see also* City Ordinance, § 9-5-1-4(D); County Code, § 30-33(d).

65. Proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, is more protective of public health and the environment than current federal regulations. *See* NMSA 1978, § 74-2-5(G).

66. Adoption of proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, is justified given the character and degree of injury to or interference with health, welfare, visibility, and property caused by the sources of air contaminants involved. *See* NMSA 1978, § 74-2-5(F)(1); *see also* City Ordinance, § 9-5-1-4(E)(1); County Code, § 30-33(e)(1); 20.11.82.32(A)(1) NMAC.

67. Adoption of proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, is in the public interest, including when considering the social and economic value of the sources and subjects of air contaminants involved. *See* NMSA 1978, § 74-2-5(F)(2); *see also* City Ordinance, § 9-5-1-4(E)(2); County Code, § 30-33(e)(2); 20.11.82.32(A)(2) NMAC.

68. Proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, is technically practicable and economically reasonable in the methods the rule employs with proposed rule 20.2.91 NMAC to reduce or eliminate air contaminants from the sources involved. *See* NMSA 1978, § 74-2-5(F)(3); *see also* City Ordinance, § 9-5-1-4(E)(3); County Code, § 30-33(e)(3); 20.11.82.32(A)(3) NMAC.

69. Adoption of proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, is justified given prior experience with the equipment and the methods that are available to control the air contaminants involved. *See* NMSA 1978, § 74-2-5(F)(3); *see also* City Ordinance, § 9-5-1-4(E)(3); County Code, § 30-33(e)(3); 20.11.82.32(A)(3) NMAC.

70. Therefore, proposed replacement rule 20.11.104 NMAC, as packaged with proposed rule 20.2.91 NMAC, compliance with the statutory rulemaking requirements.



Received by: Stephanie Apodaca  
Date: 1/25/2022 Time: 4:33 pm

~~1 [TITLE 20 — ENVIRONMENTAL PROTECTION  
2 CHAPTER 11 — ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD  
3 PART 104 — EMISSION STANDARDS FOR NEW MOTOR VEHICLES  
4~~

~~5 20.11.104.1 — ISSUING AGENCY: Albuquerque Bernalillo County Air Quality Control Board, c/o  
6 Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2738.  
7 [20.11.104.1 NMAC — N, 1/1/08]~~

~~8  
9 20.11.104.2 — SCOPE: 20.11.104 NMAC applies to all persons who deliver for sale, offer for sale, sell, import,  
10 deliver, purchase, offer for rent, offer for lease, acquire, receive or register new passenger cars, light duty trucks,  
11 medium-duty passenger vehicles, and medium-duty motor vehicles within the jurisdiction of the Albuquerque-  
12 Bernalillo county air quality control board.  
13 [20.11.104.2 NMAC — N, 1/1/08]~~

~~14  
15 20.11.104.3 — STATUTORY AUTHORITY: The New Mexico Air Quality Control Act, Section 74-2-4 and  
16 Subsection B of Section 74-2-5 NMSA 1978; the Joint Air Quality Control Board Ordinance, Bernalillo County  
17 Ordinance 94-5 Sections 3, 4 and 5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of  
18 Albuquerque 1994 Sections 9-5-1-3, 9-5-1-4, and 9-5-1-5.  
19 [20.11.104.3 NMAC — N, 1/1/08]~~

~~20  
21 20.11.104.4 — DURATION: Permanent.  
22 [20.11.104.4 NMAC — N, 1/1/08]~~

~~23  
24 20.11.104.5 — EFFECTIVE DATE: 1/1/08 unless a later date is cited at the end of a section.  
25 [20.11.104.5 NMAC — N, 1/1/08]~~

~~26  
27 20.11.104.6 — OBJECTIVE: The objective of 20.11.104 NMAC is to establish emission standards for new  
28 motor vehicles subject to 20.11.104 NMAC.  
29 [20.11.104.6 NMAC — N, 1/1/08]~~

~~30  
31 20.11.104.7 — DEFINITIONS: In addition to the terms defined in 20.11.104.7 NMAC, Definitions, the  
32 definitions in California code of regulations (“CCR”), Title 13, sections of which are incorporated by reference in  
33 20.11.104 NMAC, and the definitions in 20.11.1 NMAC apply, except that “California” shall mean “Bernalillo  
34 county” or “state”, as applicable unless otherwise specified or clearly inappropriate. If there is a conflict between a  
35 term defined in 20.11.104.7 NMAC, and CCR, Title 13, Section 1900, or 20.11.1 NMAC, the definition in  
36 20.11.104.7 NMAC shall apply.~~

~~37 — A. — “Air contaminant emission control system” means the equipment designed for installation on a  
38 motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor  
39 vehicle or motor vehicle engine or a system or engine modification on a motor vehicle which causes a reduction of  
40 air contaminants emitted from the motor vehicle engine, including but not limited to exhaust control systems, fuel  
41 evaporative control systems and crankcase ventilating systems.~~

~~42 — B. — “Business” means an occupation, profession or trade; a person or partnership or corporation  
43 engaged in commerce, manufacturing, or a service; or a profit seeking enterprise or concern.~~

~~44 — C. — “CARB” means California air resources board.~~

~~45 — D. — “CCR” means California code of regulations, Title 13.~~

~~46 — E. — “California-certified” means a vehicle having a valid executive order stating that the vehicle  
47 meets all applicable requirements of the applicable sections of CCR and is approved for sale in California by CARB.~~

~~48 — F. — “California standards” means the emission standards for motor vehicles and new motor vehicle  
49 engines that the state of California has adopted and for which California has received a waiver from the United  
50 States environmental protection agency (EPA) pursuant to 42 U.S.C. Section 7543 and which other states are  
51 authorized to adopt pursuant to 42 U.S.C. Section 7507.~~

~~52 — G. — “Certification” means a finding by CARB that a motor vehicle, motor vehicle engine, or air  
53 contaminant emission control system satisfies the criteria adopted by CARB for the control of specified air  
54 contaminants from motor vehicles.~~

~~55 — H. — “Clean Air Act” or “CAA” means the federal Clean Air Act, 42 U.S.C. Sections 7401 et seq.~~

1 ——— **I.** ——— “**Dealer**” means any person actively engaged in the business of offering to sell, solicit or advertise  
 2 the sale, purchase, transfer, lease, sale or exchange of a new motor vehicle and who has an established place of  
 3 business.

4 ——— **J.** ——— “**Department**” means the Albuquerque environmental health department.

5 ——— **K.** ——— “**Emergency vehicle**” means any publicly owned vehicle operated by a peace officer in the  
 6 performance of his duties, any authorized emergency vehicle used for fighting fires or responding to emergency fire  
 7 calls, any publicly owned authorized emergency vehicle used by an emergency medical technician or paramedic, or  
 8 any ambulance used by a private entity under contract with a public agency.

9 ——— **L.** ——— “**Emission standards**” means specified limitations on the discharge of air contaminants into the  
 10 atmosphere.

11 ——— **M.** ——— “**Executive order**” means a document issued by CARB certifying that a specified test group or  
 12 model year vehicle has met all applicable requirements adopted by CARB pursuant to the applicable sections of  
 13 CCR for the control of specified air contaminants from motor vehicles.

14 ——— **N.** ——— “**Fleet average greenhouse gas emission requirement**” means the limitations on greenhouse gas  
 15 exhaust mass emission values from passenger cars, light duty trucks and medium duty passenger vehicles as set  
 16 forth in CCR, Section 1961.1.

17 ——— **O.** ——— “**Fleet wide average non-methane organic gas exhaust emission requirement**” means, based  
 18 on the calculation in CCR, Section 1960.1(g)(2), a motor vehicle manufacturer’s average vehicle emissions of all  
 19 non-methane organic gases from all vehicles subject to this regulation and sold in the state in any model year.

20 ——— **P.** ——— “**Gross vehicle weight rating**” means the value specified by the manufacturer as the maximum  
 21 loaded weight of a single vehicle.

22 ——— **Q.** ——— “**Light duty truck**” means any model year 2000 and subsequent motor vehicle certified to the  
 23 standards in CCR, section 1961(a)(1) rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle  
 24 rated at 6,000 pounds or less, which is designed primarily for the purposes of transportation of property, is a  
 25 derivative of such vehicles, or is available with special features enabling off-street or off-highway operation and use.

26 ——— **R.** ——— “**Low emission vehicle**” or “**LEV**” means a motor vehicle which has been certified by CARB.

27 ——— **S.** ——— “**Medium-duty passenger vehicle**” or “**MDPV**” means any medium-duty vehicle with a gross  
 28 vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The  
 29 medium-duty passenger vehicle definition does not include any vehicle which:

30 ——— (1) ——— is an “incomplete truck”, i.e., a truck that does not have primary load-carrying device or  
 31 container attached;

32 ——— (2) ——— has a seating capacity of more than 12 persons;

33 ——— (3) ——— is designed for more than nine persons in seating rearward of the driver’s seat; or

34 ——— (4) ——— is equipped with an open cargo area of 72.0 inches in interior length or more; a covered  
 35 box not readily accessible from the passenger compartment shall be considered an open cargo area for the purpose  
 36 of this definition.

37 ——— **T.** ——— “**Medium-duty vehicle**” means any pre-1995 model year heavy-duty vehicle with a  
 38 manufacturer’s gross vehicle weight rating of 8,500 pounds or less, any 1992 through 2006 model year heavy-duty  
 39 low emission, ultra-low emission, super-ultra-low emission or zero-emission vehicle certified to the standards in  
 40 CCR, Section 1960.1(h)(2) having a manufacturer’s gross vehicle weight rating of 14,000 pounds or less; and any  
 41 2000 and subsequent model heavy-duty low emission, ultra-low emission, super-ultra-low emission or zero-  
 42 emission vehicle certified to the standards in CCR, Sections 1961(a)(1) or 1962 having a manufacturer’s gross  
 43 weight rating between 8,501 and 14,000 pounds.

44 ——— **U.** ——— “**Model year**” means the manufacturer’s annual production period which includes January 1, or, if  
 45 the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two  
 46 or more stages, the time of manufacture shall be the date of completion of the chassis.

47 ——— **V.** ——— “**Motor vehicle**” or “**vehicle**” means every device in, upon, or by which a person or property is or  
 48 may be transported otherwise than by muscular power, except motorized bicycles and devices that run only on rails  
 49 or tracks.

50 ——— **W.** ——— “**Motor vehicle engine**” means an engine that is used to propel a motor vehicle.

51 ——— **X.** ——— “**New vehicle**” means any vehicle with 7,500 miles or fewer on its odometer.

52 ——— **Y.** ——— “**Non-methane organic gas**” or “**NMOG**” means the sum of non-oxygenated and oxygenated  
 53 hydrocarbons contained in a gas sample as measured in accordance with the “California non-methane organic gas  
 54 test procedures”, which is incorporated herein by reference.

55 ——— **Z.** ——— “**Passenger car**” means any motor vehicle designed primarily for transportation of persons and  
 56 having a design capacity equal to or less than 12 individuals.

1 ~~AA. "Person" means an individual, public or private corporation, company, partnership, firm,~~  
2 ~~association, society or joint stock company, municipality, state, interstate body, the United States, or any board,~~  
3 ~~commission, employee, agent, officer or political subdivision, or a state, an interstate body or the United States.~~

4 ~~BB. "Placed in service" means having been sold to an ultimate purchaser and not to a dealer or other~~  
5 ~~entity in the distribution chain, and having been individually registered for on-road use by the New Mexico motor~~  
6 ~~vehicle division.~~

7 ~~CC. "Sale" or "sell" means the transfer of equitable or legal title to a motor vehicle or motor vehicle~~  
8 ~~engine to the ultimate purchaser.~~

9 ~~DD. "State" means:~~  
10 ~~(1) for purposes of referring to a governing entity, the New Mexico environment department;~~  
11 ~~or~~

12 ~~(2) for purposes of referring to a geographic area, all geographic areas within the jurisdiction~~  
13 ~~of the Albuquerque Bernalillo county air quality control board and the environmental improvement board.~~

14 ~~EE. "Test group" means a grouping of vehicles as defined by 40 CFR 86.1827-01.~~

15 ~~FF. "Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle~~  
16 ~~engine, the first person whom in good faith purchases a new motor vehicle or new motor vehicle engine for a~~  
17 ~~purpose other than resale.~~

18 ~~GG. "Vehicle identification number" or "VIN" means a unique, 17 digit, alphanumeric code that the~~  
19 ~~vehicle manufacturer assigns to a vehicle.~~

20 ~~HH. "ZEV credit bank" means a system designated by the state that records and tracks the generation,~~  
21 ~~verification, transfer, voluntary retirement, use, and invalidation of vehicle credits.~~  
22 ~~{20.11.104.7 NMAC - N, 1/1/08; A, 3/15/09}~~

23  
24 ~~20.11.104.8 VARIANCES: No person can obtain a variance from the requirements of 20.11.104 NMAC.~~  
25 ~~{20.11.104.8 NMAC - N, 1/1/08}~~

26  
27 ~~20.11.104.9 SEVERABILITY: If for any reason any section, subsection, sentence, phrase, clause or wording~~  
28 ~~of 20.11.104 NMAC, or the application of the provision to any person or circumstance, is held to be unconstitutional~~  
29 ~~or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect~~  
30 ~~the validity of the remaining portions of 20.11.104 NMAC.~~  
31 ~~{20.11.104.9 NMAC - N, 1/1/08}~~

32  
33 ~~20.11.104.10 CONSTRUCTION: 20.11.104 NMAC shall be liberally construed to carry out its purpose.~~  
34 ~~{20.11.104.10 NMAC - N, 1/1/08}~~

35  
36 ~~20.11.104.11 SAVINGS CLAUSE: The filing of 20.11.104 NMAC, Emission Standards For New Motor~~  
37 ~~Vehicles, and the filing of any amendment to 20.11.104 NMAC with the state records center and archives shall not~~  
38 ~~affect any action pending for violation of a city or county ordinance, a board regulation, or a permit.~~  
39 ~~{20.11.104.11 NMAC - N, 1/1/08}~~

40  
41 ~~20.11.104.12 COMPLIANCE WITH OTHER REGULATIONS: Compliance with 20.11.104 NMAC does~~  
42 ~~not relieve a person from responsibility for complying with any other applicable federal, state, or local regulations.~~  
43 ~~{20.11.104.12 NMAC - N, 1/1/08}~~

44  
45 ~~20.11.104.13 LIMITATION OF DEFENSE: The existence of a valid registration under 20.11.104 NMAC~~  
46 ~~shall not constitute a defense to a violation of any section of 20.11.104 NMAC, except the requirement for obtaining~~  
47 ~~a registration.~~  
48 ~~{20.11.104.13 NMAC - N, 1/1/08}~~

49  
50 ~~20.11.104.14 DOCUMENTS: Documents incorporated and cited in 20.11.104 NMAC may be viewed at the~~  
51 ~~Albuquerque environmental health department, Suite 3023, One Civic Plaza, 400 Marquette NW, Albuquerque,~~  
52 ~~New Mexico.~~  
53 ~~{20.11.104.14 NMAC - N, 1/1/08}~~

54  
55 ~~20.11.104.15 to 20.11.104.99 [Reserved]~~  
56

**20.11.104.100 — APPLICABILITY:** Except as provided in 20.11.104.103 NMAC, Exemptions, no motor vehicle manufacturer, dealer, or other person shall deliver for sale, offer for sale, sell, import, deliver, purchase, offer for rent, offer for lease, acquire, receive, or register a new model year 2011 or subsequent model year passenger car, light duty truck, medium duty passenger vehicle, or medium duty vehicle unless the vehicle has been certified by CARB and received a CARB executive order.

~~[20.11.104.100 NMAC — N, 1/1/08]~~

**20.11.104.101 — REQUIREMENTS TO MEET CALIFORNIA STANDARDS:**

~~A. Starting with model year 2011 and each model year thereafter, no motor vehicle manufacturer, dealer, or other person shall deliver for sale, offer for sale, sell, import, deliver, purchase, offer for rent, offer for lease, acquire, receive, or register new passenger car, light duty truck, or medium duty passenger vehicle, or medium duty vehicle unless the vehicle is certified to the California standards.~~

~~B. Each motor vehicle manufacturer shall comply with the fleet average emission requirements and the warranty, recall, reporting, and other applicable requirements contained in 20.11.104 NMAC.~~

~~C. Each motor vehicle dealer shall comply with the department's inspection and information requests issued pursuant to 20.11.104.112, Inspections and Information Requests.~~

~~[20.11.104.101 NMAC — N, 1/1/08]~~

**20.11.104.102 — INCORPORATION BY REFERENCE:**

~~A. For the purpose of applying the incorporated sections of CCR, "California" means the municipality of Albuquerque and the county of Bernalillo, or the state, as applicable and "CARB" means Albuquerque Bernalillo county air quality control board or New Mexico environment department, as applicable, unless otherwise specified or clearly inappropriate.~~

~~B. Each manufacturer of a new model year 2011 and subsequent model year passenger car, light duty truck, medium duty passenger vehicle, or medium duty vehicle must comply with each applicable standard in the CCR as incorporated by reference in 20.11.104 NMAC. The department shall maintain copies of these sections for public inspection. The following sections of are incorporated in 20.11.104 NMAC:~~

~~(1) Section 1900: Definitions. CCR effective date 1/1/2006.~~

~~(2) Section 1956.8(g) and (h): Exhaust Emission Standards and Test Procedures —1985 and Subsequent Model Heavy Duty Engines and Vehicles. CCR effective date 11/15/06.~~

~~(3) Section 1960.1: Exhaust Emission Standards and Test Procedures —1981 and through 2006 Model Passenger Cars, Light Duty and Medium-Duty Vehicles. CCR effective date 3/26/04.~~

~~(4) Section 1961: Exhaust Emission Standards and Test Procedures —2004 and Subsequent Model Passenger Cars, Light Duty Trucks and Medium Duty Vehicles. CCR effective date 2/17/2007.~~

~~(5) Section 1961.1: Greenhouse Gas Exhaust Emission Standards and Test Procedures —2009 and Subsequent Model Passenger Cars, Light Duty Trucks and Medium Duty Vehicles. CCR effective date 01/01/06.~~

~~(6) Section 1962: Zero-Emission Vehicle Standards for 2005 and Subsequent Model Passenger Cars, Light Duty Trucks and Medium Duty Vehicles. CCR effective date 3/26/04.~~

~~(7) Section 1962.1: Electric Vehicle Charging Requirements. CCR effective date 7/24/02.~~

~~(8) Section 1965: Emission Control and Smog Index Labels —1979 and Subsequent Model Year Vehicles. CCR effective date 12/04/03.~~

~~(9) Section 1968.2: Malfunction and Diagnostic System Requirements —2004 and Subsequent Model Year Passenger Cars, Light Duty Trucks and Medium Duty Vehicles. CCR effective date 04/21/03.~~

~~(10) Section 1968.5: Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles and Engines. CCR effective date 04/21/03.~~

~~(11) Section 1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions. CCR effective date 2/17/07.~~

~~(12) Section 1978: Standards and Test Procedures for Vehicle Refueling Emissions. CCR effective date 2/17/07.~~

~~(13) Section 2035: Purpose, Applicability and Definitions. CCR effective date 12/26/90.~~

~~(14) Section 2037: Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light Duty Trucks and Medium Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles. CCR effective date 11/27/99.~~

- 1 ~~\_\_\_\_\_ (15) Section 2038: Performance Warranty Requirements for 1990 and Subsequent Model~~  
2 ~~Year Passenger Cars, Light Duty Trucks and Medium Duty Vehicles and Motor Vehicle Engines Used in Such.~~  
3 ~~CCR effective date 11/27/99.~~
- 4 ~~\_\_\_\_\_ (16) Section 2039: Emission Control System Warranty Statement. CCR effective date~~  
5 ~~12/26/90.~~
- 6 ~~\_\_\_\_\_ (17) Section 2040: Vehicle Owner Obligations. CCR effective date 12/26/90.~~
- 7 ~~\_\_\_\_\_ (18) Section 2041: Mediation; Finding of Warrantable Condition. CCR effective date~~  
8 ~~12/26/90.~~
- 9 ~~\_\_\_\_\_ (19) Section 2046: Defective Catalyst. CCR effective date 2/15/79.~~
- 10 ~~\_\_\_\_\_ (20) Section 2109: New Vehicle Recall Provisions. CCR effective date 12/30/83.~~
- 11 ~~\_\_\_\_\_ (21) Section 2111: Applicability. CCR effective date 12/13/06.~~
- 12 ~~\_\_\_\_\_ (22) Section 2112: Definitions. CCR effective date 11/15/03.~~
- 13 ~~\_\_\_\_\_ (23) Section 2113: Initiation and Approval of Voluntary and Influenced Recalls. CCR~~  
14 ~~effective date 1/26/95.~~
- 15 ~~\_\_\_\_\_ (24) Section 2114: Voluntary and Influenced Recall Plans. CCR effective date 11/27/99.~~
- 16 ~~\_\_\_\_\_ (25) Section 2115: Eligibility for Repair. CCR effective date 1/26/95.~~
- 17 ~~\_\_\_\_\_ (26) Section 2116: Repair Label. CCR effective date 1/26/95.~~
- 18 ~~\_\_\_\_\_ (27) Section 2117: Proof of Correction Certificate. CCR effective date 1/26/95.~~
- 19 ~~\_\_\_\_\_ (28) Section 2118: Notification. CCR effective date 1/26/95.~~
- 20 ~~\_\_\_\_\_ (29) Section 2119: Record keeping and Reporting Requirements. CCR effective date~~  
21 ~~11/27/99.~~
- 22 ~~\_\_\_\_\_ (30) Section 2120: Other Requirements Not Waived. CCR effective date 1/26/95.~~
- 23 ~~\_\_\_\_\_ (31) Section 2121: Penalties.~~
- 24 ~~\_\_\_\_\_ (32) Section 2122: General Provisions. CCR effective date 1/26/95.~~
- 25 ~~\_\_\_\_\_ (33) Section 2123: Initiation and Notification of Ordered Emission Related Recalls. CCR~~  
26 ~~effective date 1/26/95.~~
- 27 ~~\_\_\_\_\_ (34) Section 2124: Availability of Public Hearing. CCR effective date 1/26/95.~~
- 28 ~~\_\_\_\_\_ (35) Section 2125: Ordered Recall Plan. CCR effective date 1/26/95.~~
- 29 ~~\_\_\_\_\_ (36) Section 2126: Approval and Implementation of Recall Plan. CCR effective date 1/26/95.~~
- 30 ~~\_\_\_\_\_ (37) Section 2127: Notification of Owners. CCR effective date 1/26/95.~~
- 31 ~~\_\_\_\_\_ (38) Section 2128: Repair Label. CCR effective date 1/26/95.~~
- 32 ~~\_\_\_\_\_ (39) Section 2129: Proof of Correction Certificate. CCR effective date 1/26/95.~~
- 33 ~~\_\_\_\_\_ (40) Section 2130: Capture Rates and Alternative Measures. CCR effective date 11/27/99.~~
- 34 ~~\_\_\_\_\_ (41) Section 2131: Preliminary Tests. CCR effective date 1/26/95.~~
- 35 ~~\_\_\_\_\_ (42) Section 2132: Communication with Repair Personnel. CCR effective date 1/26/95.~~
- 36 ~~\_\_\_\_\_ (43) Section 2133: Record keeping and Reporting Requirements. CCR effective date~~  
37 ~~1/26/95.~~
- 38 ~~\_\_\_\_\_ (44) Section 2135: Extension of Time. CCR effective date 1/26/95.~~
- 39 ~~\_\_\_\_\_ (45) Section 2137: Vehicle and Engine Selection. CCR effective date 12/28/2000.~~
- 40 ~~\_\_\_\_\_ (46) Section 2138: Restorative Maintenance. CCR effective date 11/27/99.~~
- 41 ~~\_\_\_\_\_ (47) Section 2139: Testing. CCR effective date 8/21/2002.~~
- 42 ~~\_\_\_\_\_ (48) Section 2140: Notification and Use of Test Results. CCR effective date 8/21/2002.~~
- 43 ~~\_\_\_\_\_ (49) Section 2141: General Provisions. CCR effective date 12/28/00.~~
- 44 ~~\_\_\_\_\_ (50) Section 2142: Alternative Procedures. CCR effective date 2/23/90.~~
- 45 ~~\_\_\_\_\_ (51) Section 2143: Failure Levels Triggering Recall. CCR effective date 11/27/99.~~
- 46 ~~\_\_\_\_\_ (52) Section 2144: Emission Warranty Information Report. CCR effective date 11/27/99.~~
- 47 ~~\_\_\_\_\_ (53) Section 2145: Field Information Report. CCR effective date 11/27/99.~~
- 48 ~~\_\_\_\_\_ (54) Section 2146: Emissions Information Report. CCR effective date 11/27/99.~~
- 49 ~~\_\_\_\_\_ (55) Section 2147: Demonstration of Compliance with Emission Standards. CCR effective~~  
50 ~~date 8/21/02.~~
- 51 ~~\_\_\_\_\_ (56) Section 2148: Evaluation of Need for Recall. CCR effective date 11/27/99.~~
- 52 ~~\_\_\_\_\_ (57) Section 2149: Notification of Subsequent Action. CCR effective date 2/23/90.~~
- 53 ~~\_\_\_\_\_ (58) Section 2151: New Motor Vehicle Dealer Surveillance. CCR effective date 12/13/83.~~
- 54 ~~\_\_\_\_\_ (59) Section 2235: Requirements. CCR effective date 9/17/91.~~
- 55 ~~[20.11.104.102 NMAC N, 1/1/08; A, 3/15/09]~~

56

1 ~~20.11.104.103~~ **EXEMPTIONS:** The following vehicles are not subject to 20.11.104 NMAC.

2 ~~\_\_\_\_\_ A. \_\_\_\_\_~~ Military tactical vehicles.

3 ~~\_\_\_\_\_ B. \_\_\_\_\_~~ Vehicles sold for registration and use in a state that is not subject to the California vehicle  
4 emission standards.

5 ~~\_\_\_\_\_ C. \_\_\_\_\_~~ Previously registered vehicles with more than 7,500 miles, provided that for vehicle dealers, the  
6 mileage at the time of sale is determined by the odometer statement when the dealer acquired the vehicle.

7 ~~\_\_\_\_\_ D. \_\_\_\_\_~~ Vehicles available only for rent to a final destination in a state that is not subject to the California  
8 vehicle emission standards.

9 ~~\_\_\_\_\_ E. \_\_\_\_\_~~ Vehicles transferred by inheritance or as a result of divorce, dissolution, or legal separation.

10 ~~\_\_\_\_\_ F. \_\_\_\_\_~~ Emergency vehicles if a public safety agency has demonstrated to the department's satisfaction  
11 that a vehicle that meets the agency's needs is not otherwise reasonably available.

12 ~~\_\_\_\_\_ G. \_\_\_\_\_~~ A vehicle acquired by a New Mexico resident to replace a vehicle registered to such resident that  
13 was stolen, damaged or failed beyond reasonable repair while out of state, provided that such replacement vehicle is  
14 acquired out of state when the previously owned vehicle was stolen, damaged, or failed beyond reasonable repair.

15 ~~\_\_\_\_\_ H. \_\_\_\_\_~~ A vehicle with a right hand drive configuration that is not available in a California certified  
16 model, purchased by a rural route postal carrier and used primarily for work.

17 ~~\_\_\_\_\_ I. \_\_\_\_\_~~ Vehicles purchased by a nonresident before establishing residency in New Mexico, regardless of  
18 the mileage on the vehicle.

19 [20.11.104.103 NMAC - N, 1/1/08]

20  
21 ~~20.11.104.104~~ **FLEET AVERAGE NON METHANE ORGANIC GAS EXHAUST EMISSION**  
22 **REQUIREMENTS AND REPORTING:**

23 ~~\_\_\_\_\_ A. \_\_\_\_\_~~ **Fleet average requirement.** Effective model year 2011 and each model year thereafter, each  
24 motor vehicle manufacturer's NMOG fleet average emissions from passenger cars, light duty trucks and medium-  
25 duty vehicles delivered for sale in Bernalillo county shall not exceed the fleet average NMOG exhaust emission  
26 requirement set forth in CCR, Section 1961. Compliance averaging on a statewide basis is authorized, including  
27 vehicles that are subject to 20.11.104 NMAC and delivered for sale in Bernalillo county.

28 ~~\_\_\_\_\_ B. \_\_\_\_\_~~ **Fleet average NMOG exhaust emission credits and debits.** Effective model year 2011 and each  
29 model year thereafter, each motor vehicle manufacturer may accrue NMOG emission credits and debits and use  
30 credits in accordance with the procedures in CCR Section 1961. Debits and credits accrued and used are authorized  
31 for vehicles subject to 20.11.104 NMAC that are delivered for sale in Bernalillo county.

32 ~~\_\_\_\_\_ C. \_\_\_\_\_~~ **Reporting.** Effective model year 2011 and for each model year thereafter, each motor vehicle  
33 manufacturer shall submit a report to the state no later than March 1, that follows the procedures in CCR, Section  
34 1961 and in the same format used to report such information to CARB.

35 [20.11.104.104 NMAC - N, 1/1/08; A, 3/15/09]

36  
37 ~~20.11.104.105~~ **ZEV SALES:**

38 ~~\_\_\_\_\_ A. \_\_\_\_\_~~ Effective model year 2011 and each model year thereafter, manufacturers subject to 20.11.104  
39 NMAC shall produce and deliver for sale in the state vehicles that comply with the ZEV sales requirement set forth  
40 in, Section 1962.

41 ~~\_\_\_\_\_ B. \_\_\_\_\_~~ An intermediate volume or large volume manufacturer of ZEVs, ATPZEVs or PZEVs may use  
42 previously earned credits in accordance with CCR, Section 1962 to offset the ZEV sales requirement in Subsection  
43 A of 20.11.104.105 NMAC.

44 [20.11.104.105 NMAC - N, 1/1/08; A, 3/15/09]

45  
46 ~~20.11.104.106~~ **ZEV CREDIT BANK AND REPORTING:**

47 ~~\_\_\_\_\_ A. \_\_\_\_\_~~ Manufacturers shall establish a ZEV credit bank with the state on or before January 1, 2011, and  
48 establish reporting procedures to report additions and deletions to that bank in accordance with CARB  
49 manufacturers advisory correspondence (MAC) #06-03 zero emission vehicle (ZEV) credit reporting and tracking  
50 system and Subsections B, C, D, E and F of 20.11.104.106 NMAC.

51 ~~\_\_\_\_\_ B. \_\_\_\_\_~~ The state shall set aside a number of New Mexico ZEV credits proportionally equivalent to the  
52 number of ZEV credits possessed by the requesting manufacturer for use in the state of California at the beginning  
53 of the 2011 model year. This transfer shall be performed only after all credit obligations for model years 2010 and  
54 earlier have been satisfied in California. Each manufacturer's California credit balances shall be multiplied by the  
55 ratio of the average number of PCs and LDTs produced and delivered for sale in New Mexico to the combined  
56 average number of PCs and LDTs produced and delivered for sale in California in model years 2003 through 2005,

or, alternatively, by the ratio of PCs and LDTs produced and delivered for sale in New Mexico to the combined number of PCs and LDTs produced and delivered for sale in California in model year 2011. In either case, the time period used to determine the credit transfer ratio shall be used to determine model year 2011 ZEV sales requirements in New Mexico. The state shall establish ZEV compliance accounts for each manufacturer and allocate the credits calculated under this subsection to such compliance accounts, including separate accounts for PZEV, AT PZEV, NEV, Type 0 ZEVs, Type I ZEVs, Type II ZEVs, Type III ZEVs, transportation system, and extended service. The state shall notify each manufacturer of the number of ZEV credits available for use by July 31, 2011. Credits issued pursuant to this subsection may only be used in New Mexico for compliance with the ZEV provisions subject to the same requirements and limitations on credit use set forth in CCR, Section 1962, adjusted for New Mexico specific vehicle numbers. Each manufacturer operating in accordance with this subsection shall do the following:

(1) By May 1, 2011, provide the state with the total number of PC and LDT1 vehicles produced and delivered for sale in New Mexico and California for 2003 through 2005 model years.

(2) Alternatively, by May 1, 2011, provide the state with the total number of PC and LDT1 vehicles to be produced and delivered for sale in New Mexico and California in model year 2011. By March 1, 2012, provide the state with actual model year 2011 PC and LDT1 vehicles produced and delivered for sale in New Mexico and California. By May 31, 2012, the state shall adjust and notify each manufacturer of the number of ZEV credits established based on actual model year 2011.

(3) By May 1, 2011, provide the state with the total number of banked California credits after all model year 2010 and earlier obligations have been met.

C. In addition to the credits transferred in accordance with Subsection B of 20.11.104.106 NMAC, manufacturers may also generate and deposit credits for vehicles delivered for sale within the state during the 2009 through 2010 model years, a manufacturer shall open an account with the ZEV credit bank and submit an appropriate notice of credit generation to the state by the time such vehicles are delivered.

D. A manufacturer shall be entitled to full credit for each type III ZEV placed in service prior to model year 2012 in any state that has adopted the California ZEV regulations contained in CCR, section 1962.

E. A manufacturer with an account in the ZEV credit bank may acquire credits from another manufacturer with an account in the ZEV credit bank, provided that if the credits are to be used for future compliance with the ZEV sales requirement in 20.11.104.105 NMAC, *ZEV Sales*, the transaction shall be recorded in the ZEV credit bank and certified by both parties to the transaction.

F. A vehicle equivalent credit shall not constitute or convey a property right.  
[20.11.104.106 NMAC – N, 1/1/08; A, 3/15/09]

**20.11.104.107 — FLEET AVERAGE GREENHOUSE GAS EXHAUST EMISSIONS AND REPORTING:**

A. Effective model year 2011 and each model year thereafter, each manufacturer subject to 20.11.104 NMAC shall comply with greenhouse gas emissions standards for passenger car, light duty truck, medium duty passenger vehicle weight classes, and other requirements of CCR Section 1961.1, for vehicles delivered for sale in Bernalillo county.

B. **Requirements for large volume manufacturers.** The fleet average greenhouse gas exhaust emission standards for passenger cars, light duty trucks, and medium duty passenger vehicles delivered for sale within the state by a large volume manufacturer for model year 2011 and each model year thereafter are set forth in CCR, Section 1961.1.

C. **Requirements for small, intermediate, and independent manufacturers.** The fleet average greenhouse gas exhaust emission requirements for passenger cars, light duty trucks, and medium duty passenger vehicles delivered for sale within the state by small volume, intermediate volume and independent low volume manufacturers for model year 2016 and each model year thereafter are set forth in CCR, Section 1961.1.

D. **Greenhouse gas emission credits and debits.** Greenhouse gas credits and debits may be accrued and used based on each manufacturer's sale of vehicles within the state as set forth in CCR, Section 1961.1.

E. **Optional alternative compliance with greenhouse gas emission standards.** Greenhouse gas vehicle test groups that are certified pursuant to CCR, Section 1961.1(a)(1)(B)2 in the state of California may obtain equivalent credit if delivered for sale and use within Bernalillo county.

F. **Alternative compliance credit.** To receive the credit authorized by subsection E of 20.11.104.107 NMAC, a manufacturer shall submit to the state the data set forth in CCR, Section 1961.1(a)(1)(B)2.a.i.

G. **Reporting on greenhouse gas requirements.** Beginning model year 2011 and for each model year thereafter, each manufacturer shall submit a report to the state that includes end-of model year data that

1 calculates the fleet average greenhouse gas emissions for the model year just ended; the report shall include the  
 2 number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to CCR Section 1961;  
 3 the report shall follow the procedures in CCR, Section 1961.1 and be in the same format used to report such  
 4 information to CARB.

5 ~~{20.11.104.107 NMAC – N, 1/1/08; A, 3/15/09}~~

6  
 7 **20.11.104.108 — ADDITIONAL REPORTING:**

8 ~~\_\_\_\_\_ A. \_\_\_\_\_ To determine compliance with 20.11.104 NMAC, the department may require a motor vehicle  
 9 manufacturer to submit any documentation that the department deems necessary to the effective administration and  
 10 enforcement of 20.11.104 NMAC, including all certification materials submitted to CARB.~~

11 ~~\_\_\_\_\_ B. \_\_\_\_\_ In addition to the reporting requirements in 20.11.104.106 NMAC, *ZEV Credit Bank and*  
 12 *Reporting*, and NMAC 20.11.104.111, *Registration and Fees*, beginning with the 2011 model year and each model  
 13 year thereafter, each manufacturer of a vehicle subject to 20.11.104.100 NMAC, *Applicability*, shall submit annually  
 14 to the state, no later than March 31 following the close of the model year, a report documenting the total deliveries  
 15 for sale within the state of vehicles in each test group during that model year.~~

16 ~~{20.11.104.108 NMAC – N, 1/1/08; A, 3/15/09}~~

17  
 18 **20.11.104.109 — WARRANTIES:**

19 ~~\_\_\_\_\_ A. \_\_\_\_\_ For model year 2011 and each model year thereafter, each manufacturer of a vehicle subject to  
 20 20.11.104.100 NMAC, *Applicability*, shall warrant to the ultimate purchaser and each subsequent purchaser that the  
 21 vehicle shall comply over its period of warranty coverage with all requirements of CCR Sections 2035 through  
 22 2038, 2040, and 2041.~~

23 ~~\_\_\_\_\_ B. \_\_\_\_\_ For model year 2011 and each model year thereafter, a manufacturer of a vehicle subject to  
 24 20.11.104 NMAC shall include an emission control system warranty statement that complies with the requirements  
 25 in CCR, Section 2039, except that a manufacturer may modify the statement for the sole purposes of informing the  
 26 owner of the warranty's applicability and including a telephone number for owners to obtain answers to questions  
 27 regarding the warranty.~~

28 ~~\_\_\_\_\_ C. \_\_\_\_\_ Upon the department's request, a manufacturer of a vehicle subject to 20.11.104 NMAC shall  
 29 submit to the department a failure of emission related component report, or copy of the report submitted to CARB,  
 30 as required by CCR, Section 2144.~~

31 ~~{20.11.104.109 NMAC – N, 1/1/08}~~

32  
 33 **20.11.104.110 — RECALLS:**

34 ~~\_\_\_\_\_ A. \_\_\_\_\_ Any order issued or enforcement action taken by CARB to correct noncompliance with any  
 35 section of CCR, Title 13, that results in the recall of a vehicle pursuant to CCR, Sections 2109 through 2135, shall  
 36 be prima facie evidence of noncompliance of a vehicle registered in Bernalillo county. In such cases, recalls may be  
 37 initiated by the state unless the manufacturer demonstrates to the state's satisfaction that the order or action is not  
 38 applicable to a vehicle registered in Bernalillo county.~~

39 ~~\_\_\_\_\_ B. \_\_\_\_\_ A voluntary or influenced emission related recall campaign initiated by a manufacturer pursuant to  
 40 CCR Sections 2113 through 2121 shall include all affected vehicles registered in Bernalillo county.~~

41 ~~\_\_\_\_\_ C. \_\_\_\_\_ For any vehicle subject to an order or action under Subsection A of 20.11.104.110 NMAC, each  
 42 manufacturer shall send to each owner of a vehicle registered in Bernalillo county a notice that complies with the  
 43 requirements in CCR Sections 2118 or 2127, including a telephone number for owners to obtain answers to  
 44 questions regarding the recall.~~

45 ~~{20.11.104.110 NMAC – N, 1/1/08; A, 3/15/09}~~

46  
 47 **20.11.104.111 — REGISTRATION AND FEES:**

48 ~~\_\_\_\_\_ A. \_\_\_\_\_ After January 1, 2010, no large volume or intermediate volume vehicle manufacturer shall deliver  
 49 for sale, offer for sale, sell, import, deliver, purchase, offer for rent, offer for lease, acquire, receive, or register a  
 50 motor vehicle subject or potentially subject to 20.11.104 NMAC without first obtaining a registration from the  
 51 department.~~

52 ~~\_\_\_\_\_ B. \_\_\_\_\_ The registration shall have a term no more than 10 years and each large and intermediate volume  
 53 manufacturer shall pay an annual registration fee to the state.~~

54 ~~\_\_\_\_\_ C. \_\_\_\_\_ The state shall assess an annual registration fee of \$10,000 to each large and intermediate volume  
 55 manufacturer for the period beginning July 1 and ending June 30 of the subsequent year.~~



1 ~~———— D. ————~~ By April 1 each year, each large and intermediate volume manufacturer shall pay the annual  
2 registration fee to the state.  
3 [~~20.11.104.111 NMAC — N, 1/1/08; A, 3/15/09~~]

4  
5 ~~**20.11.104.112 — INSPECTIONS AND INFORMATION REQUESTS:**~~

6 ~~———— A. ————~~ For the purpose of determining compliance with 20.11.104 NMAC, the department may inspect  
7 any new and used motor vehicle, and may inspect and copy relevant, non-financial records, including records  
8 documenting vehicle origin, certification, delivery, or sales, and any record of emission-related part repairs  
9 performed under warranty.

10 ~~———— B. ————~~ For the purpose of determining compliance with 20.11.104 NMAC, the department may require a  
11 vehicle dealer or rental car agency to submit relevant, non-financial documentation related to a motor vehicle subject  
12 or potentially subject to 20.11.104 NMAC, except this subsection shall not be construed to require the creation of a  
13 new record.

14 ~~———— C. ————~~ A vehicle dealer or rental car agency may assert a claim for a record or documentation requested  
15 pursuant to this section in accordance with 20.2.1.115 NMAC, Confidential Information Protection.  
16 [~~20.11.104.112 NMAC — N, 1/1/08~~]

17  
18 ~~**HISTORY OF 20.11.104 NMAC:**~~ [Reserved]

1 **TITLE 20 ENVIRONMENTAL PROTECTION**  
2 **CHAPTER 11 ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**  
3 **PART 104 NEW MOTOR VEHICLE EMISSION STANDARDS**  
4

5 **20.11.104.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, P.O. Box  
6 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-1972.  
7 [20.11.104.1 NMAC - Rp, 20.11.104.1 NMAC, 7/1/2022]  
8

9 **20.11.104.2 SCOPE:** All manufacturers, dealers, rental car agencies, the United States, state and local  
10 governments, or other persons who deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire,  
11 receive, or register model year 2026 and subsequent model year passenger cars, light-duty trucks, medium-duty  
12 passenger vehicles, medium-duty vehicles, or motor vehicle engines.  
13 [20.11.104.2 NMAC - Rp, 20.11.104.2 NMAC, 7/1/2022]  
14

15 **20.11.104.3 STATUTORY AUTHORITY:** The Air Quality Control Act, Sections 74-2-1 to -17 NMSA  
16 1978; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994, Sections 9-5-1-3,  
17 9-5-1-4, 9-5-1-5 and 9-5-1-6; and Bernalillo County Code, Article II, Sections 30-32, 30-33, 30-34 and 30-35.  
18 [20.11.104.3 NMAC - Rp, 20.11.104.3 NMAC, 7/1/2022]  
19

20 **20.11.104.4 DURATION:** Permanent.  
21 [20.11.104.4 NMAC - Rp, 20.11.104.4 NMAC, 7/1/2022]  
22

23 **20.11.104.5 EFFECTIVE DATE:** July 1, 2022, except where a later date is cited at the end of a section.  
24 [20.11.104.5 NMAC - Rp, 20.11.104.5 NMAC, 7/1/2022]  
25

26 **20.11.104.6 OBJECTIVE:** To adopt and implement the California vehicle emission standards and  
27 requirements pursuant to Section 177 of the federal Clean Air Act.  
28 [20.11.104.6 NMAC - Rp, 20.11.104.6 NMAC, 7/1/2022]  
29

30 **20.11.104.7 DEFINITIONS:** The definitions in Section 74-2-2 NMSA 1978 shall apply in 20.11.104 NMAC.  
31 If a term is defined in Section 74-2-2 NMSA 1978 and 20.11.104 NMAC, the definition in 20.11.104 NMAC shall  
32 apply. The definitions in 20.11.1.7 NMAC, the Revised Ordinances of Albuquerque 1994, Section 9-5-1-2, and the  
33 Bernalillo County Code, Article II, Section 30-31 shall not apply in 20.11.104 NMAC. When a term in a provision  
34 of the California code of regulations (CCR), Title 13, or the California health and safety code (CHSC) incorporated  
35 by reference is given a different meaning than the term defined for general purposes in 20.11.104 NMAC, the  
36 specific CCR or CHSC section’s meaning and application of the term shall control, except that all references in the  
37 incorporated sections of the CCR and CHSC to “California” shall, whenever appropriate, mean New Mexico, or  
38 Bernalillo County and the City of Albuquerque, depending on the context; all references in the incorporated sections  
39 of the CCR and CHSC to the “California Air Resources Board,” “CARB,” “state board,” or “board” shall, whenever  
40 appropriate, mean the environmental improvement board or the environment department, or the air quality control  
41 board or the environmental health department, depending on the context; and all references in the incorporated  
42 sections of the CCR and CHSC to “Executive Officer” shall, whenever appropriate, mean the secretary or the  
43 director, depending on the context; provided, however, the terms in the CCR and CHSC definitions incorporated by  
44 reference in 20.11.104.7 NMAC shall not be changed. For registration of a motor vehicle, when a term defined  
45 herein is also defined in the Motor Vehicle Code, Articles 1 through 8 of Chapter 66 NMSA 1978, and is given a  
46 different meaning than the term defined for general purposes in 20.11.104 NMAC, the Motor Vehicle Code meaning  
47 and application of the term shall control.

48 **A. “Air quality control board”** means the Albuquerque-Bernalillo county air quality control board,  
49 which is a local board, as such term is defined in Subsection K of Section 74-2-2 NMSA 1978.

50 **B. “Certification”** means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39018.

51 **C. “Dealer”** means the same in 20.11.104 NMAC as it is defined in Subsection B of Section 57-16-3  
52 NMSA 1978.

53 **D. “Director”** means the director of the environmental health department, who is the director as such  
54 term is defined in Subsection D of Section 74-2-2 NMSA 1978.

55 **E. “Emission standards”** means the same in 20.11.104 NMAC as it is defined in CHSC, Section  
56 39027, which New Mexico is authorized to adopt pursuant to 42 U.S.C. § 7507.

- 1 F. “Emergency vehicle” means the same in 20.11.104 NMAC as it is defined in CCR, Title 13,  
2 Section 1961.3(10).
- 3 G. “Environment department” means the New Mexico environment department.
- 4 H. “Environmental health department” means the environmental health department, which is a  
5 local agency as such term is defined in Subsection I of Section 74-2-2 NMSA 1978.
- 6 I. “Environmental improvement board” means the same in 20.11.104 NMAC as it is defined in  
7 Subsection A of Section 74-1-3 NMSA 1978.
- 8 J. “Greenhouse gas” means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section  
9 1961.3(18).
- 10 K. “Independent low volume manufacturer” means the same in 20.11.104 NMAC as it is defined  
11 in CCR, Title 13, Section 1900(b)(8).
- 12 L. “Intermediate volume manufacturer” means the same in 20.11.104 NMAC as it is defined in  
13 CCR, Title 13, Section 1900(b)(9).
- 14 M. “Large volume manufacturer” means the same in 20.11.104 NMAC as it is defined in CCR,  
15 Title 13, Section 1900(b)(10).
- 16 N. “Light-duty truck” means the same in 20.11.104 NMAC as it is defined in CCR, Title 13,  
17 Section 1900(b)(11).
- 18 O. “Manufacturer” means the same in 20.11.104 NMAC as it is defined in Subsection J of 57-16-3  
19 NMSA 1978, and shall include small, independent low, intermediate, or large volume manufacturers as defined  
20 herein.
- 21 P. “Medium-duty” means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39037.5.
- 22 Q. “Medium-duty passenger vehicle” means the same in 20.11.104 NMAC as it is defined in CCR,  
23 Title 13, Section 1900(b)(12).
- 24 R. “Medium-duty vehicle” means the same in 20.11.104 NMAC as it is defined in CCR, Title 13,  
25 Section 1900(b)(13).
- 26 S. “Methane” means the chemical compound containing one atom of carbon and four atoms of  
27 hydrogen.
- 28 T. “Model year” means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39038.
- 29 U. “Motor vehicle” means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39039.
- 30 V. “Motor vehicle engine” means the same in 20.11.104 NMAC as it is defined in CHSC, Section  
31 39042.5.
- 32 W. “Non-methane organic gas” means the same in 20.11.104 NMAC as it is defined in CCR, Title  
33 13, Section 1961.2.
- 34 X. “Particulate matter” means the same in 20.11.104 NMAC as it is defined in CCR, Title 13,  
35 Section 1961.2.
- 36 Y. “Passenger car” means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section  
37 1900(b)(17).
- 38 Z. “Passenger vehicle” means the same in 20.11.104 NMAC as it is defined in CHSC, Section  
39 39046.
- 40 AA. “Recall” means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section  
41 1900(b)(19).
- 42 BB. “Register” means to register a motor vehicle with the New Mexico motor vehicle division.
- 43 CC. “Sale” or “sell” means the transfer of equitable or legal title to a motor vehicle or motor vehicle  
44 engine to the ultimate purchaser.
- 45 DD. “Small volume manufacturer” means the same in 20.11.104 NMAC as it is defined in CCR,  
46 Title 13, Section 1900(b)(22).
- 47 EE. “Truck” means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39054.
- 48 FF. “Ultimate Purchaser” means the same in 20.11.104 NMAC as it is defined in CHSC, Section  
49 39055.5.
- 50 GG. “Vehicle” means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39059.
- 51 HH. “Zero-emission vehicle” or “ZEV” means the same in 20.11.104 NMAC as it is defined in CCR,  
52 Title 13, Section 1962.2(a).
- 53 II. “ZEV credit bank” means a zero-emission vehicle credit bank set up by the California air  
54 resources board or the environment department that records and tracks the generation, verification, transfer,  
55 voluntary retirement, use, and invalidation of zero-emission vehicle credits.  
56 [20.11.104.7 NMAC - Rp, 20.11.104.7 NMAC, 7/1/2022]

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**20.11.104.8 DOCUMENTS:** Documents incorporated and cited in 20.11.104 NMAC may be viewed at the environmental health department, 1 Civic Plaza NW, Albuquerque, NM 87102. Information on internet access to these documents may be obtained by contacting the environmental health department at (505) 768-1972. [20.11.104.8 NMAC - Rp, 20.11.104.8 NMAC, 7/1/2022]

**20.11.104.9 SEVERABILITY:** If for any reason any section, paragraph, sentence, clause, wording, or application of 20.11.104 NMAC or any standard incorporated herein is held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, 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. [20.11.104.9 NMAC - Rp, 20.11.104.9 NMAC, 7/1/2022]

**20.11.104.10 CONSTRUCTION:** 20.11.104 NMAC shall be liberally construed to carry out its purpose. [20.11.104.10 NMAC - Rp, 20.11.104.10 NMAC, 7/1/2022]

**20.11.104.11 SAVINGS CLAUSE:** Repeal or supersession of prior versions of 20.11.104 NMAC shall not affect any administrative or judicial action initiated under those prior versions. [20.11.104.11 NMAC - Rp, 20.11.104.11 NMAC, 7/1/2022]

**20.11.104.12 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with 20.11.104 NMAC does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations. [20.11.104.12 NMAC - Rp, 20.11.104.12 NMAC, 7/1/2022]

**20.11.104.13 LIMITATION OF DEFENSE:** The existence of a valid registration or certification under 20.11.104 NMAC shall not constitute a defense to a violation of 20.11.104 NMAC, except the requirement for obtaining a registration or certification. [20.11.104.13 NMAC - Rp, 20.11.104.13 NMAC, 7/1/2022]

**20.11.104.14 - 20.11.104.99 [RESERVED]**

**20.11.104.100 APPLICABILITY:**

**A.** Except as provided in 20.11.104.103 NMAC (Exemptions) and in compliance with the Motor Vehicle Dealers Franchising Act, Sections 57-16-1 to -16 NMSA 1978, 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.

**B.** In 20.11.104 NMAC, New Mexico is inclusive of the city of Albuquerque and Bernalillo county. Compliance with the exhaust emission standards in 20.11.104 NMAC shall be based on the motor vehicles subject to the relevant sections of 20.11.104 NMAC and 20.2.91 NMAC that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico. Exhaust emission standard compliance data shall be reported to the environment department, and compliance shall be determined and the use of debits and credits accounted for on a statewide basis. [20.11.104.100 NMAC - Rp, 20.11.104.100 NMAC, 7/1/2022]

**20.11.104.101 GENERAL REQUIREMENTS:**

**A.** Except as otherwise required, 20.11.104 NMAC 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 20.11.104 NMAC.

1 C. Each manufacturer shall comply with the motor vehicle emission standards, zero-emission motor  
 2 vehicle requirements, reporting, warranty, labeling, recall campaign, and other applicable requirements contained in  
 3 20.11.104 NMAC.

4 D. Each manufacturer, dealer, rental car agency, the United States, state and local government, and  
 5 other person shall comply with the environment department's and environmental health department's inspection and  
 6 information requests issued pursuant to 20.2.91.114 NMAC (Inspections and Information Requests) and  
 7 20.11.104.114 NMAC (Inspections and Information Requests), respectively.

8 E. Each person registering a motor vehicle in New Mexico shall comply with the registration  
 9 requirements in 20.11.104 NMAC.

10 F. The requirements in 20.11.104 NMAC shall not be applicable if an exemption, as provided in  
 11 20.11.104.103 NMAC (Exemptions), applies.  
 12 [20.11.104.101 NMAC - Rp, 20.11.104.101 NMAC, 7/1/2022]

13  
 14 **20.11.104.102 INCORPORATION BY REFERENCE:**

15 A. Sections of the CCR and the CHSC incorporated by reference herein include the regulations as  
 16 they existed on the effective date in 20.11.104.5 NMAC (Effective Date); incorporated sections of the CCR and the  
 17 CHSC do not incorporate a later adoption or amendment of the regulation.

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

21 C. The CCR sections incorporated by reference include:

22 (1) Section 1900: Definitions. California effective date 7/25/2016.

23 (2) Section 1956.8(h): Exhaust Emission Standards and Test Procedures - 1985 and  
 24 Subsequent Model Heavy Duty Engines and Vehicles (medium-duty vehicle greenhouse gas emission standards  
 25 only). California effective date 10/16/2017.

26 (3) Section 1961.2: Exhaust Emission Standards and Test Procedures - 2015 and Subsequent  
 27 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles. California effective date 4/1/2019.

28 (4) Section 1961.3: Greenhouse Gas Exhaust Emission Standards and Test Procedures -  
 29 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles. California  
 30 effective date 12/12/2018.

31 (5) Section 1962.2: Zero-Emission Vehicle Standards for 2018 and Subsequent Model Year  
 32 Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles. California effective date 1/1/2016.

33 (6) Section 1962.3: Electric Vehicle Charging Requirements. California effective date  
 34 8/7/2012.

35 (7) Section 1965: Emission Control, Smog Index, and Environmental Performance Labels -  
 36 1979 and Subsequent Model Year Vehicles. California effective date 10/8/2015.

37 (8) Section 1968.2: Malfunction and Diagnostic System Requirements - 2004 and  
 38 Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines. California  
 39 effective date 7/25/2016.

40 (9) Section 1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative  
 41 Emissions. California effective date 10/8/2015.

42 (10) Section 1978: Standards and Test Procedures for Vehicle Refueling Emissions.  
 43 California effective date 10/8/2015.

44 (11) Section 2035: Purpose, Applicability, and Definitions. California effective date  
 45 11/9/2007.

46 (12) Section 2037: Defects Warranty Requirements for 1990 and Subsequent Model  
 47 Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, and Motor Vehicle Engines Used in Such Vehicles.  
 48 California effective date 12/5/2014.

49 (13) Section 2038: Performance Warranty Requirements for 1990 and Subsequent Model  
 50 Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and Motor Vehicle Engines Used in Such  
 51 Vehicles. California effective date 8/7/2012.

52 (14) Section 2039: Emission Control System Warranty Statement. California effective date  
 53 12/26/1990.

54 (15) Section 2040: Vehicle Owner Obligations. California effective date 12/26/1990.

55 (16) Section 2041: Mediation; Finding of Warrantable Condition. California effective date  
 56 12/26/1990.

- 1                   (17)    Section 2046: Defective Catalyst. California effective date 2/15/1979.
- 2                   (18)    Section 2062: Assembly-line Test Procedures - 1998 and Subsequent Model Years.
- 3                   California effective date 8/7/2012.
- 4                   (19)    Section 2109: New Vehicle Recall Provisions. California effective date 12/30/1983.
- 5                   (20)    Section 2111: Applicability. California effective date 12/8/2010.
- 6                   (21)    Section 2112: Definitions. California effective date 4/1/2019.
- 7                   (22)    Section 2113: Initiation and Approval of Voluntary and Influenced Emission-Related
- 8                   Recalls. California effective date 1/26/1995.
- 9                   (23)    Section 2114: Voluntary and Influenced Recall Plans. California effective date
- 10                  11/27/1999.
- 11                  (24)    Section 2115: Eligibility for Repair. California effective date 1/26/1995.
- 12                  (25)    Section 2116: Repair Label. California effective date 1/26/1995.
- 13                  (26)    Section 2117: Proof of Correction Certificate. California effective date 1/26/1995.
- 14                  (27)    Section 2118: Notification. California effective date 1/26/1995.
- 15                  (28)    Section 2119: Recordkeeping and Reporting Requirements. California effective date
- 16                  11/27/1999.
- 17                  (29)    Section 2120: Other Requirements Not Waived. California effective date 1/26/1995.
- 18                  (30)    Section 2121: Penalties. California effective date 1/26/1995.
- 19                  (31)    Section 2122: General Provisions. California effective date 12/8/2010
- 20                  (32)    Section 2123: Initiation and Notification of Ordered Emission-Related Recalls.
- 21                  California effective date 1/26/1995.
- 22                  (33)    Section 2124: Availability of Public Hearing. California effective date 1/26/1995.
- 23                  (34)    Section 2125: Ordered Recall Plan. California effective date 1/26/1995.
- 24                  (35)    Section 2126: Approval and Implementation of Recall Plan. California effective date
- 25                  1/26/1995.
- 26                  (36)    Section 2127: Notification of Owners. California effective date 1/26/1995.
- 27                  (37)    Section 2128: Repair Label. California effective date 1/26/1995.
- 28                  (38)    Section 2129: Proof of Correction Certificate. California effective date 1/26/1995.
- 29                  (39)    Section 2130: Capture Rates and Alternative Measures. California effective date
- 30                  11/27/1999.
- 31                  (40)    Section 2131: Preliminary Tests. California effective date 1/26/1995.
- 32                  (41)    Section 2132: Communication with Repair Personnel. California effective date
- 33                  1/26/1995.
- 34                  (42)    Section 2133: Recordkeeping and Reporting Requirements. California effective date
- 35                  1/26/1995.
- 36                  (43)    Section 2135: Extension of Time. California effective date 1/26/1995.
- 37                  (44)    Section 2139: Testing. California effective date 8/22/2002.
- 38                  (45)    Section 2141: General Provisions. California effective date 12/8/2010.
- 39                  (46)    Section 2142: Alternative Procedures. California effective date 2/23/1990.
- 40                  (47)    Section 2143: Failure Levels Triggering Recall. California effective date 11/27/1999.
- 41                  (48)    Section 2144: Emission Warranty Information Report. California effective date
- 42                  11/27/1999.
- 43                  (49)    Section 2145: Field Information Report. California effective date 8/7/2012.
- 44                  (50)    Section 2146: Emissions Information Report. California effective date 11/27/1999.
- 45                  (51)    Section 2147: Demonstration of Compliance with Emission Standards. California
- 46                  effective date 12/5/2014.
- 47                  (52)    Section 2148: Evaluation of Need for Recall. California effective date 11/27/1999.
- 48                  (53)    Section 2149: Notification and Subsequent Action. California effective date 2/23/1990.
- 49                  (54)    Section 2235: Requirements. California effective date 8/8/2012.
- 50                  [20.11.104.102 NMAC - Rp, 20.11.104.102 NMAC, 7/1/2022]

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- 52    **20.11.104.103 EXEMPTIONS:** The following motor vehicles shall not be subject to 20.11.104 NMAC.
- 53        A.    Military tactical vehicles, which shall mean the same in this section as in CCR, Title 13, Section
- 54        1905.
- 55        B.    Motor vehicles sold for registration in a state that is not New Mexico.
- 56        C.    Motor vehicles that have greater than 7,500 miles on the odometer.

- 1 D. Motor vehicles available for rent to a final destination outside of New Mexico.
- 2 E. Motor vehicles transferred from one person to another person due to: death, inheritance, devise or
- 3 bequest; divorce, dissolution, annulment or legal separation; merger or consolidation; bankruptcy; court judgment or
- 4 decree; or possessory lien, seizure or foreclosure.
- 5 F. Emergency vehicles when demonstrated to the environment department’s satisfaction that an
- 6 appropriate vehicle is not otherwise reasonably available.
- 7 G. A motor vehicle acquired by a resident of New Mexico to replace a motor vehicle registered to
- 8 such resident that was stolen, damaged, or failed beyond reasonable repair while out of state, provided that such
- 9 replacement motor vehicle is acquired out of state when the previously owned motor vehicle was stolen, damaged,
- 10 or failed beyond reasonable repair.
- 11 H. A motor vehicle with a right-hand drive configuration that is not available in a California-certified
- 12 model, purchased by a rural route postal carrier and used primarily for work.
- 13 I. Motor vehicles purchased by a nonresident before establishing residency in New Mexico,
- 14 regardless of the mileage on the odometer.
- 15 J. Motor vehicles purchased by a resident of New Mexico while assigned to active government
- 16 service outside New Mexico.
- 17 K. Custom and assembled motor vehicles that:
- 18 (1) are maintained for occasional transportation, exhibitions, club activities, parades, tours,
- 19 testing of operation, repair, maintenance, and similar uses; and
- 20 (2) are not used for general daily transportation.
- 21 L. A vehicle sold for the purpose of being wrecked or dismantled.
- 22 M. Motor vehicles used exclusively in the conduct of agricultural operations, like implements of
- 23 husbandry not including a vehicle whose existing design is primarily for the transportation of persons or property on
- 24 a highway, or road machinery not regularly operated on public streets and highways.
- 25 [20.11.104.103 NMAC - Rp, 20.11.104.103 NMAC, 7/1/2022]

26

27 **20.11.104.104 FLEET AVERAGE NON-METHANE ORGANIC GAS PLUS OXIDES OF NITROGEN**

28 **EXHAUST EMISSION STANDARDS, REPORTING AND COMPLIANCE:**

- 29 A. Each manufacturer subject to 20.11.104 NMAC shall comply with fleet average non-methane
- 30 organic gas plus oxides of nitrogen exhaust emission standards for passenger cars, light-duty trucks, and medium-
- 31 duty vehicles, and other requirements set forth in CCR, Title 13, Section 1961.2. Compliance shall be based on the
- 32 motor vehicles subject to 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen
- 33 Exhaust Emission Standards, Reporting and Compliance) and 20.2.91.104 NMAC (Fleet Average Non-methane
- 34 Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) that each
- 35 manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall be
- 36 determined on a statewide basis.
- 37 B. Each manufacturer subject to Subsection A of 20.11.104.104 NMAC (Fleet Average Non-methane
- 38 Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) shall accrue fleet
- 39 average non-methane organic gas plus oxides of nitrogen exhaust emission standard credits and debits and may use
- 40 credits in accordance with CCR, Title 13, Section 1961.2. Each manufacturer shall accrue and use debits and credits
- 41 based on the number of motor vehicles subject to Subsection A of 20.11.104.104 NMAC (Fleet Average Non-
- 42 methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) and
- 43 Subsection A of 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust
- 44 Emission Standards, Reporting and Compliance). Accounting for the use of debits and credits shall be on a statewide
- 45 basis.
- 46 C. Each manufacturer subject to Subsection A of 20.11.104.104 NMAC (Fleet Average Non-methane
- 47 Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) shall submit a report
- 48 by March 1 of each year to the environment department that includes the statewide fleet average non-methane
- 49 organic gas plus oxides of nitrogen exhaust emission data for the model year just ended. The report shall be in
- 50 accordance with the procedures in CCR, Title 13, Section 1961.2 and be in the same format used to report such
- 51 information to CARB. If a manufacturer elects to report the information required pursuant to Subsection A of
- 52 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission
- 53 Standards, Reporting and Compliance) and Subsection A of 20.2.91.104 NMAC (Fleet Average Non-methane
- 54 Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) using the pooling
- 55 provision set forth in CCR, Title 13, Section 1961.2, the manufacturer shall report to the environment department
- 56 the information for the entire pool as well as for the portion specific to New Mexico.

1 [20.11.104.104 NMAC - Rp, 20.11.104.104 NMAC, 7/1/2022]

2  
3 **20.11.104.105 PARTICULATE MATTER EXHAUST EMISSION STANDARDS, REPORTING AND**  
4 **COMPLIANCE:** Each manufacturer subject to 20.11.104 NMAC shall comply with particulate exhaust emission  
5 standards for passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles, and  
6 other requirements set forth in CCR, Title 13, Section 1961.2. Compliance shall be based on the motor vehicles  
7 subject to 20.11.104.105 NMAC (Particulate Matter Exhaust Emission Standards, Reporting and Compliance) and  
8 20.2.91.105 NMAC (Particulate Matter Exhaust Emission Standards, Reporting and Compliance) that each  
9 manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall be  
10 determined on a statewide basis.

11 [20.11.104.105 NMAC - Rp, 20.11.104.105 NMAC, 7/1/2022]

12  
13 **20.11.104.106 FLEET AVERAGE GREENHOUSE GAS EXHAUST EMISSION STANDARDS,**  
14 **REPORTING AND COMPLIANCE:**

15 A. Each manufacturer subject to 20.11.104 NMAC shall comply with fleet average greenhouse gas  
16 exhaust emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles, and other  
17 requirements set forth in CCR, Title 13, Section 1961.3. Compliance shall be based on the motor vehicles subject to  
18 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance)  
19 and 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance)  
20 that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall  
21 be determined on a statewide basis.

22 B. Each manufacturer subject to Subsection A of 20.11.104.106 NMAC (Fleet Average Greenhouse  
23 Gas Exhaust Emission Standards, Reporting and Compliance) shall accrue fleet average greenhouse gas exhaust  
24 emission standard credits and debits and may use credits in accordance with CCR, Title 13, Section 1961.3. Each  
25 manufacturer shall accrue and use debits and credits based on the number of motor vehicles subject to Subsection A  
26 of 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance)  
27 and Subsection A of 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting  
28 and Compliance). Accounting for the use of debits and credits shall be on a statewide basis.

29 C. Each manufacturer subject to Subsection A of 20.11.104.106 NMAC (Fleet Average Greenhouse  
30 Gas Exhaust Emission Standards, Reporting and Compliance) shall submit a report by March 1 of each year to the  
31 environment department that includes the statewide fleet average greenhouse gas exhaust emission standard data for  
32 the model year just ended. The report shall include the number of motor vehicles in each test group, delineated by  
33 model type certified pursuant to CCR, Title 13, Section 1961.3, be in accordance with the procedures in CCR, Title  
34 13, Section 1961.3, and be in the same format used to report such information to CARB. If a manufacturer reports  
35 the information required pursuant to Subsection A of 20.11.104.106 NMAC (Fleet Average Greenhouse Gas  
36 Exhaust Emission Standards, Reporting and Compliance) and Subsection A of 20.2.91.106 NMAC (Fleet Average  
37 Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) using option number 2 for the  
38 “Calculation of fleet average carbon dioxide value” set forth in CCR, Title 13, Section 1961.3(a)(5)(D), the  
39 manufacturer shall report the information for the entire pool as well as for the portion specific to New Mexico.  
40 [20.11.104.106 NMAC - Rp, 20.11.104.106 NMAC, 7/1/2022]

41  
42 **20.11.104.107 REMEDIATION REPORT:**

43 A. If the environment department determines that a report submitted by a manufacturer pursuant to  
44 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission  
45 Standards, Reporting and Compliance) or 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission  
46 Standards, Reporting and Compliance) demonstrates that the manufacturer is not in compliance with the fleet  
47 average non-methane organic gas plus oxides of nitrogen exhaust emission standards or the fleet average greenhouse  
48 gas exhaust emission standards, respectively, the manufacturer shall be required to submit a fleet average  
49 remediation report to the environment department.

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

52 C. The fleet average remediation report shall, at a minimum:  
53 (1) describe how the manufacturer intends to equalize any accrued debits;  
54 (2) identify all motor vehicle models and the percentage of each model delivered for sale,  
55 offered for sale, sold, imported, delivered, or leased in New Mexico with their corresponding certification standards  
56 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.  
[20.11.104.107 NMAC - Rp, 20.11.104.107 NMAC, 7/1/2022]

**20.11.104.108 ZERO-EMISSION VEHICLE CREDIT REQUIREMENT, REPORTING, AND COMPLIANCE:**

A. Each manufacturer subject to 20.11.104 NMAC 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 20.11.104 NMAC shall comply with the ZEV credit percentage requirement set forth in CCR, Title 13, Section 1962.2(b). Compliance shall be based on the motor vehicles subject to 20.11.104 NMAC and 20.2.91 NMAC that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall be determined on a statewide basis.

C. Before May 1 of each year, each manufacturer subject to 20.11.104 NMAC shall submit to the environment 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). ZEV credit accounting shall be on a statewide basis. 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 environment 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 environment 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 20.11.104.108 NMAC (Zero-Emission Vehicle Credit Requirement, Reporting, and Compliance), 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).  
[20.11.104.108 NMAC - Rp, 20.11.104.108 NMAC, 7/1/2022]

**20.11.104.109 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 July 1, 2022, by reporting the total delivery of such motor vehicles to the environment 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, any early action credits earned by the manufacturer pursuant to Subsection A of 20.11.104.109 NMAC (Zero-Emission Vehicle Early Action and Onetime Credits) and Subsection A of 20.2.91.109 NMAC (Zero-Emission Vehicle Early Action and Onetime Credits) shall be deposited by the environment department into the manufacturer’s account in the ZEV credit bank. CARB’s procedures for reporting, tracking and recording ZEV sales and credits shall be followed by the environment department.

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, 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 shall be deposited by the environment department into the manufacturer’s account in the ZEV credit bank:

<u>manufacturer's MY2027 onetime credit</u>	=	<u>manufacturer's starting MY2025 California ZEV credit balance</u>	X	<u>manufacturer's MY2025 total New Mexico motor vehicle sales</u>  <u>manufacturer's MY2025 total California motor vehicle sales</u>
<i>where MY means model year</i>				

1  
2 **D.** Credits issued pursuant to 20.11.104.109 NMAC (Zero-Emission Vehicle Early Action and  
3 Onetime Credits) and 20.2.91.109 NMAC (Zero-Emission Vehicle Early Action and Onetime Credits) may only be  
4 used in New Mexico for compliance with the ZEV credit percentage requirements subject to the same requirements  
5 and limitations on credit use set forth in CCR, Title 13, Section 1962.2.

6 **E.** A motor vehicle equivalent credit shall not constitute or convey a property right.  
7 [20.11.104.109 NMAC - Rp, 20.11.104.109 NMAC, 7/1/2022]  
8

9 **20.11.104.110 ADDITIONAL REPORTING:**

10 **A.** Within 30 calendar days of a request from the environment department or the environmental  
11 health department, a manufacturer shall submit to the respective department:

- 12 (1) A copy of the executive order.
- 13 (2) Any documentation the respective department determines necessary for the effective  
14 administration and enforcement of 20.11.104 NMAC, including without limitation certification materials submitted  
15 to CARB and documentation regarding the sale of each motor vehicle subject to 20.11.104 NMAC.
- 16 (3) Any emission warranty information reports prepared in accordance with CCR, Title 13,  
17 Section 2144.

18 **B.** If these records are available electronically, the manufacturer shall submit the records in an  
19 electronic format approved by the respective department.  
20 [20.11.104.110 NMAC - Rp, 20.11.104.110 NMAC, 7/1/2022]  
21

22 **20.11.104.111 WARRANTIES:**

23 **A.** Each manufacturer of a motor vehicle subject to 20.11.104 NMAC shall warrant to the ultimate  
24 purchaser and each subsequent purchaser that the motor vehicle shall comply over its period of warranty coverage  
25 with all requirements of CCR, Title 13, Sections 2035 through 2038, 2040, and 2046. Subsection C of  
26 20.11.104.103 NMAC shall not apply to this section.

27 **B.** Except as otherwise provided in Subsection B of 20.11.104.111 NMAC (Warranties), each  
28 manufacturer subject to 20.11.104 NMAC shall include with each motor vehicle or motor vehicle engine the  
29 emission control systems warranty statement that complies with the requirements of CCR, Title 13, Section 2039,  
30 except:

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

35 **C.** Upon the environment department's or the environmental health department's request, a  
36 manufacturer of a motor vehicle subject to 20.11.104 NMAC shall submit to the respective department within 30  
37 calendar days any emission warranty information report submitted to CARB, as required in CCR, Title 13, Section  
38 2144.  
39 [20.11.104.111 NMAC - Rp, 20.11.104.111 NMAC, 7/1/2022]

40  
41 **20.11.104.112 LABELS:** A manufacturer, dealer, rental car agency, the United States, state or local government,  
42 or other persons shall not deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive,  
43 or register passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, or motor  
44 vehicle engines in New Mexico if emission control labels and environmental performance labels are not affixed in  
45 accordance with CCR, Title 13, Section 1965.  
46 [20.11.104.112 NMAC - Rp, 20.11.104.112 NMAC, 7/1/2022]  
47

48 **20.11.104.113 RECALL CAMPAIGNS:**

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

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

10 C. For a motor vehicle subject to an order or action under Subsection A of 20.11.104.113 NMAC  
11 (Recall Campaigns), each manufacturer shall send to each owner of an affected motor vehicle registered in New  
12 Mexico a notice that complies with the requirements in CCR, Title 13, Sections 2118 and 2127, as applicable,  
13 including a telephone number for owners to obtain answers to questions regarding the recall.  
14 [20.11.104.113 NMAC - N, 7/1/2022]  
15

16 **20.11.104.114 REGISTRATION AND FEES:** Effective January 1, 2025, each large-volume or intermediate-  
17 volume manufacturer delivering for sale, offering for sale, selling, importing, delivering, or leasing passenger cars,  
18 light-duty trucks, medium-duty passenger vehicles, or medium-duty vehicles subject to 20.11.104 NMAC is subject  
19 to and shall comply with the requirements in 20.2.91.114 NMAC (Registration and Fees), as administered by the  
20 environment department. Large-volume or intermediate-volume motor vehicle manufacturers seeking to earn ZEV  
21 early action credits under 20.11.104.109 NMAC (Zero-Emission Vehicle Early Action and Onetime Credits) are  
22 subject to and shall comply with the requirements in Subsection G of 20.2.91.114 NMAC (Registration and Fees), as  
23 administered by the environment department. It shall be a violation of 20.11.104 NMAC for a large-volume or  
24 intermediate-volume manufacturer to not comply with 20.2.91.114 NMAC (Registration and Fees).  
25 [20.11.104.114 NMAC - N, 7/1/2022]  
26

27 **20.11.104.115 INSPECTIONS AND INFORMATION REQUESTS:**

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

31 B. The environment department or environmental health department may require a manufacturer,  
32 dealer, rental car agency, the United States, state or local government, or other person to submit or may inspect and  
33 copy itself relevant, non-financial records related to a motor vehicle subject or potentially subject to 20.11.104  
34 NMAC, except that Subsection B of 20.11.104.115 NMAC (Inspections and Information Requests) shall not be  
35 construed to require the creation of a new record.  
36 [20.11.104.115 NMAC - N, 7/1/2022]  
37

38 **20.11.104.116 RECORDKEEPING:** All manufacturers, dealers, rental car agencies, the United States, state  
39 and local governments, or other persons shall retain records pertaining to compliance under 20.11.104 NMAC.  
40 [20.11.104.116 NMAC - N, 7/1/2022]  
41

42 **20.11.104.117 PROHIBITED:** Failure to comply with the emission standards, recordkeeping, reporting, or  
43 other requirements of 20.11.104 NMAC within the timeframes specified shall constitute a violation of 20.11.104  
44 NMAC subject to enforcement action under Section 74-2-12 NMSA 1978.  
45 [20.11.104.117 NMAC - N, 7/1/2022]  
46

47 **HISTORY OF 20.11.104 NMAC:**

48 **History of Repealed Material:**  
49 20.11.104 NMAC, Emission Standards for New Motor Vehicles, filed 11/30/2007, repealed effective 7/1/2022.  
50

51 **Other History:**  
52 20.11.104 NMAC, Emission Standards for New Motor Vehicles, filed 11/30/2007, was repealed and replaced by  
53 20.11.104 NMAC, New Motor Vehicle Emission Standards, effective 7/1/2022.