

PETITION TO REPEAL AND REPLACE 20.11.104 NMAC

AQCB PETITION NO. 2022-1

KELSEA SONA, ASSISTANT CITY ATTORNEY

and

KEN MILLER, AIR QUALITY REGULATION DEVELOPMENT COORDINATOR

**ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD MEETING
FEBRUARY 9, 2022**

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Overview

- Overview of Petition
- Impetus for Rulemaking
- California's Advanced Clean Cars Regulations
- Prior Public Engagement
- Special Considerations
- EHD's Request
- Proposed Orders



Petition Overview

- Repeal Existing Rule 20.11.104 NMAC, *Emission Standards for New Motor Vehicles*
 - Adopted in 2007
 - Contains Obsolete California Motor Vehicle Emission Standards
 - Legally Invalid and Unenforceable
- Adopt Proposed Replacement Rule 20.11.104 NMAC, *New Motor Vehicle Emission Standards*
 - Contains Current California Motor Vehicle Emission Standards
 - Standards Apply Starting in Model Year 2026 (Earliest Possible Under Clean Air Act Requirements)
 - Passenger Cars, Light-duty Trucks, Medium-duty Passenger Vehicles, Medium-Duty Vehicles, and Motor Vehicle Engines

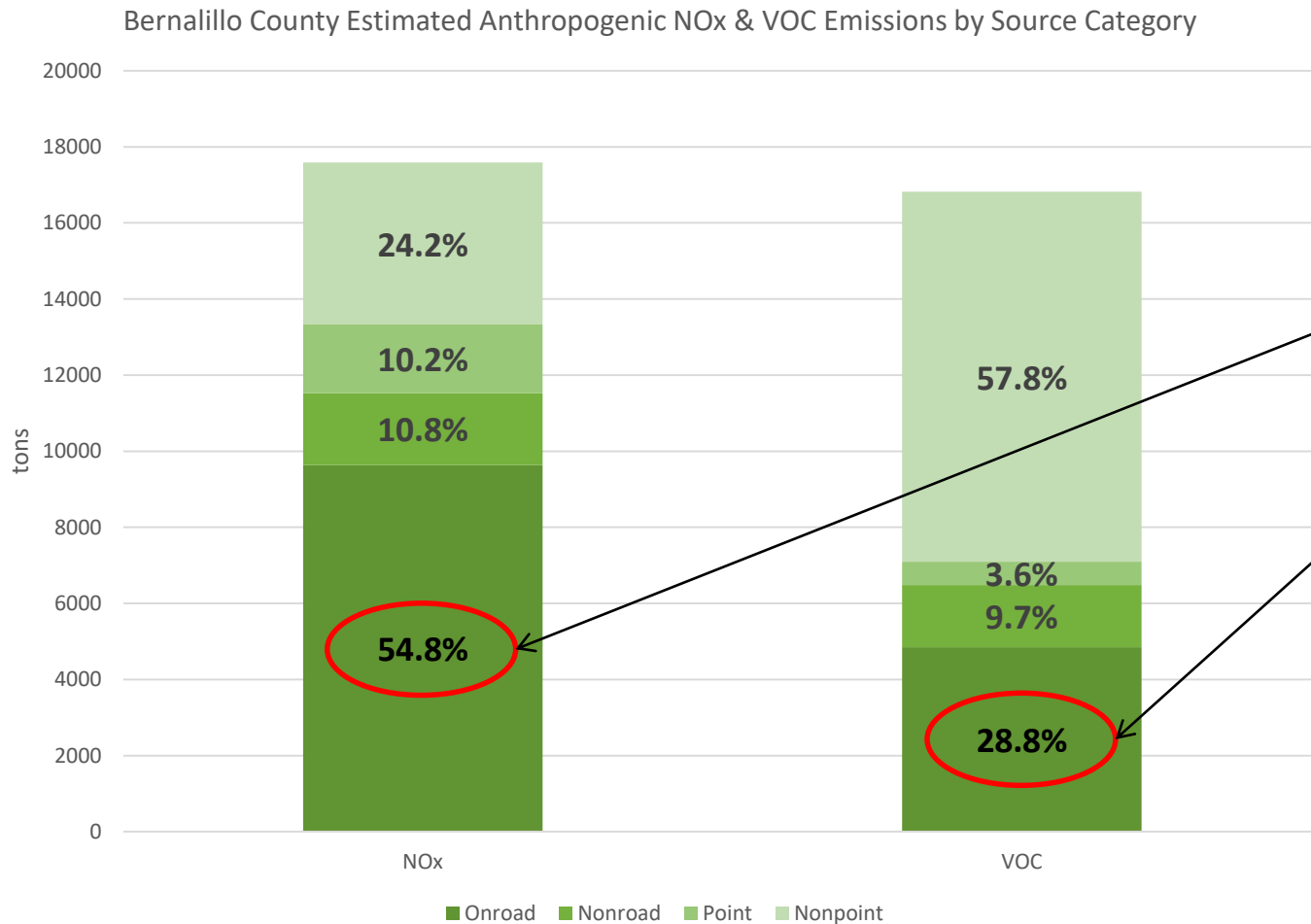
Petition Overview cont.

- The Clean Air Act allows states to adopt California's motor vehicle emission standards.
 - For New Mexico to adopt California's standards, both the Air Board and the Environmental Improvement Board must adopt them.
- December 17, 2021 → Environmental Improvement Board authorized a May 4-6, 2022 joint hearing pending the Air Board's concurrence.
- To be legally effective, New Mexico must have identical regulations imposing clean car standards throughout the state:

$$\begin{aligned} & 20.2.91 \text{ NMAC (NMED/EIB Regulation)} \\ + & \underline{20.11.104 \text{ NMAC (EHD/AQCB Regulation)}} \\ = & \text{New Mexico State-wide Clean Cars Program} \end{aligned}$$

Impetus For Rulemaking

The transportation sector is a major contributor to elevated ground-level ozone concentrations in Albuquerque and Bernalillo County.



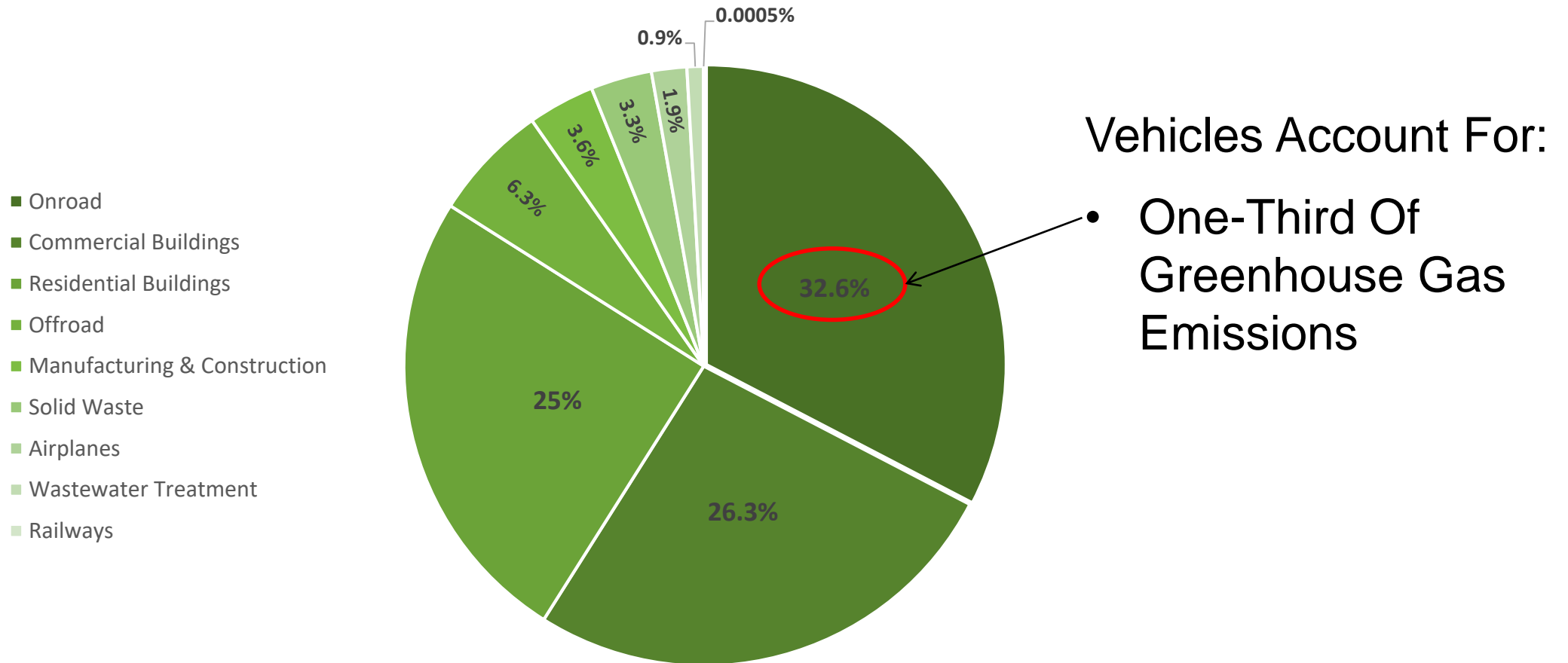
Vehicles Account For:

- Over Half Of All NOx Emissions
- Almost One-Third Of VOC Emissions

*NOx and VOC Are Ozone Precursors

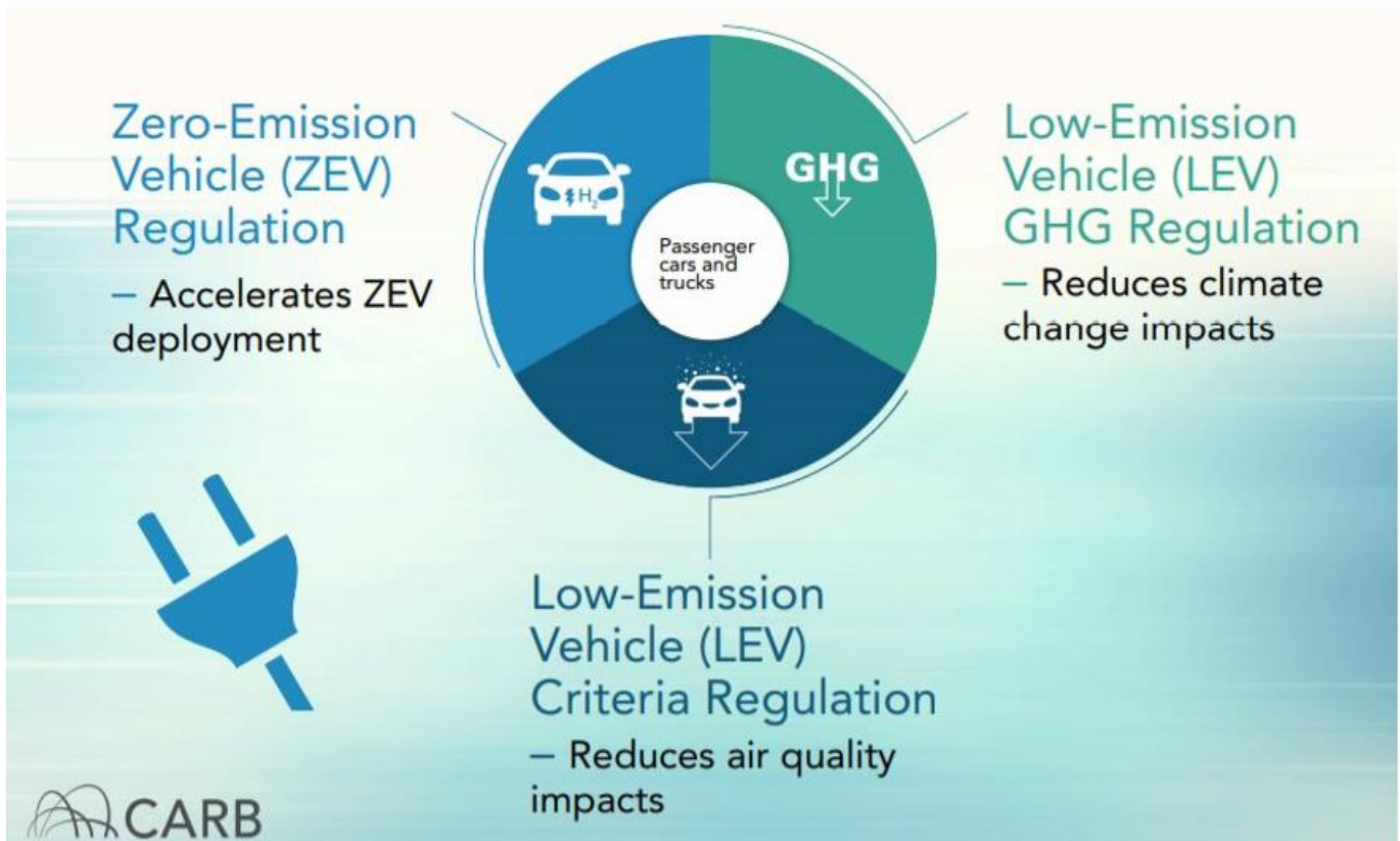
Impetus For Rulemaking

The transportation sector is also a significant source of greenhouse gas emissions in Albuquerque and Bernalillo County.



California's Advanced Clean Cars Regulations

AIR QUALITY PROGRAM



Low-Emission Vehicle (LEV) Regulations

1. Criteria Regulation – Limits emissions of carbon monoxide, nitrogen oxides, and particulate matter through:
 - Maximum Exhaust Emission Standards
 - Fleet Average Requirements
 - Particulate Emission Standards
2. Greenhouse Gas Regulation – Limits carbon dioxide emissions through:
 - Fleet Average Requirements

LEV Criteria Regulation

Maximum Exhaust Emission Standards

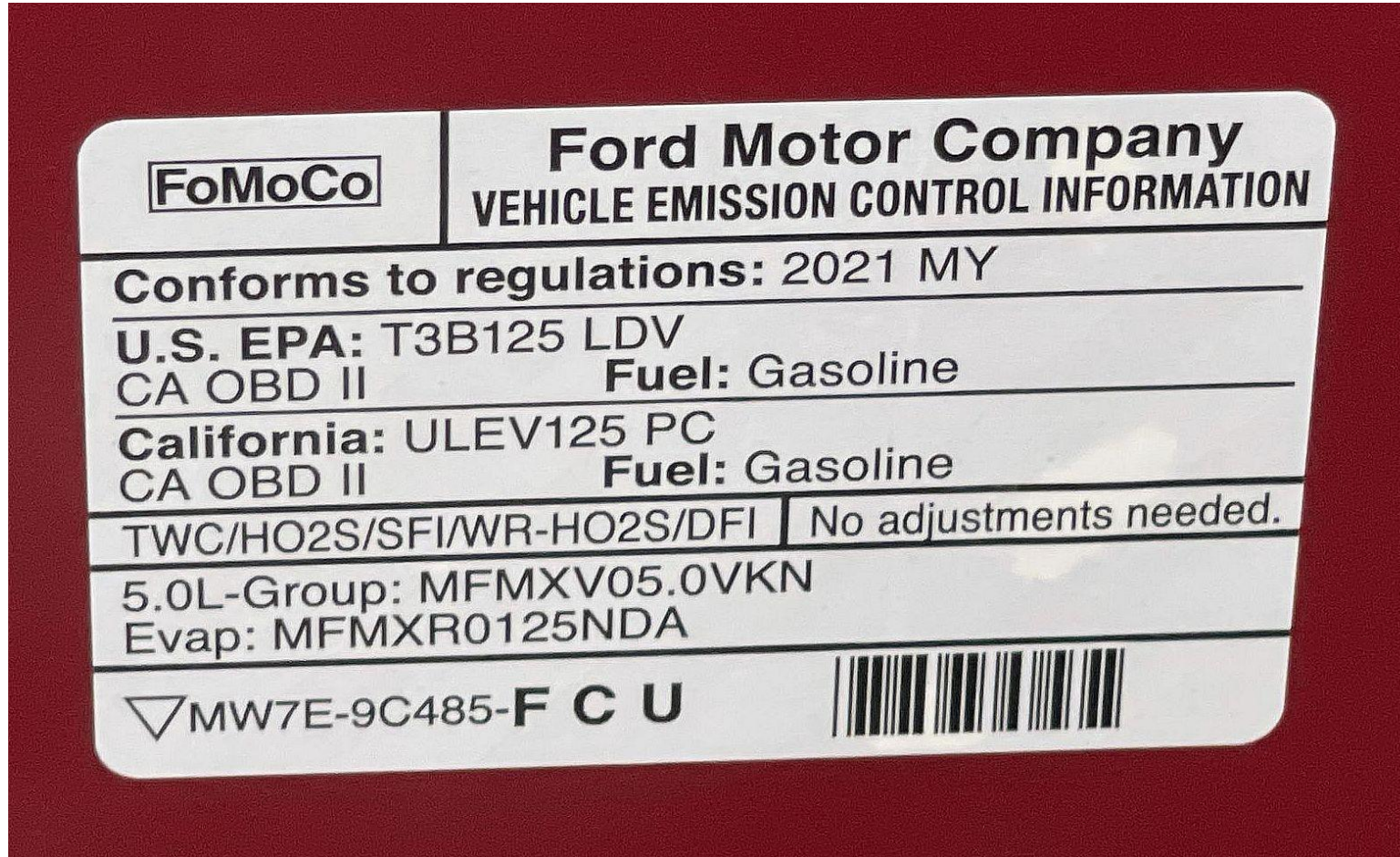
All vehicles must be certified to “categories” or “bins” indicating the maximum emissions of criteria and hazardous air pollutants the vehicle produces.

Passenger Cars, Trucks, and SUVs				
Vehicle Emission Category	NMOG + NOx* (g/mi)	Carbon Monoxide (g/mi)	Formaldehyde (mg/mi)	Particulates (g/mi)
LEV160	0.160	4.2	4	0.01
ULEV125	0.125	2.1	4	0.01
ULEV70	0.070	1.7	4	0.01
ULEV50	0.050	1.7	4	0.01
SULEV30	0.030	1.0	4	0.01
SULEV20	0.020	1.0	4	0.01

*NMOG + NOx = Non-methane organic gases + oxides of nitrogen

LEV Criteria Regulation

Maximum Exhaust Emission Standards



**AIR QUALITY
PROGRAM**

LEV Criteria Regulation

Fleet Average Requirements

The average NMOG + NOx emissions of all vehicles sold must not exceed fleet average requirements that vary based on vehicle type.

Model Year	Passenger Cars (g/mi)	Trucks and SUVs (g/mi)
2022	0.051	0.056
2023	0.044	0.047
2024	0.037	0.038
2025	0.030	0.030
2026	0.030	0.030

LEV Criteria Regulation

Particulate Emission Standards

Starting in model year 2025, a percentage of vehicles sold must be certified to meet more stringent particulate matter emission standards.

Model Year	% of Vehicles Certified to 3 mg/mi Standard	% of Vehicles Certified to 1 mg/mi Standard
2022	100	0
2023	100	0
2024	100	0
2025	75	25
2026	50	50
2027	25	75
2028	0	100

LEV Greenhouse Gas Regulation

Fleet Average Requirements

The average carbon dioxide emissions of all vehicles sold must not exceed fleet average requirements that vary based on vehicle type and size.

Vehicles with a Footprint ≤41 Square Feet		
Model Year	Passenger Cars (g/mi)	Trucks and SUVs (g/mi)
2022	150.0	186.0
2023	143.0	176.0
2024	137.0	168.0
2025	131.0	159.0
2026	131.0	159.0

Zero-Emission Vehicle Regulation

- Manufacturers must meet a ZEV credit percentage requirement based on the number of cars and trucks they deliver for sale in New Mexico.

Model Year	Credit Percentage Requirement
2022	14.5%
2023	17.0%
2024	19.5%
2025	22.0%
2026	22.0%

- ZEVs earn credits based on their all electric range; credits are capped at 4 credits per vehicle.
- Ultimately, about 7% of annual sales will need to be ZEVs to comply with the credit percentage requirement.
- Early action and onetime credits ease compliance the first few years.

Other Requirements

- EV Charging Specifications
- Environmental Performance Labels
- Onboard Diagnostic Systems
- Evaporative & Refueling Emissions Standards
- Emission Control System Warranty
 - Performance: 3 Years/50,000 Miles
 - Defects: 7 Years/70,000 Miles
- Recall Provisions
- Compliance Testing



Prior Public Engagement

Since EHD and the New Mexico Environment Department kicked off the rulemaking process last June, the public and stakeholders have had numerous opportunities to ask questions and provide comments and feedback:

- 3 Public Listening Sessions
 - ✓ Almost 200 Attendees
- Numerous Meetings With Individual Stakeholders
 - ✓ Manufacturers, Dealers, Climate Advocates, Tribes
- New Mexico Environment Department Discussion Draft
 - ✓ >130 Comments Received
- EHD Discussion Draft
 - ✓ 21 Comments Received

Special Considerations

- California is currently developing new motor vehicle emissions standards (Advanced Clean Cars II) to replace its current standards and plans to adopt them later this year.
- If California fails to adopt Advanced Clean Cars Two by the end of the year, then the new standards will not take effect in model year 2026.
- If the Air Board and the Environmental Improvement Board do not adopt Advanced Clean Cars One, then New Mexico will miss out on the benefits of the current standards in model year 2026.



Special Considerations cont.

- EPA recently revised federal greenhouse gas emission standards for model years 2023-2026 and plans to initiate a separate rulemaking to establish multi-pollutant emission standards for model year 2027 and later.



Specific Requests

Through Petition 2022-01, EHD requests that the Air Board:

1. Authorize a joint hearing with the Environmental Improvement Board to consider the merits of EHD's petition;
2. Schedule the hearing to begin on May 4, 2022, at 9 a.m. and continue through May 6, 2022;
3. Appoint a hearing officer, in consultation with the Environmental Improvement Board;
4. Authorize the hearing officer to adopt procedural orders, prepare post-hearing recommendations (if requested by the Air Board), and take all measures necessary to maintain order and ensure efficient, fair, and impartial consideration of the issues.

Proposed Orders

Proposed Notice of Hearing Determination

- Authorizes a joint hearing with the Environmental Improvement Board to consider the merits of EHD's petition; and
- Schedules the hearing to begin on May 4, 2022, at 9 a.m. and continue through May 6, 2022

Proposed Pre-Hearing Order

- Sets forth certain processes for the hearing, including public comment;
- Authorizes appointment of a hearing officer, in consultation with the Environmental Improvement Board; and
- Authorizes the hearing officer to adopt procedural orders, prepare post-hearing recommendations (if requested by the Air Board), and take all measures necessary to maintain order and ensure efficient, fair, and impartial consideration of the issues.

Proposed Pre-Hearing Order

1. The public hearing shall be held virtually and possibly in person, in accordance with applicable law and public health orders, as determined in coordination with the Environmental Improvement Board. *See* 20.11.82.23 NMAC (“Unless otherwise provided by governing law, the board shall hold rulemaking hearings and meetings in public facilities within Bernalillo county with public seating available.”); NMSA 1978, § 74-2-6 (“Hearings on regulations of statewide application may be held in Santa Fe or within any area of the state substantially affected by the regulation.”); *see also* 20.11.82.24 NMAC (Participation at a Board Meeting By Conference Telephone or Other Similar Device).

Proposed Pre-Hearing Order

2. The Air Board may decide on the proposed regulatory change at the conclusion of the hearing, as determined in coordination with the Environmental Improvement Board. *See* 20.11.82.19(C)(5) NMAC (required public notice information).

Proposed Pre-Hearing Order

3. Hearing Officer Selection: [*select one*]

Undecided → The hearing officer in this matter shall be assigned by the Air Board at a later date to allow the Air Board Chair to coordinate with the Environmental Improvement Board Chair to select a hearing officer in this matter, and upon agreement of the Boards, the Air Board shall issue a notice of hearing officer assignment pursuant to 20.11.82.11(C) NMAC. *See* Joint Air Quality Control Board Ordinance, § 9-5-1-6(E); Bernalillo County Code, Art. II, § 30-35(e); 20.11.82.11(A) NMAC.

Name a Hearing Officer → Pursuant to City Ordinance, Section 9-5-1-6(E), Bernalillo County Code, Article II, Section 30-35(e), and 20.11.82.11(A) NMAC, the Air Board desires _____ to serve as hearing officer in this matter and, upon the consent of the Environmental Improvement Board, the Air Board shall issue a notice of hearing officer assignment pursuant to 20.11.82.11(C) NMAC.

Proposed Pre-Hearing Order

4. In accordance with 20.11.82.20 NMAC, the Department and any person intending to present direct technical testimony shall file their notices of intent to present direct technical testimony no later than 15 days before the hearing, unless otherwise ordered by the Hearing Officer to protect the orderly hearing process given the joint nature of the hearing. *See* 20.11.82.11(B)(3) NMAC.

Proposed Pre-Hearing Order

5. In accordance with 20.11.82.22(B) NMAC, the Air Board will accept non-technical written statements for the record (*i.e.*, written comments) from the general public before the hearing. The Air Board will accept a written statement as an electronic filing with the Hearing Clerk via e-mail at seapodaca@cabq.gov.

Paper Copies → [Optional] The Air Board requests that an original and 15 paper copies of a non-technical written statement be filed with the Hearing Clerk, in accordance with 20.11.82.22(B) NMAC. Written statements filed with the Hearing Clerk shall be considered filed at the time the Hearing Clerk receives them, whether by electronic or paper filing, whichever is earliest.

Proposed Pre-Hearing Order

6. Any person filing a document, except non-technical written statements for the record, shall: [*select one*]

Option 1 → Pursuant to 20.11.82.16(B)(1) NMAC, provide the Hearing Clerk with the original and 15 paper copies of the document; provided, however, parties may submit the *original* as an electronic filing with the Hearing Clerk via e-mail at seapodaca@cabq.gov. Documents filed with the Hearing Clerk shall be considered filed at the time the Hearing Clerk receives them, whether by electronic or paper filing, whichever is earliest.

Option 2 → Submit the document as an electronic filing with the Hearing Clerk via email at seapodaca@cabq.gov, as the requirement in 20.11.82.16(B)(1) to provide the Hearing Clerk with the original and 15 paper copies of the document is hereby waived. Documents filed with the Hearing Clerk shall be considered filed at the time the Hearing Clerk receives them.

Proposed Pre-Hearing Order

7. Service of documents shall be in accordance with 20.11.82.16(C) NMAC, which allows for service by electronic transmission when a person has agreed in writing, as may be evidenced by that person including their email address on a document filed in this matter.

Proposed Pre-Hearing Order

8. Pursuant to City Ordinance, § 9-5-1-6(C), Bernalillo County Code, Article II, Section 30-35(c), and 20.11.82.19 NMAC, the Hearing Clerk shall give public notice of the hearing at least 30 days before the hearing. The Petitioner is hereby directed to work with the Hearing Clerk on such notice.

Summary

- EHD is asking the Air Board to repeal and replace 20.11.104 NMAC following a public hearing.
- The proposed replacement rule adopts California's current motor vehicle emission standards, which limit both criteria pollutant and greenhouse gas emissions and require manufacturers to sell more zero-emission vehicles. The new standards would apply starting in model year 2026.
- The New Mexico Environment Department has proposed a parallel rule and the Environmental Improvement Board has agreed to hold a joint hearing with the Air Board on May 4-6, 2022.
- EHD requests that the Air Board authorize a joint hearing with the Environmental Improvement Board and issue a pre-hearing order concerning conduct of the hearing.