


FOR AGENCY USE

Date: 5/23/23Received by: Mark MargerumSignature 

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
PETITION TO REQUIRE AGENCY RULEMAKING

We, the qualified voters of the State of Maine, whose signatures are appended to the attached petitions, hereby petition the Department of Environmental Protection pursuant to 5 M.R.S.A., Section 8055 to: (Check one)

Adopt a New Rule Modify Chapter _____, Sec. _____ Repeal Chapter _____, Sec. _____

The proposed change would (summarize content and impact of proposal): *

promulgate a new chapter incorporating California's Zero Emission Vehicle (ZEV) and Low Emission Vehicle (LEV) IV regulations, together known as the Advanced Clean Cars II Program. This includes ZEV standards that require sales of increasing numbers of battery electric vehicles, hydrogen fuel cell electric vehicles, and plug-in hybrid-electric vehicles for passenger cars and light-duty trucks. For more, please see the Petition to Require Maine Department of Environmental Protection Rulemaking to Adopt Advanced Clean Cars II Regulation Pursuant to 5 M.R.S. Section 8055, enclosed herein.

The text of the new or modified rule would read: *

Please see Attachment 2, enclosed herein.

***Use additional page(s), if necessary**

For the purposes of communication with the agency concerning this petition, the petitioners designate as their representative the following individual:

Jack Shapiro

(Name)

3 Wade Street, Augusta, ME 04330

(Mailing Address)

207-430-0112

(Telephone Number)

May 23, 2023

VIA HAND DELIVERY AND ELECTRONIC MAIL

Melanie Loyzim, Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
(207) 287-7688
Melanie.Loyzim@maine.gov

Subject: Petition to Require Maine Department of Environmental Protection
Rulemaking to Adopt Advanced Clean Cars II Regulation
Pursuant to 5 M.R.S. § 8055

Dear Commissioner Loyzim:

150 petitioners, together with Natural Resources Council of Maine, petition the Maine Department of Environmental Protection to initiate rulemaking proceedings to adopt an Advanced Clean Cars II regulation.

Enclosed with this cover letter, please find:

- Department Petition Cover Sheet;
- Petition to Require Maine Department of Environmental Protection Rulemaking to Adopt Advanced Clean Cars II Regulation Pursuant to 5 M.R.S. § 8055;
- Attachment 1. Certified Petition Signatures; and
- Attachment 2. Proposed Regulatory Text.

Thank you for your attention. Please don't hesitate to contact the undersigned with any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'JS', written in a cursive style.

Jack Shapiro
Climate and Clean Energy Director
Natural Resources Council of Maine

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

**PETITION TO REQUIRE
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
RULEMAKING TO ADOPT ADVANCED CLEAN CARS II REGULATION
PURSUANT TO 5 M.R.S. § 8055**

Filed by

150 VOTERS REGISTERED IN THE STATE OF MAINE

NATURAL RESOURCES COUNCIL OF MAINE

MAY 23, 2023

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I. INTRODUCTION

Maine law requires the state to reduce gross greenhouse gas (“GHG”) emissions 45% below 1990 levels within the next decade and 80% by 2050 in recognition of the grave threat climate change poses.¹ Despite this legal obligation, the Department of Environmental Protection (“Department”) has missed its statutory 2021 rulemaking deadline and failed to adopt any regulations or policies addressing Maine’s largest contributor: transportation. The Department’s inaction conflicts with the state’s Climate Action Plan, which emphasizes transportation electrification as a key strategy for achieving the mandatory emission reduction levels.² The Department’s inaction further defies the state’s Clean Transportation Roadmap, which recommends adoption of California’s vehicle emission regulations as “critical” for hitting the GHG milestones.³

Petitioners hereby submit this Petition to Require Agency Rulemaking to compel the Department to adopt zero-emission vehicle and low emission vehicle regulations for light-duty vehicles to reduce GHG emissions from the transportation sector as Maine law demands. Adoption of California’s Advanced Clean Cars II (“ACC II”) regulation is well within the Department’s long-standing and regularly exercised authority over vehicle emissions, and the proposed rule will benefit Maine’s environment, people, and economy.

a. Petitioners

150 registered voters of the state, together with Natural Resources Council of Maine, submit this petition pursuant to 5 M.R.S. § 8055. Signatures are certified by Portland, Farmington, Chesterville, Alfred, Topsham, Freeport, Brunswick, Sanford, Otisfield, Woodstock, and Norway municipalities, pursuant to 21-A M.R.S. § 354(7).

b. Petition

In compliance with 5 M.R.S. § 8055(2), Department *Information About Petitions to Require Agency Rulemaking*,⁴ and Department petition forms, this petition includes a cover letter and:

- Department Petition Cover Sheet;
- Petition to Require Maine Department of Environmental Protection Rulemaking to Adopt Advanced Clean Cars II Regulation Pursuant to 5 M.R.S. § 8055 (this document);

¹ 38 M.R.S. § 576-A.

² 38 M.R.S. § 577; Me. Climate Council, *Maine Won’t Wait: A Four-Year Plan for Climate Action* 38-42 (2020), https://www.maine.gov/climateplan/sites/maine.gov.climateplan/files/inline-files/MaineWontWait_December2020_printable_12.1.20.pdf.

³ Cadmus, *Maine Clean Transportation Roadmap* 53 (2021); *see also* Me. Exec. Order No. 36 FY 20/21, 1 (Mar. 30, 2021) (“[T]he transportation sector is vital to Maine’s economy and is also responsible for fifty four percent of greenhouse gas emissions in Maine . . .”).

⁴ Me. Dep’t of Env’t Prot., *Information About Petitions to Require Agency Rulemaking*, Maine.gov, <https://www.maine.gov/dep/rules/petition.html> (last visited Mar. 16, 2023).

- Attachment 1. Certified Petition Signatures; and
- Attachment 2. Proposed Regulatory Text.

c. Procedure

The Maine Administrative Procedure Act requires the Department to initiate appropriate rulemaking proceedings within 60 days of receipt of this Petition because it is submitted by more than 150 registered voters of the state.⁵

Petitioners respectfully request the Department conduct a public hearing as a component of the rulemaking pursuant to 5 M.R.S. § 8052.

II. DESCRIPTION OF THE PROPOSED RULE

Pursuant to 38 M.R.S. §§ 576-A, 585, 585-A, and 585-D, Petitioners urge the Department to promulgate a new chapter incorporating California's Zero Emission Vehicle (ZEV) and Low Emission Vehicle (LEV) IV regulations, together known as the Advanced Clean Cars II (ACC II) Program. The ACC II combines:

- ZEV standards that require increasing sales of battery electric vehicles, hydrogen fuel cell electric vehicles, and the cleanest possible plug-in hybrid-electric vehicles (PHEVs) for passenger cars and light-duty trucks; and
- LEV IV requirements that reduce smog-forming and particulate emissions from new light- and medium-duty internal combustion engine vehicles.

In addition, the ACC II includes charging and ZEV and PHEV assurance measures that set minimum warranty and durability requirements that will help ensure consumers successfully replace their internal combustion engine vehicles with new or used ZEVs and PHEVs. The Department's adoption of these provisions will drive sales of new ZEVs and PHEVs to 82% in Maine through model year (MY) 2032, which will reduce emissions of criteria and toxic air pollutants and greenhouse gases, improving air quality and reducing the adverse effects of climate change. The proposed rule would require the Department to conduct a mid-term review in 2029 to determine incorporation of ACC II percentage requirements for subsequent years.

California adopted these rules November 30, 2022, effective beginning with MY 2026. Under the CAA's two-model year lead time requirement, it is too late for Maine to impact vehicles of that model year. The soonest model year the state can impact is 2027. To do so, Petitioners urge the Department to adopt this rule by January 1, 2024.

The full text of the proposed Advanced Clean Cars II rule is found in Attachment 2.

III. MAINE'S ADOPTION OF THE PROPOSED RULE MUST BE EQUITABLE

⁵ 5 M.R.S. § 8055 (3); *see also* 21-A M.R.S. § 354 (7).

A central tenet of the Climate Law and Climate Action Plan is the advancement of equity through climate policies to “ensure communities and citizens who are often left behind can benefit from climate solutions by having access to opportunities and protection from threats.”⁶ Among other references to this important goal, the Climate Law directs the council to consider actions that “minimize deleterious effects, including those on persons of low income and moderate income,” and that create opportunities for economic growth, especially in “rural and economically distressed regions” of Maine.⁷ The council is to “[e]nsur[e] equity for all sectors and regions of the State and that the broadest group of residents benefit . . . with consideration of economic, quality-of-life and public health benefits.”⁸ The Maine Climate Council Equity Subcommittee introduced its recent report by explaining the rationale for this focus:

In Maine and across the world, climate change poses the greatest threat to communities which are already marginalized. Low-income communities and communities of color, among others, are often already subject to both social and environmental harm—experiencing disparities in health outcomes, and inequitable access to healthy, efficient, and secure housing, potable drinking water, and reliable transportation.⁹

The Climate Law’s emphasis on equity extends to the Department’s emissions reduction mandate: the rules ensuring compliance with the GHG levels must be “fair and equitable.”¹⁰ The Department’s adoption of the ACC II rules is consistent with the spirit and letter of the Climate Law and Climate Action Plan.

The ACC II will increase accessibility to personal EVs, helping the benefits of clean cars reach all Mainers, including low-income, rural or communities of color. Growing supply and demand will not only drive down costs of EVs as markets continue to improve; it will also contribute to more diversified model availability (including more affordable models) and will boost the burgeoning used EV market.¹¹ The adoption of ACC II would allow ZEV placement in community car share programs or related incentives to encourage sales to low-income community members. However, equity groups should be met and consulted with directly during the development of complementary policies, programs, and incentives that ensure disadvantaged communities experience the full benefits of ZEVs.

The ACC II regulations will more directly spur increased access to EVs by offering automakers compliance opportunities for actions targeting overburdened and lower-income communities. The proposed ACC II regulations would allow manufacturers to fulfill 5% of their

⁶ Me. Climate Council, *supra* note 2, at 6.

⁷ 38 M.R.S. § 577(7)(B).

⁸ *Id.* § 577(7)(C).

⁹ Me. Climate Council, Equity Subcomm., *Final Recommendations of the Equity Subcommittee of the Maine Climate Council* 5 (2023).

¹⁰ 38 M.R.S. § 576-A(4)(C).

¹¹ See Alexander Tankou et al., Int’l Council on Clean Transp., *Understanding and Supporting the Used Zero-Emission Vehicle Market* (2021), <https://theicct.org/wp-content/uploads/2021/12/ZEVA-used-EVs-white-paper-v2.pdf> (In the United States, five-year-old plug-in electric vehicles could save 11% to 17% in annual ownership costs relative to a comparable conventional car, and the savings increase to 17% to 22% for seven-year-old vehicles.)

total annual ZEV requirement by earning “environmental justice” credits.¹² Manufacturers can earn these credits by selling lower priced EVs, placing EVs at a 25% discount in qualifying “community-based clean mobility programs,” reselling EVs at the end of their lease to participating dealerships, and by offering financial assistance programs for low-income consumers.¹³ While these credits are voluntary for automakers, to maximize the equity benefits accruing under the ACC II, the Department should ensure that these programs are in place before automakers can start earning these credits. We urge the Department to work with all interested stakeholders, including rural, low-income and community of color organizations to develop and implement programs that qualify for these credits.

The impacts of climate change and air pollution affect all Mainers, but residents in low-income and Black, Indigenous, and people of color communities are especially vulnerable and often face the most severe impacts. The Department’s swift adoption of the ACC II proposed rule will ensure that communities historically overburdened with transportation pollution realize the benefits of zero-emission vehicles upon Maine’s air and transportation sector. The Department’s implementation of the ACC II rule will also align with the expectations of the state’s Climate Law and Climate Action Plan that require the advancement of equity in climate policymaking.

IV. CONCLUSION

Under 5 M.R.S. § 8055, Petitioners—including more than 150 registered voters of the state—urge the Department to take swift action in Maine’s transportation sector by adopting the proposed rule by January 1, 2024. Doing so will protect Maine’s residents, communities, and natural resources from the devastating effects of climate change while protecting Mainers’ health, boosting the economy, and promoting equity.

Petitioners urge the Department to promptly initiate rulemaking proceedings including a public hearing pursuant to 5 M.R.S. § 8052.

Thank you for your climate work and dedication. Petitioners look forward to continuing to work together to achieve just and effective solutions for all Mainers.

¹² 13 CCR § 1962.4(e)(2).

¹³ *Id.*

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'J' and 'S' intertwined.

Jack Shapiro
Climate and Clean Energy Director
Natural Resources Council of Maine

Chapter XX: ADVANCED CLEAN CARS II PROGRAM

SUMMARY: This regulation establishes motor vehicle emission standards for new passenger cars, light-duty trucks, and medium-duty vehicles by incorporating the requirements of the California Advanced Clean Cars II regulations, beginning model year 2027.

1. Applicability

- A. This Chapter applies statewide.
- B. This Chapter shall apply to all new 2027 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles subject to the California standards that are bought, sold, transferred, or registered in Maine, that have a production period beginning no less than two years after the effective date of this regulation.

2. Definitions

- A. **California-certified.** “California-certified” means having a valid executive order and approved by CARB for sale in California.
- B. **CARB.** “CARB” means the California Air Resources Board.
- C. **CARB Executive Order.** “CARB Executive Order” means a document issued by CARB certifying that a specified engine family, test group or model year vehicle has met all applicable Title 13 CCR requirements for certification and sale in California.
- D. **California Code of Regulations or CCR.** “California Code of Regulations” or “CCR” means the official compilation and publication of the regulations adopted, amended or repealed by California state agencies pursuant to the California Administrative Procedure Act.
- E. **Dealer.** “Dealer” means any person engaged in the business of selling, offering to sell, soliciting or advertising the sale of new vehicles who holds a valid sales and service agreement, franchise or contract, granted by the manufacturer or distributor for the retail sale of said manufacturer’s or distributor’s new vehicles.
- F. **Deliver for sale.** “Deliver for sale” means deliver for sale or for lease in Maine.
- G. **Department.** “Department” means the Maine Department of Environmental Protection.
- H. **Emergency vehicle.** “Emergency vehicle” means any authorized vehicle publicly owned and operated that is used by a peace officer, used for fighting fires or responding to emergency fire calls, used by emergency medical technicians or paramedics, used for towing or servicing other vehicles, used for repairing damaged lighting or electrical equipment.

- I. Fleet Average Emission.** “Fleet Average Emission” means a vehicle manufacturer’s average vehicle emissions of all greenhouse gases, non-methane organic gases (NMOG), or NMOG plus oxides of nitrogen (NO_x), as applicable, from all new vehicles delivered for sale or lease in Maine in any model-year.
- J. Greenhouse gas.** “Greenhouse gas” is as defined in Title 13 CCR § 1961.3(f).
- K. GHG.** “GHG” means greenhouse gas.
- L. Independent low volume manufacturer.** “Independent low volume manufacturer” is as defined in Title 13 CCR § 1900.
- M. Intermediate volume manufacturer.** “Intermediate volume manufacturer” is as defined in Title 13 CCR § 1900.
- N. Large volume manufacturer.** “Large volume manufacturer” is as defined in Title 13 CCR § 1900.
- O. Light-duty truck.** “Light-duty truck” is as defined in Title 13 CCR § 1900.
- P. Lease.** “Lease” means any commercial transaction recognized under the laws of this State as a means of creating a right to use a good and includes renting. It also includes offering to rent or lease.
- Q. Manufacturer.** “Manufacturer” means any small, independent low volume, intermediate or large volume vehicle manufacturer as those terms are defined in Title 13, *California Code of Regulations* Section 1900.
- R. Medium-duty passenger vehicle.** “Medium duty passenger vehicle” is as defined in Title 13 CCR § 1900.
- S. Medium-duty vehicle.** “Medium-duty vehicle” is as defined in Title 13 CCR § 1900.
- T. Model-year.** “Model-year” means the manufacturer’s annual production period for each engine family which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any motor vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.
- U. Motor Vehicle or Vehicle.** “Motor Vehicle” or “Vehicle” means any passenger car, light-duty truck, medium-duty passenger vehicle, medium-duty vehicle or heavy-duty vehicle as appropriate.
- V. New vehicle.** “New Vehicle” means any vehicle with 7,500 miles or fewer on its odometer.

- W. Passenger car.** “Passenger car” is as defined in Title 13 CCR § 1900.
- X. Qualifying Community-based Clean Mobility Program.** “Qualifying Community-based Clean Mobility Program” means a program determined by the Department to qualify as a community-based clean mobility program. The Department must determine that a program qualifies as a community-based clean mobility program before a manufacturer may earn vehicle value pursuant to the requirements of Title 13, California Code of Regulations Section 1962.4.
- Y. Recall.** “Recall” means the issuing of notices directly to consumers that vehicles in their possession or control should be corrected, and/or efforts to actively locate and correct vehicles in the possession or control of consumers.
- Z. Sell.** “Sell” means any commercial vehicles transaction recognized under the laws of this State as a means of transferring ownership of a good and includes barter. It also includes offering for sale.
- AA. Small volume manufacturer.** “Small volume manufacturer” is as defined in Title 13 CCR § 1900.
- BB. VEC.** “VEC” means vehicle equivalent credits.
- CC. ZEV—Zero-Emission Vehicle.** “Zero emission vehicle” is as defined in Title 13 CCR § 1962.4 for Advanced Clean Cars II.
- DD. ZEV Credit or ZEV Value.** “ZEV Credit” or “ZEV value” means a unit, expressed numerically, generated in accordance with Title 13 California Code Regulations, Section 1962.4.

3. Incorporation by Reference

- A.** This chapter incorporates by reference certain sections of Title 13, *California Code of Regulations*. Appendix A lists the sections of Title 13, *California Code of Regulations* incorporated by reference and the respective amended date for each section. The sections of Title 13, *California Code of Regulations* incorporated by reference in this chapter are the version of the section adopted as of the amended date in Appendix A. For purposes of applying the incorporated sections of the *California Code of Regulations*, unless clearly inappropriate, “California” shall mean “Maine.”
- B.** In the event there are inconsistencies or duplications in the requirements of the provisions of the CCR sections incorporated herein and this Chapter, the provisions of the CCR shall prevail.

- C. Nothing in the provisions incorporated by reference from the CCR shall affect the Department's authority to enforce statutes, rules, and permits, or any orders administered or issued by the Department.
- D. 13 CCR § 1962.4(c)(1)(B) is incorporated by reference, except that the Percentage Requirements are only incorporated up to and including the requirement for Model Year 2032. Incorporation of Percentage Requirements for subsequent years will be determined by a midterm review of Maine's Advanced Clean Cars II Program that the Department will conduct pursuant to Sec. 12 of this chapter.
- E. 13 CCR § 1962.4(m)(3) is incorporated by reference, except that the citation to "Health and Safety Code section 43016 and 43212" is replaced with "Title 38 M.R.S. § 349, Penalties."

5. Prohibitions

- A. **New Vehicle Emission Requirements.** No person or other entity, including a manufacturer or dealer, shall deliver for sale or lease, offer for sale or lease, sell or lease, import, deliver, purchase, lease, rent, acquire, or receive a new vehicle subject to this Chapter in or into Maine unless the vehicle has received a CARB Executive Order for all applicable requirements of Title 13, *California Code of Regulations* and complies with all applicable requirements of this chapter.
- B. **Exemptions.** The following new vehicles shall not be subject to this Chapter:
 - (1) An emergency vehicle.
 - (2) A vehicle with a right-hand drive configuration that is not available in a California-certified model, purchased by a rural route postal carrier and used primarily for work;
 - (3) A vehicle designed exclusively for off-road use;
 - (4) A vehicle certified to standards promulgated pursuant to the authority contained in 42 U.S.C. Section 7521 and which is in the possession of a rental agency in Maine and is next rented with a final destination outside of Maine; or
 - (5) A vehicle which is a military tactical vehicle or equipment.

6. Warranty

- A. For California-certified vehicles delivered for sale or lease in Maine, each manufacturer shall provide a warranty for the ultimate purchaser and each subsequent

purchaser that complies with the applicable warranty requirements of Title 13, California Code of Regulations Sections 1962.8, 2035 through 2038, 2040 and 2046.

7. Recall

- A. For all California-certified vehicles registered in Maine, each manufacturer shall undertake an action equivalent to that which is required by any order or enforcement action taken by CARB, or any voluntary or influenced emission related recall initiated by any manufacturer pursuant to Title 13, California Code of Regulations Sections 1962.7, 2101 through 2120, 2122 through 2133, and 2135 through 2149 unless within 30 days of CARB approval of said recall, the manufacturer demonstrates to the Agency that such recall is not applicable to vehicles registered in Maine. Each manufacturer must send to owners of Maine registered California-certified vehicles the same notice that is used for California owners required by Title 13, California Code of Regulations Sections 2118 or 2127.

8. Manufacturer Fleet Requirements

- A. Each manufacturer shall meet the following fleet requirements for the new vehicles delivered for sale or lease in Maine:
- (1) Effective for the 2027 and subsequent model-years, each manufacturer shall comply with the fleet average NMOG + NOx emission requirements and the LEV IV phase-in requirements for passenger cars, light-duty trucks, and medium duty vehicles, and may earn and bank NMOG + NOx credits or VECs as applicable, in accordance with Title 13, California Code of Regulations Section 1961.4.
 - (2) Effective for 2027 and subsequent model years, each manufacturer shall comply with the Zero Emission Vehicle sales requirements and, starting with 2025 model year vehicles, may earn and bank ZEV value, both in accordance with Title 13, California Code of Regulations Section 1962.4.

9. Manufacturer Reporting Requirements

- A. **Delivery Reporting.** Each manufacturer shall submit annually to the Department, by March 1 following the end of each model-year, a report, itemized by test group, documenting total new vehicles delivered for sale or lease in Maine.
- B. **Fleet Reporting**
- (1) Each manufacturer shall submit annually to the Department, by March 1 (or May 1 for GHG reporting) following the end of each model-year, a report that demonstrates that the manufacturer has met the fleet requirements of Section 8 in

Maine.

- (2) If a manufacturer wants to bank VECs, or GHG, NMOG + NO_x, or ZEV credits, the manufacturer shall submit annually, by March 1 or May 1 for GHG reporting, following the end of the model-year, a report, which demonstrates that such manufacturer has earned VECs or GHG, NMOG + NO_x, or ZEV credits in Maine. Credits are to be calculated in the same manner as required by CARB.

C. Recall Reporting

- (1) Each manufacturer shall submit, within 30 days of CARB approval, a copy of any CARB approved voluntary, influenced or ordered recall plan specified by Title 13, California Code of Regulations Sections 1962.7, 2114, and 2125 supplemented with the number of affected vehicles registered in Maine.
- (2) Each manufacturer shall submit recall campaign progress reports for vehicles registered in Maine, within the timelines of, and containing the information required by, Title 13, California Code of Regulations Sections 1962.7, 2119, and 2133. Reports need not be submitted to the Department if the equivalent reports have been waived by CARB.

D. Documentation

A manufacturer, a dealer or a transporter of new vehicles shall, upon request, provide to the Department any documentation which the Department determines to be necessary for the effective administration and enforcement of this Chapter.

10. Regional Document Repository

Maine may enter into an agreement with other states to establish a regional document repository.

11. Dealer Inspection

The Department or its agents may conduct inspections on any premises owned, operated, used, leased, or rented by any dealer.

12. Program Review

The Department will conduct a review of the program no later than January 1, 2028. Such review shall consider, among other factors, technical feasibility, cost-effectiveness, air pollution reductions, and availability of vehicles for subsequent model-years.

13. Severability

Each Section of this Chapter shall be deemed severable, and in the event that any Section of this Chapter is held invalid, the remainder shall continue in full force and effect.

AUTHORITY: 38 M.R.S.A., Sections 576-A, 585, 585-A, 585-D
