

Proposed 20.2.88 NMAC

June 10, 2021

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY STANDARDS
PART 88 EMISSION STANDARDS FOR NEW MOTOR VEHICLES

20.2.88.1 ISSUING AGENCY: Environmental Improvement Board
[20.2.88.1 NMAC – N, xx/xx/2021]

20.2.88.2 SCOPE: This part applies to any person who transfers a new motor vehicle for titling or registration in the State of New Mexico.
[20.2.88.2 NMAC – N, xx/xx/2021]

20.2.88.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, Section 74-1- 8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq.
[20.2.88.3 NMAC – N, xx/xx/2021]

20.2.88.4 DURATION: Permanent.
[20.2.88.4 NMAC – N, xx/xx/2021]

20.2.88.5 EFFECTIVE DATE: January 1, 2022.
[20.2.88.5 NMAC – N, xx/xx/2021]

20.2.88.6 OBJECTIVE: The objective of this part is to improve the health and welfare of New Mexico residents by reducing emissions of criteria pollutants, air toxics, and greenhouse gases resulting from new passenger motor vehicles.
[20.2.88.6 NMAC – N, xx/xx/2021]

20.2.88.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC – Definitions, as used in this Part, the following definitions apply:

- A. “**CARB**” means the California Air Resources Board.
- B. “**California Standards**” means those emission standards and requirements for motor vehicles and new motor vehicle engines that the State of California has adopted for Model Years 2025 and all subsequent model years, and for which it has received a waiver from the U.S. Environmental Protection Agency pursuant to 42 U.S.C. § 7543(b) as of the effective date of this rulemaking.
- C. “**Department**” means the New Mexico Environment Department.
- D. “**Emergency vehicle**” means any publicly owned vehicle operated by a peace officer in the performance of his duties, any authorized emergency vehicle used for fighting fires or responding to emergency fire calls, any publicly owned authorized emergency vehicle used by an emergency medical technician or paramedic, or any ambulance used by a private entity under contract with a public agency.

- 1 E. The terms “**light-duty truck**,” “**LTD1**,” and “**LTD2**” shall have the same meaning in
2 this part as in California Code of Regulations, title 13, section 1900(b)(11).
- 3 F. “**Military tactical vehicle**” shall have the same meaning in this part as in California
4 Code of Regulations, title 13, section 1905.
- 5 G. “**Motor vehicle**” means any self-propelled vehicle designed for transporting persons
6 or property on a street or highway, other than motorized bicycles.
- 7 H. “**NMOG**” means non-methane organic gas.
- 8 I. “**New motor vehicle**” means a motor vehicle with 7,500 miles or fewer on its
9 odometer.
- 10 J. “**Passenger car**” means any motor vehicle designed primarily for transportation of
11 persons and having a design capacity of twelve persons or less.
- 12 K. “**Test group**” means a grouping of vehicles as defined by 40 C.F.R. section 86.1827-
13 01.
- 14 L. “**Transfer**” means to sell, import, deliver, purchase, lease, rent, acquire, or receive a
15 motor vehicle for titling or registration in New Mexico.
- 16 M. “**Zero emission vehicle**” or “**ZEV**” means a vehicle that produces zero exhaust
17 emissions of any criteria pollutant (or precursor pollutant) or greenhouse gas under
18 any possible operational modes or conditions.

19 [20.2.88.7 NMAC – N, xx/xx/2021]

20 **20.2.88.8 SUMMARY OF REQUIREMENTS IMPOSED BY THIS PART:** Effective
21 model year 2025 and each model year thereafter:

- 22 A. No person may transfer a new motor vehicle in the State of New Mexico unless that
23 vehicle (1) has been certified by CARB to comply with the California Standards
24 applicable, as of the effective date of this rulemaking, to model year 2025 and all
25 subsequent model years or (2) is subject to an exemption set forth in 20.2.88.**Error!**
26 **Reference source not found.** NMAC.
- 27 B. Each manufacturer subject to this part shall comply with all the applicable
28 requirements of this part, including the fleet average emission standards, the ZEV
29 requirement, and the warranty, recall, reporting, and registration requirements.
- 30 C. Each motor vehicle dealer and rental car agency shall comply with any inspection and
31 information requests issued under this part.

32 [20.2.88.8 NMAC – N, xx/xx/2021]

1 **20.2.88.9 EXEMPTIONS:** Effective model year 2025 and each model year thereafter:

2 The following vehicles are not subject to this part:

3 (a) Military tactical vehicles.

4 (b) A vehicle sold for registration and use in a state that has not adopted California's
5 vehicle emission standards.

6 (c) Previously registered vehicles with more than 7,500 miles, provided that for
7 vehicle dealers, the mileage at the time of sale is determined by the odometer
8 statement when the dealer acquired the vehicle.

9 (d) A vehicle transferred by inheritance or as a result of divorce, dissolution, or legal
10 separation.

11 (e) Emergency vehicles when a public safety agency has demonstrated to the
12 department's satisfaction that a vehicle that meets the agency's needs is not
13 otherwise available.

14 (f) A vehicle acquired by a New Mexico resident to replace a vehicle registered to
15 such resident that was stolen, damaged, or failed beyond reasonable repair while
16 out of state, provided that such replacement vehicle is acquired before the owner
17 returns to the State of New Mexico.

18 (g) A vehicle with a right-hand drive configuration that is not available in a
19 California-certified model which vehicle is purchased by a rural route postal
20 carrier and used primarily for work.

21 (h) A vehicle sold for the purpose of being wrecked or dismantled.

22 (i) A vehicle purchased by a nonresident before establishing residency in New
23 Mexico, regardless of the mileage of the vehicle.

24 [20.2.88.9 NMAC – N, xx/xx/2021]

25 **20.2.88.10 FLEET AVERAGE EMISSION REQUIREMENTS**

26 Effective model year 2025 and each model year thereafter:

27 A. Each manufacturer must comply with the fleet average NMOG plus oxides of
28 nitrogen emission values set forth in California Code of Regulations, title 13, section
29 1961.2. Each manufacturer may accrue and use credits and debits based upon the
30 manufacturer's sales of vehicles subject to this part in New Mexico, in accordance
31 with the procedures set forth at California Code of Regulations, title 13, section
32 1961.2.

1 **B.** Each manufacturer of a Passenger Car, Light-Duty Truck, or Medium-Duty Passenger
2 Vehicle produced and delivered for sale or lease in New Mexico shall comply with
3 the fleet average greenhouse gas exhaust emission standards set forth in California
4 Code of Regulations, title 13, section 1961.3. Manufacturers of Medium-Duty
5 Vehicles produced and delivered for sale or lease in New Mexico shall comply with
6 the CO₂ emission standards set forth in California Code of Regulations, title 13,
7 section 1956.8(h)(6). Credits and debits may be accrued and utilized based upon each
8 manufacturer’s sales of vehicles subject to this part in New Mexico, in accordance
9 with the procedures set forth in California Code of Regulations, title 13, section
10 1961.3.

11 [20.2.88.10 NMAC – N, xx/xx/2021]

12 **20.2.88.11 ZEV REQUIREMENT**

- 13
- 14 **A.** Beginning with model year 2025, all ZEVs must be certified by the Executive
15 Officer of CARB in accordance with section 1962.2(a) of Title 13 of the
16 California Code of Regulations.
- 17 **B.** Effective model year 2025 and each model year thereafter, each manufacturer
18 shall produce and deliver at least the minimum number of ZEV credits required
19 by this section. The minimum number of ZEV credits required for each
20 manufacturer is equal to the “applicable ZEV percentage” multiplied by the
21 “manufacturer’s production volume.” For purposes of this provision, the
22 “applicable ZEV percentage” means the relevant percentage set forth in California
23 Code of Regulations, title 13, section 1962.2(b)(1). The “manufacturer’s
24 production volume” means the number of passenger cars and light-duty trucks
25 delivered to New Mexico by the manufacturer, which number shall be determined
26 in accordance with California Code of Regulations, title 13, section
27 1962.2(b)(1)(B), substituting “New Mexico” for “California” wherever it appears.
- 28 **C.** Beginning with model year 2025, a manufacturer shall open an account in the
29 California ZEV Credit System for banking credits generated in this State. The
30 manufacturer may deposit and earn ZEV credits for each qualifying vehicle
31 delivered for sale in this State in accordance with this section and sections
32 1962.2(c), (d) and (g) of Title 13 of the California Code of Regulations.
- 33 **D.** A manufacturer may earn early action credits for any 2023 and 2024 model year
34 range extended battery electric vehicles, neighborhood electric vehicles,
35 transitional zero emission vehicles and zero emission vehicles the manufacturer
36 produces and delivers for sale in New Mexico by reporting the total production
37 and delivery of such vehicles to the Department at the end of the 2023 and 2024
38 model years. Any early action credits earned for model years 2023 and 2024
39 earned pursuant to this section will be deposited into the manufacturer’s account
40 in the California ZEV Credit System for model year 2025 in addition to the
41 credits deposited pursuant to 20.2.88.12 NMAC.

- 1 E. A manufacturer may deposit into the account a number of credits equal to the
- 2 manufacturer’s 2025 model year starting California credit balance multiplied by
- 3 the number of new passenger cars and light-duty trucks the manufacturer
- 4 produced and delivered for sale in New Mexico in model year 2025 and divided
- 5 by the number of new passenger cars and light-duty trucks that the manufacturer
- 6 produced and delivered for sale in California in model year 2025.

- 7 F. A manufacturer may not make a deposit pursuant to this section until all credit
- 8 obligations for model years 2024 and earlier have been satisfied in California.

- 9 G. Credits awarded under subsection E:

- 10 1. May not be traded, sold, or used to satisfy a manufacturer’s credit obligation in
- 11 any model year unless and until the regulations in this Part are superseded by new
- 12 regulations updating New Mexico’s Clean Car Program, and

- 13 2. May only be traded, sold, or used in model years for which the credit obligation
- 14 has been modified by such new regulations.

- 15 H. On or before September 1 of each year, following the close of the model year,
- 16 each manufacturer must submit to the Department a report detailing the credits
- 17 generated or credits transferred to or from any another manufacturer for each
- 18 qualifying vehicle sold or delivered for sale in this State during the previous
- 19 model year. The report must be prepared in the same format as the report
- 20 submitted to CARB.

21 [20.2.88.11 NMAC – N, xx/xx/2021]

22 **20.2.88.12 CREDIT PROVISIONS APPLICABLE IN THE EVENT NEW MEXICO’S**
23 **CLEAN CAR STANDARDS ARE AMENDED.**

- 24 A. As part of any update to the regulations in this Part, the updated regulations:

- 25 1. Shall allow manufacturers to trade, sell, and use credits awarded under Section
- 26 20.2.88.11(E) in a manner consistent with the California Advanced Clean Cars
- 27 program;

- 28 2. Shall result in a total ZEV credit percentage required from ZEVs delivered for
- 29 sale in New Mexico that equivalent to the total ZEV credit percentage required
- 30 from ZEVs delivered for sale in California for the same compliance year;

- 31 3. Shall adjust the New Mexico ZEV credit bank balances under the new regulations
- 32 referenced in 20.2.88.12(D) to mirror changes made to the California ZEV credit
- 33 banks including but not limited to discounting of credits in the credit bank and/or
- 34 to mirror restrictions or limitations on use of the credits; and

- 1 4. Must take into account only existing ZEV credit banks, any changes in or
- 2 restrictions on use of ZEV credits, and the new regulatory requirements, and not
- 3 external factors such as the availability of infrastructure, incentives, or other
- 4 supporting measures.

5 [20.2.88.12 NMAC – N, xx/xx/2021]

6 **20.2.88.13 REPORTING**

7 A. The Department may require a manufacturer to submit any documentation that the

8 Department deems necessary to effective administration and enforcement of this part,

9 including any material submitted, or required to be submitted, to CARB under California

10 law.

11 B. Effective model year 2025 and each model year thereafter, each manufacturer shall

12 submit annually to the Department, no later than March 31 following the close of the

13 model year, a report documenting (1) the total deliveries for sale in New Mexico of

14 vehicles in each test group during the prior model year, (2) the average greenhouse gas

15 emissions of the fleet of vehicles delivered by the manufacturer to New Mexico during

16 the prior model year, and (3) the average NMOG exhaust emissions of the fleet of

17 vehicles delivered by the manufacturer to New Mexico during the prior model year. The

18 report shall be in the same format, and be prepared in accordance with the same

19 procedures, as the manufacturer uses when reporting similar information to CARB.

20 C. If the “Pooling Provision” option number two in the California Code of Regulations, title

21 13, section 1961.2 is chosen, or the “Calculation of Fleet Average Carbon Dioxide

22 Value” option number two in California Code of Regulations, title 13, section 1961.3

23 (5)(D) is chosen, or if the Department otherwise requires it, manufacturers must report

24 the data for the entire pool as well as the New Mexico specific portion.

25 [20.2.88.13 NMAC – N, xx/xx/2021]

26 **20.2.88.14 EMISSION CONTROL SYSTEM WARRANTIES**

27 Any manufacturer of a vehicle subject to this part shall comply with all applicable emission

28 control system warranties under California law, including those found in California Code of

29 Regulations, title 13, article 6. Reports generated by or for CARB and associated findings made

30 by CARB shall be acceptable for demonstrating compliance with this section.

31 [20.2.88.14 NMAC – N, xx/xx/2021]

32 **20.2.88.15 RECALLS**

33 Any order issued or enforcement action taken by CARB that results in the recall of a vehicle

34 pursuant to California Code of Regulations, title 13, Article 2.1 or Article 2.2, shall be prima

35 facie evidence that the vehicle is non-compliant with this part. If the manufacturer demonstrates

36 to the Department’s satisfaction that a recall of the vehicle in New Mexico is not appropriate

1 because the vehicles sold in New Mexico are compliant with this part, the Department shall not
2 pursue a recall. Otherwise, the Department shall pursue a recall of the non-compliant vehicle,
3 following the procedures set forth in procedures set forth in California Code of Regulations, title
4 13, Article 2.1 or Article 2.2, which are hereby incorporated by reference.

5 [20.2.88.15 NMAC – N, xx/xx/2021]

6 **20.2.88.16 REGISTRATION AND FEES**

7 **A.** After January 1, 2022, no affected manufacturer shall transfer a motor vehicle potentially
8 subject to this part without first obtaining a registration from the Department.

9 **B.** The registration shall have a term of no more than 10 years and shall be subject to an
10 annual fee.

11 **C.** The Department shall assess an annual registration fee of \$10,000 to each affected
12 manufacturer for the period beginning July 1 and ending June 30 of the next year.

13 **D.** Each affected manufacturer shall remit the specified amount payable to the New Mexico
14 Environment Department by April 1, annually.

15 **E.** The term “affected manufacturer” as used in this section means any manufacturer that
16 qualifies as a “large-volume manufacturer” or “intermediate volume manufacturer” as
17 those terms are defined in 13 California Code of Regulations, title 13, section 1900.

18 [20.2.88.16 NMAC – N, xx/xx/2021]

19 **20.2.88.17 INSPECTIONS AND INFORMATION REQUESTS**

20 **A.** For the purpose of determining compliance with this part, the Department may inspect
21 any new or used motor vehicle, and may inspect and copy relevant, non-financial records,
22 including records documenting vehicle origin, certification, delivery, or sales, and any
23 record of emission-related part repairs performed under warranty.

24 **B.** For the purpose of determining compliance with this part, the Department may require a
25 vehicle dealer or rental car agency to submit relevant, non-financial documentation
26 related to a motor vehicle subject or potentially subject to this part.

27 **C.** A vehicle dealer or rental car agency may assert a claim, pursuant to 20.2.1.115 NMAC,
28 to have a record subject to protections applicable to confidential information.

29 [20.2.88.17 NMAC – N, xx/xx/2021]

30 **20.2.88.18 SEVERABILITY**

1 If any provision of this part, or the application of such provision to any person or circumstance,
2 is held invalid, the remainder of this part, or the application of such provision to persons or
3 circumstances other than those as to which it is held invalid, shall not be affected thereby.

4 [20.2.88.18 NMAC – N, xx/xx/2021]

5 **20.2.88.19 CONSTRUCTION**

6 This part shall be liberally construed to carry out its purpose of improving the health and welfare
7 of New Mexico residents by reducing emissions of criteria pollutants, air toxics, and greenhouse
8 gases.

9 [20.2.88.19 NMAC – N, xx/xx/2021]

10 **20.2.88.20 OTHER REGULATIONS NOT AFFECTED**

11 Compliance with this part does not relieve a person from the responsibility to comply with any
12 other applicable federal, state, or local regulations.

13 [20.2.88.20 NMAC – N, xx/xx/2021]