

**STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD**

IN THE MATTER OF PROPOSED NEW REGULATION,
20.2.88 NMAC – *Emission Standards for New Motor Vehicles*

No. EIB 21-30

STATEMENT OF REASONS

Pursuant to 20.1.1.300.B NMAC, Center for Civic Policy, Conservation Voters New Mexico, Natural Resources Defense Council, Plug In America, Prosperity Works, Sierra Club, Southwest Energy Efficiency Project, and 350 New Mexico (“Climate Advocates”) provide the following Statement of Reasons in support of the proposed regulation 20.2.88 NMAC – *Emission Standards for New Motor Vehicles* (“Clean Car Standards”).

Purpose of Rulemaking. The Clean Car Standards are needed 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. Ozone pollution is a particular concern in New Mexico. Three New Mexico counties (Bernalillo, Doña Ana, and Eddy) are currently exceeding the 2015 national ambient air quality standard (“NAAQS”) for ozone, based on the most recent three-year design values,¹ while another five counties (Lea, San Juan, Sandoval, Rio Arriba, and Valencia) are exceeding 95% of the standard.² Doña Ana County contains a federally designated ozone nonattainment area, centered on the City of Sunland Park.³

Mobile sources are a major contributor to New Mexico’s ozone problem. In the Sunland Park Ozone Nonattainment Area, for example, mobile sources are the single largest contributor

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

² <https://www.env.nm.gov/air-quality/o3-initiative/>

³ <https://www.env.nm.gov/air-quality/dona-ana-2/>

to regional ozone exceedances, responsible for between 3.7 and 7.4 parts per billion of ozone.⁴ Statewide, mobile sources were responsible for substantial amounts of ozone-precursor pollution—including over 75,000 tons of NO_x emissions in 2014, or 23% of the state’s total.⁵

The transportation sector is the second largest source of greenhouse gas emissions in the state, behind oil-and-gas sector but ahead of electricity generation.⁶ Governor Lujan Grisham has identified implementation of Clean Car Standards as one of the most impactful steps the state can take to reduce its contribution to the climate crisis. As the New Mexico Interagency Climate Change Task Force recently explained:

In September 2019, Governor Lujan Grisham announced that New Mexico will join 14 other states in adopting low emission vehicle (LEV) standards and 11 other states adopting zero-emission vehicle (ZEV) standards. NMED will hold initial informational public meetings on these regulations starting in spring 2021 and petition the Environmental Improvement Board (EIB) in July 2021 to hold a hearing on proposed rules later in 2021. If adopted, these standards will take effect in January 2023. The LEV rules would limit greenhouse gas and other pollutants from cars and light duty trucks and the ZEV rules would require a percentage of new vehicles for sale in New Mexico to be zero-emission vehicles.⁷

Statutory Authority. The Board has authority pursuant to N.M. Stat. Ann. § 74-2-5 to “adopt, promulgate, publish, amend and repeal rules and standards consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution” Subsection D of this provision goes on to provide: “Any regulation

⁴ <https://www.env.nm.gov/air-quality/wp-content/uploads/sites/2/2017/02/Sunland-Park-179B-Final.pdf> at 20.

⁵ https://www.wrapair2.org/pdf/NM_OAI_2028_AQTSD_v8.pdf at Figure 4-3.

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

⁷ https://www.climateaction.state.nm.us/documents/reports/NMClimateChangeReport_2020.pdf at 14.

adopted pursuant to this section shall be consistent with federal law, if any, relating to control of motor vehicle emissions.”

The proposed Clean Car Standards are consistent with federal law. Under Section 177 of the federal Clean Air Act, “any State” that has adopted state implementation plan provisions that were approved under Part D of the Clean Air Act⁸ “may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines . . . if (1) such standards are identical to the California standards for which a waiver has been granted for such model year, and (2) California and such state adopt such standards at least two years before commencement of such model year” 42 U.S.C. § 7507.

The standards proposed here are identical to the LEV and ZEV standards that California has adopted for model year 2025 and all subsequent model years. California received a waiver for these standards under the Obama Administration, 78 Fed. Reg. 2112 (Jan. 9, 2013), which the Biden Administration is in the process of reinstating, 86 Fed. Reg. 22,421 (Apr. 28, 2021). States are permitted to adopt California’s standards before a waiver is formally granted for those standards, as long as they do not attempt to enforce the standards until after the waiver is granted. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. New York State Dep’t of Env’t Conservation*, 17 F.3d 521, 534 (2d Cir. 1994). Accordingly, New Mexico may adopt the proposed Clean Car Standards, consistent with federal law, and can enforce them once

⁸ New Mexico has adopted plan provisions that were approved pursuant to Part D of the Clean Air Act. *See Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting*, 78 Fed. Reg. 4339 (Jan. 22, 2013).

California's waiver is reinstated. Indeed, thirteen states⁹ and the District of Columbia have adopted the LEV standards, with ten of these states¹⁰ also adopting the ZEV program.

Notably, the Board has previously adopted Clean Car Standards, pursuant to N.M. Stat. Ann. § 74-2-5 and consistent with Section 177 of the Clean Air Act. On December 31, 2007, the Board finalized regulations which adopted California's emission standards to begin in model year 2011. The regulations were rendered unnecessary upon the promulgation of new federal standards matching the stringency of California's standards, and were subsequently repealed.

Summary of Proposed Regulation. As explained, in order to comply with Section 177 of the federal Clean Air Act, New Mexico's Clean Car Standards must be "**identical**" to the standards adopted in California. The proposed Clean Car Standards draw upon regulatory language adopted in other Section 177 states, as well as on the regulatory text adopted by the Board in December 2007, to establish LEV standards and ZEV credit requirements that are identical to those that California has adopted for the model years in question.

The first seven sections of the rule, proposed 20.2.88.1 through 20.2.88.7 NMAC, identify the issuing agency, scope, statutory authority, duration, effective date, objective, and definitions for the rulemaking. Although the rule will take effect January 1, 2022 (during model year 2023), it will not apply until two years thereafter, consistent with Section 177 of the Clean Air Act. Proposed 20.2.88.8 NMAC provides that, effective model year 2025 and each model year thereafter, no person may deliver a new motor vehicle for sale in the State of New Mexico unless (1) the vehicle has been certified by the California Air Resources Board ("CARB") to

⁹ These states are: Colorado, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.

¹⁰ These states are: Colorado, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Vermont.

comply with the California Standards applicable to that model year as of the effective date of this rulemaking or (2) an exception applies. It further specifies that each manufacturer must comply with the substantive provisions of the rule, including the fleet average emission standards, the ZEV requirement, and the warranty, recall, reporting, and registration requirements.

Proposed 20.2.88.9 NMAC sets forth certain vehicles that are exempt from the Clean Car Standards. The exemptions are identical to those that apply in California and other Section 177 states. Proposed 20.2.88.10 NMAC establishes fleet average emission requirements for non-methane organic gases (“NMOG”) plus oxides of nitrogen, and for greenhouse gases. All of these emission standards are expressed as a fleet-wide average.

Proposed 20.2.88.11 NMAC establishes the ZEV Credit Requirement applicable to manufacturers. The minimum number of ZEV credits required for each manufacturer is derived from the applicable ZEV percentage set forth in the California Standards. This section allows manufacturers to generate “early action” credits for certain model year 2023 and 2024 ZEVs that are delivered for sale in New Mexico. This section also allows manufacturers to deposit in their account a specified number of credits based on the manufacturer’s model year 2025 California credit balance, but such credits may not be used for compliance unless the regulations are amended in the future. Proposed 20.2.88.12 NMAC sets forth the crediting program that shall apply in the event New Mexico’s Clean Car Standards are updated after model year 2025.

Proposed 20.2.88.13 NMAC sets forth reporting requirements for manufacturers. Proposed 20.2.88.14 NMAC sets forth emission control system warranty requirements. Proposed 20.2.88.15 NMAC sets forth provisions for recalling vehicles that do not comply with the Clean Car Standards. Proposed 20.2.88.16 NMAC sets forth registration requirements for manufacturers and provides for the payment of fees at the time a vehicle is registered. Proposed

20.2.88.17 NMAC governs inspections and information requests. Proposed 20.2.88.18 through 20.2.88.20 NMAC set forth instructions on how the regulation should be construed and provide for the severability of provisions found to be unlawful.

Respectfully submitted,

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