



NEW MEXICO
ENVIRONMENT DEPARTMENT



Air Quality Bureau

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RYAN FLYNN
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June 5, 2013

Dear Air Quality Stakeholder,

In 2007, the New Mexico Environmental Improvement Board (EIB) adopted the regulation 20.2.88 NMAC – Emission Standards for New Motor Vehicles. Under the requirements of the federal Clean Air Act, any state provisions related to motor vehicle standards must be identical to those approved from California, and so 20.2.88 NMAC incorporated by reference the California rules that were in effect at that time. In 2010, the EIB reopened and added a new section 20.2.88.14 NMAC, waiving all requirements until January 1, 2016.

Federal law requires that the EIB reopen and take further action on 20.2.88 NMAC before the end of this year. Because the California standards have been significantly revised since 2007, New Mexico would be in violation of the federal Clean Air Act if 20.2.88 NMAC remains as it is; it would come into effect in 2016 incorporating standards that are no longer identical to California's. The regulatory action must be taken by the end of this year because the Clean Air Act also requires that any change to the rule must occur at least 2 years prior to implementation. In order to achieve this deadline we will be asking the EIB in July to set a hearing in November.

The EIB has several options with regards to reconsideration of 20.2.88 NMAC. Attached is a summary of those options and the pros and cons of each. As indicated in the summary, the New Mexico Environment Department, Air Quality Bureau, after reviewing the options, is planning to recommend to the EIB that the regulation be rescinded. However, we welcome your comments regarding this recommendation. In addition, the regulatory process assures that you will have the opportunity to provide comments to the EIB when it considers this regulation.

If you would like to make comments to the New Mexico Environment Department Air Quality Bureau, or be added to (or removed from) the list of persons who will be notified of activities related to this regulatory action, please contact Lany Weaver at (505) 476-4322 or lany.weaver@state.nm.us.

Thank you for your interest in New Mexico's Air Quality.

Sincerely,

Richard L. Goodyear, P.E.
Bureau Chief

Regulatory Options for

20.2.88 NMAC – *Emission Standards for New Motor Vehicles*

June 5, 2013

Executive Summary

This rule was first adopted in 2007 to apply the California motor vehicle emissions standards within New Mexico. At the request of the New Mexico Environment Department Air Quality Bureau, the rule's requirements were waived in 2010 and have not taken effect. Due to the upcoming expiration of the waiver and certain provisions in the federal Clean Air Act, the Environmental Improvement Board (EIB) is required to reconsider 20.2.88 NMAC by the end of this year. Although the federal and California motor vehicle emissions standards are in the process of becoming synchronized until 2025, they will remain different with regards to requirements for 'zero emissions' vehicles and state-specific average fleet emissions. Three regulatory options are described for the rule; to rescind, update, or continue to waive the rule's requirements. The recommendation of the Environment Department Air Quality Bureau is to rescind the rule. A timeline is provided, which meets the statutory requirements for hearings and includes additional stakeholder involvement.

The Background and Requirements of 20.2.88 NMAC

The regulation 20.2.88 NMAC – *Emission Standards for New Motor Vehicles* was first adopted in 2007 to apply the California motor vehicle emissions standards, or "California standards", within New Mexico beginning with model year 2011. The regulation applied to the sale, delivery, purchase, rent, lease, and registration of new light- and medium-duty motor vehicles in the State of New Mexico. Under Section 177 of the federal Clean Air Act (CAA), states may adopt and enforce the new motor vehicle emissions standards only if they are identical to the California standards, and 20.2.88 NMAC met this provision by incorporating portions of the California rules by reference. New Mexico was one of fourteen states and the District of Columbia to adopt the California standards under Section 177.

The adoption of 20.2.88 NMAC was part of a broader package of initiatives to reduce greenhouse gas emissions under Governor Richardson's Executive Order 2006-069 – *New Mexico Climate Change Action*, which directed the New Mexico Environment Department to submit to the EIB new motor vehicle emissions standards consistent with the California clean car standards no later than the end of calendar year 2007. In a joint hearing, the Albuquerque-Bernalillo County Air Quality Control Board adopted the same requirements for their jurisdiction.

The California standards actually consist of three separate sets of standards: (1) standards applicable to air pollutants, including non-methane organic gases, known as the Low Emission Vehicle program (LEV); (2) standards requiring a percentage of total sales for each manufacturer to consist of zero emission vehicles (ZEV); and (3) emissions standards for greenhouse gases. Additional provisions address emissions credits (and their banking), control equipment warranties, recalls, registration and labeling. In order to cover staffing needs for the program, 20.2.88 NMAC levied annual fees on large and intermediate-volume automakers.

At the time that 20.2.88 NMAC was adopted, the California standards were more stringent than the federal motor vehicle emissions standards with regards to emissions of conventional air pollutants, including non-methane organic gases (NMOG), carbon monoxide, oxides of nitrogen, formaldehyde, and particulates. There was not a comparable federal standard for motor vehicle greenhouse gas emissions. In addition, the federal program did not include a ZEV standard. As a result of having to meet federal and California standards, automakers frequently produced more than one version of a model of car. The technologies incorporated into a model's 'clean car' version also increased fuel efficiency, resulting in lower operating costs for the vehicle owner.

Since New Mexico's adoption of 20.2.88 NMAC, the Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA) adopted a national clean cars program designed to reduce GHG emissions and increase fuel economy (CAFE standards) for all new motor vehicles sold in the United States. This program, typically referred to as the Light-Duty Vehicle Rule and promulgated on April 1, 2010, applied increasingly stringent emissions limits from model years 2012 to 2016, with the federal standards achieving the same reduction in 2016 as the California standards. This approach has allowed manufacturers to build a single light-duty national fleet that satisfies the standards adopted by the federal government, the State of California, and the states that implemented the California standards.

With adoption of the federal Light-Duty Vehicle Rule, the same emissions reduction could be achieved in New Mexico without incurring the additional expense of implementing a state program. At the request of the New Mexico Environment Department Air Quality Bureau, the EIB reopened 20.2.88 NMAC in 2010 and added a new section, 20.2.88.14 NMAC, to waive all requirements in the regulation until January 1, 2016. There was no opposition to this proposal. Fees that had been collected from automakers were reimbursed, and the Bureau was able to conserve its resources for other more pressing work.

In July 2011, automakers, California and the federal government committed to a series of actions that would harmonize the federal and California standards for motor vehicles for model years 2017 to 2025. Such harmonization will allow automakers to continue to produce one version of a vehicle for nationwide sale and establish federal greenhouse gas emissions limits for vehicles. The current version of the California standard (LEV III) is comparable to proposed federal standards (Tier 3) which are scheduled to be finalized by the end of this year. The proposed federal Tier 3 rules have received strong support from automakers. The federal and California standards continue to differ with regards to requirements for 'zero emissions' vehicles. In addition, state-specific average fleet emissions limits, and the reporting that verifies state-specific limits, apply only to states that implement the California standards under Section 177.

Why the EIB Must Address 20.2.88 NMAC This Year

Under Section 177(1) of the CAA, any state provisions related to motor vehicle standards must be identical to the California standards. When adopted in 2007, 20.2.88 NMAC incorporated by reference the California rules that were in effect at that time. Since then, the California regulations have been significantly revised. As a result, 20.2.88 NMAC cannot be implemented in its current form.

Under Section 177(2) of the CAA, a state rule that incorporates the California standards must be adopted or revised at least 2 years prior to when that state rule becomes effective. Under the current section 20.2.88.14 NMAC, all requirements in the rule are waived until January 1, 2016. However, if the rule were to become effective on January 1, 2016, it would have to be identical to the updated California standards by January 1, 2014.

In June, the New Mexico Environment Department Air Quality Bureau will submit a request that the EIB, at its July meeting, set a November hearing date to reconsider and take action on 20.2.88 NMAC. The three regulatory options described below are to rescind the rule, update it, or extend the waiver of its requirements.

Regulatory Option 1: Rescind 20.2.88 NMAC

The simplest regulatory action the EIB can take on this rule is to rescind it. In doing so, the emissions from new autos delivered to the state (outside of Bernalillo County) would only be subject to federal requirements (as is currently the case). If the federal Tier 3 rules are finalized in their existing form, federal requirements will be comparable to the California standards. By rescinding 20.2.88 NMAC, the potential administrative burdens to automakers and the New Mexico Environment Department Air Quality Bureau from implementing 20.2.88 NMAC would not occur. Automakers would not be required to register or pay fees under this rule, or track and report the anticipated emissions from the auto fleet delivered to this state.

In the event that the proposed federal Tier 3 regulations to harmonize federal and California standards until 2025 are not finalized or are weakened in the future, the potential for less efficient, higher emitting vehicles being delivered to the state may increase. In addition, regulatory incentives for the delivery of zero emissions vehicles would not occur.

Regulatory Option 2: Update 20.2.88 NMAC and Implement the Regulation

Updating 20.2.88 NMAC would involve:

- In Section 14 – Waiver of Part Requirements: After the phrase “January 31, 2011 through January 1, 2016” add the phrase “and for model years 2016 and earlier.” This amendment clarifies a discrepancy introduced in 2010. Note that this change would also delay implementation of the standards for an additional year in order to synchronize with the proposed federal Tier 3 rule and to allow time to set up the credit banks.
- In Section 102 – Incorporation by Reference: Update the effective dates associated with 24 of the 59 Code of California Regulations (CCR) sections currently incorporated by reference in this section, and add 4 additional CCR rule sections (1961.2, 1961.3, 1962.2, and 1962.3) that have been adopted since 2007.
- Correct any cites to CCR sections 1961.1 and 1962.1 to the extent that the referenced requirements have been moved to other CCR sections during California’s revisions of their regulations.

Implementation of 20.2.88 NMAC would serve as a backstop in the event that the proposed federal Tier 3 rule is not adopted or is weakened or rescinded in the future, and would increase the regulatory

incentives for the delivery of zero emissions vehicles to New Mexico. However, in the likely event that federal Tier 3 standards are adopted, the federal standard would be comparable with California's LEV III standard, rendering the standards in 20.2.88 NMAC redundant.

Implementing 20.2.88 NMAC would place administrative and logistical burdens on automakers and the New Mexico Environment Department Air Quality Bureau. Automakers would be required to register, pay annual fees, and track and report the anticipated emissions from the vehicle fleet delivered to this state. The Bureau would be required to establish and maintain credit banks, and monitor compliance with the rule, an effort that would entail hiring additional staff.

Regulatory Option 3: Extend the Waiver in Section 20.2.88.14 NMAC

Under this option, the EIB would amend the section that it added in 2010. Note, however, that because some of the requirements in 20.2.88 NMAC are triggered by dates and others are triggered by model years, the expiration of the waiver would need to be based on both a date and a (subsequent) model year. This issue was not addressed in the 2010 amendment.

The advantage to this option is that the rule would place none of the burdens of its implementation on the automakers or the Mexico Environment Department Air Quality Bureau, and yet would remain in place as a backstop in the event that the federal program is weakened or rescinded. However, a future burden would be placed on the Bureau and EIB to spend time and resources to evaluate the vehicle standards existing at that time and take regulatory action, regardless of whether such resources would be better spent on other issues. In addition, such a backstop would be weak in that 20.2.88 NMAC could not automatically come into effect; its implementation could not occur without first updating it to the California standards in effect at that time. The waiver can place no obligation on the future members of the EIB to take that action.

Air Quality Bureau Recommendation to Rescind 20.2.88 NMAC

After consideration of the regulatory options, the Air Quality Bureau intends to recommend that the EIB rescind 20.2.88 NMAC. Given the likely continued harmonization between the federal and California standards, the administrative burdens of implementing 20.2.88 NMAC clearly outweigh the potential benefits. In addition, extending the waiver would not constitute a meaningful backstop in the event that the federal standards are weakened, because the waiver could not assure that 20.2.88 NMAC would actually be updated and implemented when the waiver expires.

Timeline for Regulatory Action

June 5: Release this document and inform potential stakeholders of the upcoming regulatory action. With this release, the informal comment period begins. From this point until the hearing, the New Mexico Environment Department Air Quality Bureau will take comments from and, if requested, meet with interested parties regarding the regulatory proposal.

June 17: Deadline for the New Mexico Environment Department Air Quality Bureau to submit a request to be placed on the July EIB meeting agenda. The request must include a hearing request package that contains the Bureau's proposed regulatory revision.

July 8: July meeting of the EIB. The New Mexico Environment Department Air Quality Bureau will request that the EIB schedule a November hearing to consider 20.2.88 NMAC.

July 16: Deadline to submit the public notice of the hearing for publication in the New Mexico Register and newspapers.

July 31: Publication of Hearing Notice in NM Register. The formal public comment period for the EIB hearing begins on this day and continues until the hearing. Formal public comments must be submitted directly to the EIB.

November: EIB hearing to consider 20.2.88 NMAC. After the hearing is completed the EIB may take action on the regulation. After the EIB has taken action and approved the Statement of Reasons for that action, it is filed with the State Records Center. The regulatory action becomes effective 30 days after filing with the State Records Center.