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**STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED  
AMENDMENTS TO 20.2.91 NMAC – *New  
Motor Vehicle Emission Standards***

**No. EIB 23 - 56 (R)**

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**STATEMENT OF REASONS**

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Pursuant to 20.1.1.300(B) NMAC, Petitioner New Mexico Environment Department (“NMED” or “Department”) provides the following Statement of Reasons in support of the Proposed Amendments to 20.2.91 NMAC – New Motor Vehicle Emission Standards (“Proposal”).

**I. Summary of Proposed Amendments.**

In order to comply with Section 177 of the federal Clean Air Act, New Mexico’s Advanced Clean Cars and Advanced Clean Truck Standards must be “identical” to the standards adopted in California. The Proposal amends New Mexico’s existing Clean Car Standards to bring New Mexico’s standards into conformity with the new Advanced Clean Cars II (ACC II) program recently adopted by California, ensuring that New Mexico’s standards remain identical to the California program and thus enforceable under federal law for model years 2027 through 2032. The Proposal also includes new provisions for the purpose of adopting Advanced Clean Trucks (ACT) and Heavy-Duty Engine and Vehicle Omnibus (Low NOx) rules. The Proposal draws upon regulatory language adopted in other states that have elected to participate in the ACC II, ACT, and Low NOx programs. The Proposal sets emission standards for new passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty motor vehicles, heavy-duty vehicles, heavy-duty engines, and motor vehicle engines.

## II. Authority and Scope

1. This regulation conforms with the Governor's Executive Order 2019-03 – *Addressing Climate Change and Energy Waste Prevention*, which directs the state’s Climate Change Task Force to “evaluate policies and regulatory strategies to achieve reductions in greenhouse gas pollution . . . across all categories of emission sources.” See Exec. Order No. 2019-03, ¶ 5.

2. The Executive Order directs that such regulatory strategies shall include “Adoption of approaches to reduce greenhouse gas and criteria pollutant emissions from light-duty vehicles sold in state, including Low Emission Vehicle (LEV) emission standards and Zero Emission Vehicle (ZEV) performance standards.” [Id.](#)3. As set forth in the New Mexico Greenhouse Gas Emissions Inventory and Forecast (for 2018 emissions) (“Forecast”), the transportation sector is the second greatest source of greenhouse gas emissions in the state. The Forecast identifies increasing ZEV sales as one of two strategies to achieve reductions in emissions in the transportation sector. See New Mexico GHG Inventory and Forecast Report 2020-10-27\_final ([https://cnee.colostate.edu/wp-content/uploads/2020/10/New-Mexico-GHG-Inventory-and-Forecast-Report\\_2020-10-27\\_final.pdf](https://cnee.colostate.edu/wp-content/uploads/2020/10/New-Mexico-GHG-Inventory-and-Forecast-Report_2020-10-27_final.pdf)), pp.7, 25

4. The Proposal is the latest in a series of formal rulemakings that are part of the Department’s Ozone Attainment Initiative to develop a series of rules and voluntary measures to mitigate the emissions of ozone precursor pollutants. Because emissions from motor vehicles are a source of anthropogenic oxides of nitrogen and volatile organic compounds, reducing emissions of these ozone precursor pollutants will improve ozone levels in the State.

5. The statutory authority of the Environmental Improvement Board (“EIB” or “Board”) to adopt new motor vehicle emissions standards, including standards for greenhouse gases, is

found in the Air Quality Control Act, NMSA 1978, §§ 74-2-1 to -17 which authorizes the Board to adopt regulations to "prevent or abate air pollution." § 74-2-5(B).

6. The Proposal applies to the sale, delivery, purchase, rent, lease, and registration of new light, medium-duty, and heavy-duty motor vehicles within the jurisdiction of the State of New Mexico, and to vehicles individually registered with the New Mexico Motor Vehicle Division.

7. The Proposal does not apply to motor vehicles operated exclusively within lands under the control of sovereign Tribes, Pueblos, or First Nations, for which air quality regulations are promulgated by those entities or the U.S. EPA.

8. "Air pollution" is defined as "the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life as may unreasonably interfere with the public welfare, visibility or the reasonable use of property." § 74-2-2(B)

9. "Air contaminant" is defined as "any substance, including but not limited to any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay or reaction product thereof." § 74-2-2(A).

10. Under this definition, common pollutants, such as nitrogen oxides, particulate matter, and carbon monoxide, as well as greenhouse gases, such as carbon dioxide, are "air contaminants" whose emission constitutes "air pollution" because they may injure human health and animal and plant life and unreasonably interfere with public welfare.

11. Section 177 of the federal Clean Air Act (CAA), 42 U.S.C. § 7507, authorizes New Mexico to adopt California motor vehicle emissions standards, provided that those standards are "identical" to the California motor vehicle emission standards. See 42 U.S.C. § 7507(1).

12. This “identity” requirement is intended to prevent a state from adopting standards that have the effect of creating a "third vehicle", e.g., a vehicle other than one required to satisfy the federal or California motor vehicle emission standards. See 42 U.S.C. § 7507(2).

13. The emission standards contained in the Proposal are identical to the recently adopted changes to the California motor vehicle emission standards.

14. The administration and enforcement provisions of the Proposal are identical to the California provisions in many respects, but to the extent that they differ, they do not create an undue burden for manufacturers.

15. The Proposal applies new motor vehicle emission standards beginning with model year 2027, which complies with the CAA requirement that the manufacturers be given at least two full model years to prepare their fleets to meet the standards.

16. By incorporating definitions from the California Code of Regulations by reference, the proposal ensures compliance with the "identity" requirement in Section 177 of the CAA.

### **III. General Provisions of the Rule**

17. Under the provisions of the Proposal, beginning with model year 2027 all new motor vehicles imported, sold, leased, or registered with the New Mexico Motor Vehicle Division must comply with the updated ACC II California motor vehicle emissions standards for model years 2027 through 2032.

18. Under the provisions of the Proposal, starting with model year 2027, vehicle manufacturers must deliver for sale a fleet of vehicles that complies with fleet average exhaust emission standards, fleet average greenhouse gas standards, and per-vehicle particulate matter standards contained in ACC II.

19. Under the provisions of the Proposal, starting with model year 2027, medium and heavy vehicle and engine manufacturers must deliver for sale vehicles and engines that comply with ACT California motor vehicle emissions standards.

20. Under the provisions of the Proposal, starting with model year 2027, heavy vehicle and engine manufacturers must deliver for sale vehicles and engines that comply with Low NOx California motor vehicle emissions standards.

21. The Proposal continues a requirement for motor vehicle dealers and rental car agencies to comply with inspection and information requests issued by NMED to verify their compliance with Part 91.

22. The Proposal continues to exempt certain categories of new motor vehicles, including vehicles for which the standards would be technically or economically infeasible, conflict with national security or public safety, have been transferred from one person to another person under legal settlements, or would not provide a substantive benefit to the program. The exemptions are consistent with those adopted by California and other states.

23. The Proposal updates the credit banking system of the existing rule to conform with changes made by California whereby the term “credits” will be replaced by the term “values” going forward. The term “credit” continues to be used for model years 2023 through 2025.

24. The Proposal contains a requirement, beginning with model year 2027, that vehicle manufacturers deliver for sale vehicles that earn a specified number of ZEV values, and report delivery details to the department and to the ZEV value bank. The ZEV bank allows manufacturers to accumulate credits that can be banked for future use, or be traded, or be used in other Section 177 states, or sold to other manufacturers who require additional credits for compliance. This requirement is identical to the updated California ZEV credit requirements.

25. A manufacturer may earn early action credits for the delivery for sale of qualifying ZEV for model years 2023 through 2025 by reporting the total delivery of such ZEVs to the department by March 1 following the end of each of these three model years. These early action credits can be subsequently used for meeting ZEV percentage requirements in model year 2027 through 2029.

26. The department will grant each manufacturer that earned early action credits from ZEVs delivered for sale for model years 2023 through 2025 a one-time value equal to sum of early action credits. Manufacturers may use the one-time credits to ACC II ZEV percentage requirements for model years 2027 through 2029.

27. The ZEV early action and one-time values are consistent with the provisions established by other states adopting the California ZEV standards.

28. The Proposal will significantly increase the stringency of NOx emissions standards and will also lengthen the useful life and emissions warranty of heavy-duty diesel engines for use in vehicles with a gross vehicle weight rating (GVWR) greater than 10,000 pounds.

29. The Proposal will require fleet owners of a certain size to report information to the Department on their heavy-duty vehicles. This information will assist the department to develop additional programs to address air pollution from heavy duty vehicles. 30. The Proposal contains recordkeeping and reporting requirements for manufacturers to ensure compliance with the requirements established in this regulation.

31. The Proposal continues a registration and fee system for manufacturers covered by this regulation. The cumulative fees for intermediate and large-volume manufacturers will defray the Department's cost for implementing the emissions standards program.

32. The Department will compare the reported data from manufacturers with new vehicle registration data, and, if necessary, conduct inspections and review records at the facilities of dealers and rental agencies in order to confirm the reports submitted by the manufacturers.

#### **IV. Projected Benefits of Part 91**

33. Reducing toxic and smog-forming pollutants will improve air quality and public health in New Mexico.

34. These emission reductions will, in turn, reduce ambient concentrations of the affected pollutants.

35. The emission reductions associated with Part 91 are expected to improve visibility and compliance with Regional Haze requirements.

#### **V. Compliance with Statutory Rulemaking Requirements**

36. In compliance with NMSA 1978, Section 74-2-5(E), the Proposal is at least as stringent as federal laws relating to control of motor vehicle emissions.

37. In compliance with NMSA 1978, Section 74-2-5(G), the Proposal is more protective of public of public health and the environment than current federal standards.

38. Adoption of the proposed amendments to Part 91 is in the public interest when considering the social and economic value of the sources of air contaminants and the subjects of the regulation.

39. The Proposal is both technically practicable and economically reasonable in the methods it employs to reduce air contaminants from the sources involved.

40. The Proposal will be more protective of public health and the environment than current New Mexico emission standards for the vehicles it regulates.

