

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Minnesota Auto Dealers Association,

Civil File No. _____

Plaintiff,

v.

COMPLAINT

State of Minnesota, by and through the
Minnesota Pollution Control Agency and
the Minnesota Pollution Control Agency
Commissioner Laura Bishop,

Defendants.

Plaintiff Minnesota Automobile Dealers Association ("MADA"), for its Complaint against the State of Minnesota, by and through the Minnesota Pollution Control Agency ("MPCA"), and MPCA Commissioner Laura Bishop, in her official capacity, states and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action to enjoin MPCA from rulemaking to establish greenhouse gas ("GHG") emissions standards for new motor vehicles and impose quotas for zero-emission vehicle sales because the proposed rules are expressly preempted by federal law.

2. The Minnesota Clean Car Rules ("MCCR") would impose California vehicle emission standards on all motor vehicles sold in Minnesota beginning in model year 2025. The challenged standards, which the MCCR incorporates by reference, are (1) California's

"LEV III" standards for GHG emissions, which require both that each vehicle be certified as emitting only a certain level of various GHGs (a so-called "California car") and that manufacturers meet a fleet-wide standard for average emissions; and (2) California's technology-forcing mandate establishing manufacturer quotas for delivery of Zero Emission Vehicles (ZEVs).

3. The federal Clean Air Act ("CAA") regulates emissions from new motor vehicles. 42 U.S.C. ch. 85, subch. II, parts A & C; 42 U.S.C §§ 7521–7554, 7581–7590. The CAA prohibits any state from adopting new motor vehicle or new motor vehicle engine emission standards that differ from those established under the CAA. 42 U.S.C. § 7543(a) ("Section 209"). EPA may waive the express preemption of state regulations only for the State of California, Section 209(b)(1), or for states that meet certain criteria and adopt California's standards, 42 U.S.C. § 7507 ("Section 177"). EPA has revoked the waiver previously issued to California for GHG emissions and the ZEV mandate. 84 Fed. Reg. 51,310 (Sept. 27, 2019).

4. The Energy Policy and Conservation Act ("EPCA") charges the Secretary of Transportation, acting through NHTSA, to "prescribe by regulation average fuel economy standards for automobiles." 49 U.S.C. § 32902(a); *see also* 49 C.F.R. pts 531 & 532 (NHTSA passenger automobile average fuel economy standards for passenger automobile vehicles and light trucks, respectively). NHTSA has determined that EPCA preempts state regulations of GHG and quotas of ZEVs. 84 Fed. Reg. 51,310 (Sept. 27, 2019).

5. These two federal laws preempt Minnesota's proposed rulemaking.

6. On December 21, 2020, the State of Minnesota, acting through MPCA, issued a Notice of Intent to Adopt a Rule, Notice of Hearing, and a Statement of Need and Reasonableness ("SONAR") for the MCCR. (*See* SONAR excerpts attached as Ex. A.)

7. MPCA is planning to hold online information sessions on January 19, 20 and 27, 2021, and February 2, 2021. (MPCA, News Release, *Minnesota drives forward with clean car standards to reduce greenhouse gas emissions* (Dec. 18, 2020), attached hereto as Ex. B.) MPCA is also planning to hold formal public hearings on the proposed rules on February 22 and 23, 2021. (*Id.*)

8. MPCA claims legal authority to adopt California's GHG emission standards and ZEV mandate under CAA Section 177 and under Minn. Stat. § 116.07, subd. 2(a), which directs MPCA to adopt "maximum allowable standards of emission of air contaminants from motor vehicles." This claim is erroneous. The CAA waiver has been revoked and the relevant portion of Minn. Stat. § 116.07, subd. 2(a) has been expressly preempted by CAA Section 209 since the latter's adoption in 1967.

9. In the SONAR, MPCA admits that the rule making process is "unusual" because the proposed rule cannot take effect until three things happen: (1) the federal litigation over California's CAA waiver is resolved, (2) EPA and NHTSA reverse course and grant California a new CAA waiver, and (3) Minnesota meets the standards in Section 177 to adopt California's rules. (Ex. A at 36–37, 52–53.) This could be at least years from now and possibly never. The rule is also unusual because even when (and if) MPCA receives authority to promulgate these rules, the rules must be identical to an existing California state standard. Hence, the Minnesota rules simply incorporate California rules

by reference (*id.* at 40), despite an admitted inability to know what the California rules will say in the future. Finally, the rule is unusual because, although the rule is dependent on multiple contingencies and cannot take effect until *at the earliest* 2025, one of the enforcement mechanisms begins *immediately*, that is, "five working days" after completion of the rulemaking process. (*Id.* at 53.) The early action credit program for ZEVs would begin with model year 2022, which means vehicles sold as soon as January 2, 2021—right now. (*See* Proposed Rule 7023.0300, subp. 4, Minn. Reg. 45 SR 666 (Dec. 21, 2020), attached as Ex. C.)

10. Members of MADA will be forced to incur substantial economic costs and harms if Minnesota is allowed to proceed with its illegal adoption of California's motor vehicle emission standards. Under MPCA's proposed rules, manufacturers can sell only California cars in Minnesota and must ship an increasing percentage of ZEVs in accordance with the ZEV mandate. By law, auto manufacturers with existing dealership networks may only sell new motor vehicles via those dealers. If MADA members are limited to selling California cars, and forced to take delivery of an ever-increasing percentage of ZEVs, MADA members face harms including lost profits, stranded inventory, increased interest costs, increased technology costs, diminished ability to sell to neighboring states, and the complete obstruction of the interstate dealer trading system.

PARTIES

11. Plaintiff MADA, a Minnesota corporation, was founded in 1919 as an advocate for franchised new car and truck dealerships in Minnesota. MADA advocates for the interests of Minnesota's retail motor vehicle industry and serves as an important source

of legal, legislative and industry advocacy and information. It also provides specialized expertise, training and communications for its members. MADA's purpose is to promote the commercial and mercantile interests of the automotive industry as well as engage in any and all activities relating to the automotive industry for the benefit and protection of its members. MADA has submitted comments to MPCA regarding the agency's proposed MCCR and has met with numerous Minnesota government officials to express its members' concerns with the proposed rule. All MADA members operate their dealerships within the State of Minnesota.

12. Defendant MPCA is the state governmental agency authorized under Minn. Stat. § 116.07, subd. 2(a) to regulate air quality within the State of Minnesota, which is also a defendant in this matter. Defendant Laura Bishop is the current Commissioner of MPCA. MPCA's headquarters are located in St. Paul, Minnesota.

JURISDICTION AND VENUE

13. This Complaint seeks declaratory and injunctive relief to prevent violations of MADA's federally protected rights under the United States Constitution, the CAA, and the EPCA, specifically seeking redress for the alleged deprivation, under color of state statute and regulation, of rights protected by the laws of the United States.

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the case presents a question arising under federal law. Minnesota's actions, through MPCA, interfere with MADA's federal rights. As explained below, the CAA and EPCA expressly preempt the proposed regulations.

15. This Court has the authority to grant proper relief pursuant to 28 U.S.C. § 2202, including the issuance of an injunction. This Court also has the authority to issue a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

16. Venue in this district is proper under 28 U.S.C. § 1391 because all the parties exist, operate, regulate or are regulated, as applicable, in this judicial district.

STANDING

17. MADA has an imminent, concrete and particularized injury because its members will (1) lose sales if they can stock and sell only California compliant vehicles, and (2) incur costs from stocking increased numbers of ZEVs.

18. MADA's injury is fairly traceable to Minnesota's actions through MPCA because the MCCR forces MADA members to prepare for and attempt to sell vehicles for which there is no apparent demand and which they would not otherwise order.

19. MADA's injury would be redressed by a favorable decision by this Court because an order preventing the rulemaking would stop the imposition of the proposed rules on MADA members.

20. The controversy between MADA and Minnesota is ripe because Minnesota lacks the authority to engage in the proposed rulemaking. Since Minnesota lacks the authority to adopt the GHG regulations and enforce ZEV quotas, the outcome of any proposed rulemaking or period for input from stakeholders is irrelevant to determining whether there is a concrete dispute between Minnesota and MADA. The controversy concerns whether Minnesota can regulate at all, not the contents of any resulting regulations. Because MPCA has already committed to going forward with an illegal

regulatory effort, this Court need not await the inevitable outcome to determine whether the process is permitted.

21. The controversy is also ripe because the proposed rule adopts the California regulations by reference. MPCA has no power or authority to alter the California rules prior to the proposed Minnesota enactment.

22. Moreover, Minnesota plans to apply regulatory pressure, through its early action credit program, to achieve early compliance with the new Minnesota emission rules as soon as the rulemaking is complete—well before the rules even become officially effective—which means Minnesota will be enforcing compliance with emission rules MPCA admits, under present law, it has no authority to establish.

FACTUAL BACKGROUND

Federal Regulation of Motor Vehicle Emissions and Fuel Economy

23. The CAA creates a federal system for the regulation of "emissions of any air pollutant from . . . new motor vehicles." 42 U.S.C. § 7521(a)(1). The statute tasks the EPA Administrator with establishing national limits for emitted pollutants.

24. The CAA expressly preempts state regulation of emissions from new motor vehicles. 42 U.S.C. § 7543(a). It states, "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part."

25. The only exception to the federal regulation of emissions is when the Administrator of the EPA "waive[s] application" of the preemption provision. 42 U.S.C. § 7543(b)(1).

26. California is the only state eligible for a waiver under Section 209 because it was the only state, as of March 30, 1966, with its own standards to control the emissions from new motor vehicles.

27. Other states that meet certain qualifications may adopt regulations "identical to the California standards." 42 U.S.C. § 7507.

28. The MCCR represents the first time Minnesota has attempted to use the authority granted under Section 177 to stray from the federal standards for emissions.

29. The EPCA charges the Secretary of Transportation, acting through NHTSA, to "prescribe by regulation average fuel economy standards for automobiles." 49 U.S.C. § 32902(a); *see also* 49 C.F.R. pts 531 & 533 (NHTSA passenger automobile average fuel economy standards for passenger automobile vehicles and light trucks, respectively).

30. The EPCA contains an express preemption provision that prohibits any state from adopting or enforcing a "law or regulation related to fuel economy standards or average fuel economy standards for automobiles...." 49 U.S.C. 32919(a); *see also* 49 CFR §§ 531.7, 533.7 (same, for passenger automobiles and light trucks, respectively). NHTSA regulations specify that any state law or regulation that has "the direct or substantial effect of regulating or prohibiting tailpipe carbon dioxide emissions from automobiles or automobile fuel economy is a law or regulation related to fuel economy standards and expressly preempted under 49 U.S.C. 32919." 49 C.F.R. pt. 531, App. B(a)(3); *see also* 49 C.F.R. pt. 533, App. B(a)(3) (same).

31. On September 27, 2019, EPA formally revoked California's CAA preemption waiver. This ended California's ability to set GHG emission standards and

impose ZEV quotas. *See* “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program,” 84 Fed. Reg. 51,310 (Sept. 27, 2019). That revocation was based on two independent grounds. First, EPA concluded that California's waiver application had not demonstrated that these state standards were necessary to meet “compelling and extraordinary conditions,” in accordance with 42 U.S.C § 7543(b)(1)(B). *Id.* at 51,328. Second, EPA concluded that NHTSA’s preemption regulation, 49 C.F.R. §§ 531.7, 533.7, clarified that EPCA preempts California’s GHG standards and ZEV mandates; therefore, EPA’s prior waiver of CAA preemption for those programs was no longer valid. *Id.* at 51,310. Thus, the present position of the United States is (a) no CAA waiver exists at present for the California vehicle standards MPCA proposes to adopt, and (b) even if the waiver did exist, the GHG standards and ZEV mandate would still be preempted by EPCA.

32. The Joint Rulemaking established that there is a single national standard for GHG emissions and fuel economy, and that California's GHG rules and ZEV mandate violate that standard. *Id.*

33. Reinstating California’s CAA waiver would require a notice and comment rulemaking from both EPA and NHTSA, a process that, were it to occur, would likely take years to complete.

34. Despite EPA’s revocation of the preemption waiver for GHG standards and ZEV quotas, California continues to defy federal law and attempt to regulate emissions from new motor vehicles. On September 23, 2020, Governor Gavin Newsom signed Executive Order N-79-20, which requires California agencies to adopt the rule that *all*

passenger cars and light-duty trucks sold in California have zero emissions by 2035, and all medium- and heavy-duty trucks sold in California have zero emissions by 2045. (*See* Ex. D, Executive Order N-79-20 (Sept. 23, 2020).)

35. MPCA proposes to incorporate California's LEV III GHG standards and ZEV mandate "as amended." (Ex. A at 49.) The result of this would be that any future amendments California makes to these GHG and ZEV regulations would automatically become Minnesota law with no involvement or prior approval by the Minnesota legislature or MPCA.

Minnesota's Automobile Emissions Authority

36. Minn. Stat. § 116.07, subd. 2(a), grants MPCA the authority to "adopt standards of air quality, including maximum allowable standards of emission of air contaminants from motor vehicles."

37. CAA Section 209 expressly preempts state regulation of emissions, providing, "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to" subchapter II, Part A of the CAA. Part A establishes and governs federal motor vehicle emission and fuel standards.

38. On or about October 7, 2019, MPCA published a Request for Comments on its proposal to adopt the MCCR. MPCA's stated purpose for adopting the new Minnesota emission rules is "to reduce greenhouse gas (GHG) and other harmful air pollutant emissions from passenger vehicles by adopting the Low-Emission Vehicles (LEV) and Zero-Emission Vehicles (ZEV) standards adopted by the California Air Resources Board,

as allowed under section 177 [42 U.S.C. § 7507] of the Clean Air Act (CAA).” (MPCA, Request for Comments at 1 (Sept. 30, 2019), attached hereto as Ex. E.)

39. Even while drafting the new rules, MPCA was aware that it did not have authority to regulate emissions. MPCA acknowledged that moving forward with these new rules now was beyond its current authority and was “contingent on restoration of [California’s] ability to adopt these measures, including the existence of operative waiver authority under Sections 209(b) and 177 of the Clean Air Act [42 U.S.C. §§ 7543(a), 7507].” (*See* Ex. E at 2; *see also* Ex. A at 36–37, 52–53 (discussing the rule's dependence on the status of California's waiver).) And if California's waiver was not restored, then MPCA “would probably have to revoke the whole rule.” (*See* February 11, 2020 email chain obtained by counsel via Minnesota Data Practices Act on April 14, 2020, attached as Ex. F.)

40. Notwithstanding these acknowledged legal barriers, MPCA instead cites its own authority under Minn. Stat. § 116.07 as justification for adopting GHG standards for motor vehicles.

41. MPCA’s Request for Comments states the new Minnesota emission rules will consist of two components. First, the LEV standard would require automobile manufacturers to deliver for sale in Minnesota only vehicles that meet the more stringent GHG and other air pollutant emissions standards established by California’s LEV III emission standards. MPCA’s LEV standards would apply, with limited exceptions, to new motor vehicles that are passenger cars, light-duty trucks, medium-duty passenger vehicles,

and medium-duty vehicles, and the standards would become more stringent each year in lockstep with California's LEV III standards.

42. Second, MPCA's proposed ZEV rule would require automobile manufacturers to deliver for sale in Minnesota a certain number of vehicles with ultra-low or zero tailpipe emissions each year, including battery electric vehicles (EVs), plug-in hybrid electric vehicles (PHEVs), and hydrogen-fueled vehicles, all of which are considered ZEVs. Under the proposed ZEV rules, manufacturers would be given ZEV credit quotas based on their average annual sales, with the quotas rising each year. Manufacturers would generate different numbers of credits for delivering different types of vehicles for sale, based on vehicle technology and maximum range per charge. Manufacturers would be able to bank credits to meet requirements in future years or to buy and sell credits amongst themselves.

43. MPCA claimed, in its Request for Comments, "The ZEV standard would result in additional ZEVs sold in Minnesota, but does not require any individual to purchase a ZEV." (*See* Ex. E at 2.) The agency offered no evidence in support of this assertion.

44. Even before MPCA's proposed emissions standards become effective, and before MPCA has legal authority under federal law to adopt the standards, MPCA plans to enforce compliance with the ZEV standard through an early action credit program, which will "go into effect five working days after the MPCA publishes a Notice of Adoption in the *State Register* following completion of the rulemaking process." (Ex. A at 53.)

The MCCR Will Harm MADA Members

45. MADA members will suffer harm both from (1) being forced to stock ZEVs; and (2) being limited to selling only California cars.

46. MPCA's proposed ZEV standard will cause concrete harm to MADA members in the form of direct costs, reduced access to in-demand vehicles, and lost business opportunity.

47. MPCA's proposed ZEV standard requires that manufacturers deliver for sale or lease a certain percentage of ZEVs in Minnesota each year. The rule raises that percentage over time, requiring more ZEV deliveries every year.

48. MPCA's proposed ZEV standard requires the share of ZEVs delivered to Minnesota dealers to match the share delivered for sale in California.

49. MPCA estimates considerably less than 1% of cars on dealer lots are currently battery electric vehicles. (Ex. A at 49.)

50. MPCA estimates that the proposed rules quota system would push this to 7.5% by 2025. (*Id.* at 50.)

51. By Minnesota law, auto manufacturers with existing dealership networks may only sell new motor vehicles via those dealers. Dealers—MADA members—take “delivery” of those vehicles by purchasing the vehicles at their sole expense from the manufacturers and then bearing the responsibility for selling those motor vehicles to consumers. Thus, the only way manufacturers can meet MPCA's ZEV delivery quota—and the only way the rule can accomplish MPCA's goals—is for manufacturers to “deliver,” i.e., “sell,” enough ZEVs to meet their percentage quotas to MADA members.

52. Auto dealers have finite lot space. MPCA's ZEV quota will force dealers to dedicate increased lot space to less-popular ZEVs, thereby squeezing lot space available for more popular vehicles. In Minnesota, those more popular vehicles are overwhelmingly non-ZEV, full-size pick-ups and SUVs.

53. With more lot space dedicated to unprofitable ZEVs, and less space dedicated to profitable trucks, dealers' profits will fall and their costs will rise.

54. Carrying the quota of ZEVs will also tie up dealer capital and financing capacity that would otherwise be spent on profitable vehicles.

55. In addition, preparing to stock ZEVs demands an initial and ongoing capital investment. As the state acknowledges, the requirement that Minnesota dealers sell more electric cars will impose direct costs in "the necessary infrastructure and training . . . and building public awareness." (Ex. A at 59; *see also id.* at 63, 68–70.) Dealer experience with prior transitions demonstrates these costs can run from a minimum of \$10,000 to well over \$200,000 per model.

56. Though MPCA asserts that the rules would affect vehicles delivered for sale no earlier than January 2, 2024 (model year 2025 vehicles), the impact of the proposed ZEV rule upon MADA members will be immediate because of the "early action credit." (*See* Ex. A. at 53.) Manufacturers start to earn ZEV credits on vehicles delivered for sale *immediately* upon the rule's enactment. The stated regulatory purpose of the early action credit mechanism is to incentivize deliveries of ZEVs to Minnesota before the eventual (possible) effective date of the ZEV quotas. (*Id.*) This means dealers will be forced to take

delivery of ZEVs—long before there is any legal authority for Minnesota to pass ZEV regulations.

57. MADA members will bear the economic burdens and the risk of the manufacturer's compliance with the ZEV mandate. While MPCA makes an anecdotal claim of unmet consumer demand for ZEVs, the MCCR offers no relief to MADA members who, after being compelled to purchase ZEVs for their dealership fleet inventory, are then unable to sell those motor vehicles to their customers. These harms will begin even before the rule is effective through the proposed early action credit program, which will effectively compel compliance even before MPCA has authority to regulate. If dealers could sell more ZEVs, they would do so without a rule.

58. MPCA's proposed adoption of California's LEV III GHG emission standards will also have a negative economic effect on MADA members. Minnesota will become an island of California cars in a sea of federal cars. Because California cars are invariably more expensive, Minnesota dealers will lose sales to dealers in neighboring states that can sell less expensive versions of the same models. Presently, many Minnesota dealers sell 10–20% of their cars to out-of-state residents. Those sales will effectively cease if the MCCR is adopted.

59. Minnesota suggests the solution to these lost out-of-state sales is for dealers to keep two distinct sets of vehicle inventories available: California-compliant cars for Minnesota residents and federal cars for customers from other states. (Ex. A at 56–57, 63, 69–70.) However, the state's "solution" will only increase the injury to these dealers. In addition to effectively imposing the costs of managing and maintaining two sets of vehicle

inventory, the proposed rules will also restrict which customers can purchase from each vehicle inventory, a restriction inapplicable to competitors in neighboring states that places Minnesota dealers at a competitive disadvantage.

60. An even more devastating effect of pushing Minnesota off the national standard will be the total obstruction of cross-border trading by dealers. In addition to the cars on their lots, car dealers serve their customers with cars they obtain from other dealers via trade. These trades are a necessity in a time when cars come with many option packages and colors. Many Minnesota dealers trade across state lines, with dealers in Iowa, Wisconsin, and the Dakotas. This is particularly true of MADA members with dealerships close to Minnesota's borders. These MADA members' businesses rely significantly upon the ability to trade in non-California certified vehicles originating in these border states. Most, if not all, MADA members make interstate trades, and many have cultivated extensive networks of partners in neighboring states.

61. MPCA's proposed rule will make it impossible for MADA members to trade with any neighboring states because dealers in those states do not stock California cars. The closest trading partners for California cars will be located in Colorado.

62. Dealers' transaction costs for vehicle trades consist primarily of the cost of transit, which increases dramatically with distance. For example, vehicle trades with dealers located within a distance of 300 miles—the distance of most trades at present—can be achieved by a single driver in a single day. Any trade with a Colorado dealer will require the car be moved on a trailer, increasing three-fold the cost of the trade as compared to a

trade with a closer dealer. Transit costs will increase even further for trades with dealers from farther-flung California-car states on the coasts.

63. The agency acknowledged the potential negative effect of this rule on cross-state trading and concedes it is unable to determine the level of impact upon Minnesota dealers. (*See* Ex. A at 70.)

64. The MCCR will generate concrete and immediate costs, lost profits, and harms to MADA members.

CAUSES OF ACTION

Count One

Injunction: Preventing MPCA from Setting GHG Emission Standards and ZEV Mandates that Are Preempted by Federal Law.

65. MADA restates and incorporates by reference the above-numbered paragraphs.

66. 42 U.S.C. § 7543(a) preempts state authority to regulate GHG emissions, declaring, “No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to” subchapter II, Part A of the CAA.

67. The proposed rule attempts to enforce standards on vehicles subject to subchapter II, Part A of the CAA.

68. Despite Section 7543(a)'s express preemption, MPCA claims Minn. Stat. § 116.07, subd. 2(a) provides authority to adopt the MCCR.

69. An actual controversy exists between MADA and the State of Minnesota because Minnesota, through MPCA, is illegally attempting to use its preempted authority under Minn. Stat. § 116.07, subd. 2(a) to adopt state motor vehicle emission standards that differ from those established by the federal government, in contravention of 42 U.S.C. § 7543(a) and to the detriment of MADA members.

70. The EPCA, 49 U.S.C. 32919(a), provides that when the Secretary of the Department of Transportation prescribes an average fuel economy standard pursuant to the EPCA, states may not adopt or enforce any “law or regulation related to fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard” adopted under the EPCA.

71. NHTSA has adopted fuel economy standards for vehicles pursuant to the EPCA. *See* 49 C.F.R. 531.5(c).

72. NHTSA regulations specify that any state law or regulation that has “the direct or substantial effect of regulating or prohibiting tailpipe carbon dioxide emissions from automobiles or automobile fuel economy is a law or regulation related to fuel economy standards and expressly preempted under 49 U.S.C. 32919.” 49 C.F.R. pt. 531, App. B(a)(3); *see also* 49 C.F.R. pt. 533, App. B(a)(3) (same).

73. MPCA proposes to adopt California’s LEV III GHG standards and ZEV mandate, each of which has “the direct or substantial effect of regulating or prohibiting tailpipe carbon dioxide emissions from automobiles or automobile fuel economy.”

74. MADA seeks an injunction preventing Minnesota through MPCA from pursuing its attempt to regulate emissions from new motor vehicles because its authority is preempted by the CAA and EPCA.

Count Two

Declaratory Judgment: Minnesota Lacks the Authority to Regulate GHG Emissions from New Motor Vehicles and Impose ZEV Mandates

75. MADA restates and incorporates by reference the above numbered paragraphs.

76. The Clean Air Act establishes federal regulation of emissions from new motor vehicles and expressly preempts state regulation of the same, unless EPA permits California to regulate emissions and other states adopt California's standards.

77. EPA has revoked the waiver that formerly allowed California's LEV III GHG standards and ZEV mandate; as a result, the only permissible regulation of GHG emissions are the federal standards.

78. MPCA is nonetheless illegally planning to adopt California's LEV III GHG standards and ZEV mandate.

79. MADA seeks a declaratory judgment stating that Minnesota lacks the authority to pursue the proposed new Minnesota GHG emission rules and ZEV mandate.

Count Three

Declaratory Judgment: The Energy Policy and Conservation Act Preempts the MCCR

80. MADA restates and incorporates by reference the above-numbered paragraphs.

81. The EPCA, 49 U.S.C. 32919(a), provides that when the Secretary of the Department of Transportation prescribes an average fuel economy standard pursuant to the EPCA, states may not adopt or enforce any “law or regulation related to fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard” adopted under the EPCA.

82. NHTSA has adopted fuel economy standards for vehicles pursuant to the EPCA. *See* 49 C.F.R. 531.5(c).

83. NHTSA regulations specify that any state law or regulation that has “the direct or substantial effect of regulating or prohibiting tailpipe carbon dioxide emissions from automobiles or automobile fuel economy is a law or regulation related to fuel economy standards and expressly preempted under 49 U.S.C. 32919.” 49 C.F.R. pt. 531, App. B(a)(3); *see also* 49 C.F.R. pt. 533, App. B(a)(3) (same).

84. MPCA proposes to adopt California’s LEV III GHG standards and ZEV mandate, each of which has “the direct or substantial effect of regulating or prohibiting tailpipe carbon dioxide emissions from automobiles or automobile fuel economy.”

85. An actual controversy exists between MADA and the defendants because Minnesota, through MPCA, is illegally attempting to adopt GHG and ZEV standards that are preempted by the EPCA, to the detriment of MADA members.

86. MADA seeks a declaration that Minnesota cannot adopt California’s GHG and ZEV standards because those standards constitute state laws or regulations that have the “direct or substantial effect of regulating or prohibiting tailpipe carbon dioxide

emissions from automobiles or automobile fuel economy,” which are preempted by the EPCA and NHTSA’s regulations.

WHEREFORE, Plaintiff Minnesota Automobile Dealers Association requests judgment in its favor and against the State of Minnesota, through its Pollution Control Agency, awarding Minnesota Automobile Dealers Association the following:

- A. Injunctive relief prohibiting the State, through MPCA, from conducting the public hearings scheduled for February 22–23, 2021, on the MCCR and from adopting the MCCR;
- B. Declaratory judgments under the Declaratory Judgments Act, as set forth in MADA’s Causes of Action;
- C. All attorney fees, costs, and expenses allowed by law;
- D. Any interest on the above-described amounts, including prejudgment interest, allowed by law; and
- E. Such other and further relief as the Court deems necessary, just, or proper.

Dated: January 6, 2021

/s/ *Byron E. Starns*

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ATTORNEYS FOR PLAINTIFF

*Minnesota Automobile Dealers Association v. State of Minnesota,
by and through the Minnesota Pollution Control Agency and
Minnesota Pollution Control Agency Commissioner Laura Bishop*

EXHIBIT LIST TO COMPLAINT

Exhibit A	Excerpts from MPCA Statement of Need and Reasonableness ("SONAR") Proposed Revisions to Minnesota Rules, chapter 7023, Adopting Vehicle Greenhouse Gas Emissions Standards (Dec. 2020)
Exhibit B	MPCA News Release, <i>Minnesota drives forward with clean care standards to reduce greenhouse gas emissions</i> (Dec. 18, 2020)
Exhibit C	Proposed Rule 7023.0300, subp. 4, Minn. Reg. 45 SR 666 (Dec. 21, 2020)
Exhibit D	California Executive Order N-79-20 (Sept. 23, 2020)
Exhibit E	MPCA Request for Comments (Sept. 30, 2019)
Exhibit F	February 11, 2020 email chain obtained by counsel via Minnesota Data Practices Act on April 14, 2020

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EXHIBITS A-F TO COMPLAINT



STATEMENT OF NEED AND REASONABLENESS

Proposed Revisions to Minnesota Rules, chapter 7023,
Adopting Vehicle Greenhouse Gas Emissions Standards
(Clean Cars Minnesota)
Revisor ID No. 04626

Environmental Analysis and Outcomes Division

December 2020

EXHIBIT A

General information:

- 1) Availability: The *State Register* notice, this Statement of Need and Reasonableness (SONAR) and its appendices and the proposed rule will be available during the public comment period on the Agency's Public Notices website: <https://www.pca.state.mn.us/public-notice>
- 2) Agency contact for information, documents, or alternative formats: Upon request, this SONAR can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Katie Izzo, Rulemaking Coordinator, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, MN 55155-4194; telephone 651-757-2595; 1-800-657-3864; email Katie.izzo@state.mn.us; or use your preferred telecommunications relay service.
- 3) How to read a sample Minnesota Statutes citation: Minn. Stat. § 116.07, subd. 2(f)(2)(ii)(A) is read as Minnesota Statutes, section 116.07, subdivision 2, paragraph (f), clause (2), item (ii), subitem (A). Minn. Stat. § 116.07 is found in Minnesota Statutes, chapter 116.
- 4) How to read a sample Minnesota Rules citation: Minn. R. 7150.0205, subp. 3(B)(3)(b)(i) is read as Minnesota Rules, part 7150.0205, subpart 3, item B, subitem (3), unit (b), subunit (i). Minn. R. 7150.0205 is found in Minnesota Rules, chapter 7150.

the level of auto emissions,” and enforcement mechanisms, which are regulatory devices “intended to ensure that the ‘standards’ are effective.”⁶⁵ There is thus no requirement that states’ enforcement mechanisms with regard to LEV and ZEV are identical to California’s enforcement mechanisms. The proposed early action credit mechanism and one-time credit allotment are not emission standards, but rather enforcement mechanisms intended to ensure that the ZEV standard is effective in Minnesota.⁶⁶

D. The current status of California’s 209(b) waiver and the LEV and ZEV standards

California was granted a waiver under 209(b) for its LEV and ZEV standards in 2013⁶⁷ and 13 other states and the District of Columbia have since adopted one or both of these standards.

In 2019, the EPA published the first part of its SAFE Rule, which purports to withdraw California’s 2013 waiver for the LEV and ZEV standards regulating GHG emissions from motor vehicles.⁶⁸ Minnesota and other states have challenged this rule, and it is currently being litigated. The next sub-section will describe the legal basis for why the MPCA is proposing to adopt these standards in light of the EPA’s recent SAFE rule and related litigation.

E. The MPCA will publish in the *State Register* the effective date of the Minnesota Clean Cars rule along with notice that California has a valid waiver for the standards Minnesota seeks to adopt

The Clean Cars Minnesota proposed rule language is clear that the GHG emission standards adopted by the rule would be effective only to the extent California’s waiver under CAA section 209(b) is valid. In addition, the proposed rule has been drafted such that the LEV and ZEV standards would not go into effect until after the MPCA publishes notice in the *State Register* indicating the effective date of the rule.⁶⁹ With this provision, the MPCA would adopt the LEV and ZEV standards while maintaining compliance with applicable CAA provisions.⁷⁰ This process would ensure the MPCA would adopt the LEV and ZEV standards in conformance with the Minnesota APA and the federal CAA.

F. Conclusion

The MPCA has the statutory authority in Minn. Stat. § 116.07 to adopt the LEV and ZEV emission standards. Minnesota law grants the MPCA the authority to adopt air pollution rules and standards, including the express authority to adopt standards relating to vehicle emissions. Because GHG emissions meet the definition of air contaminant and air pollution under Minnesota law, the MPCA has the statutory authority to adopt the LEV and ZEV standards.

This section also demonstrates how this rule meets federal regulations for motor vehicle emissions. The

⁶⁵ *American Auto. Mfrs. Ass’n v. Cahill*, 152 F.3d 196, 200 (2d Cir. 1998).

⁶⁶ Courts have held that ZEV is an emission standard, even though it is not a traditional emission standard, reasoning that “a requirement that a particular percentage of vehicle sales be EVs has no purpose other than to effect a general reduction in emissions.” *American Auto. Mfrs. Ass’n v. Cahill*, 152 F.3d 196, 200 (2d Cir. 1998).

⁶⁷ U.S. Env’t Prot. Agency., *California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California’s Advanced Clean Car Program*, 78 Fed. Reg. 2,112 (January 9, 2013).

⁶⁸ U.S. Env’t Prot. Agency., *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program*, 84 Fed. Reg. 51,310 (Sep. 27, 2019).

⁶⁹ The MPCA will still publish a notice of adoption to the *State Register* once the rulemaking process is complete since the early action credit mechanism will go into effect.

⁷⁰ Further discussion in the SONAR will describe how the proposed rule has been drafted in a manner to address the requirements of §177 of the CAA.

federal CAA establishes a regulatory structure within which California can adopt and enforce more stringent vehicle emission standards that have received a waiver under section 209(b) of the Act. California is the only state that can receive such a waiver from EPA. Once a waiver has been granted, section 177 of the CAA allows other states, like Minnesota, to adopt and enforce the more stringent emission standards. In addition, section 177 requires states to adopt standards that are identical to the standards adopted by California, but enforcement mechanisms like early action credit programs can vary from state to state. In 2013, the EPA granted a waiver for the LEV and ZEV standards now under consideration by the MPCA in this rulemaking. In 2019, the EPA purported to revoke this waiver and Minnesota is participating in the related, ongoing litigation. The proposed Clean Cars Minnesota rule has been drafted to ensure that upon adoption, the LEV and ZEV standards would not go into effect until MPCA provides the public with adequate notice of the effective date of its rule upon determination that the waiver is valid.

6. Reasonableness of the amendments

This section describes the reasonableness of the proposed rule. The section describes the reasonableness of the rule as a whole and then discusses the reasonableness of each proposed rule part. Minn. Stat. § 14 requires the MPCA to explain the facts establishing the need for and reasonableness of the rule as proposed. Section 2 of this document describes the need for action to reduce GHG emissions and other air pollutants from transportation that this proposed rule is meant to address, and this section addresses the reasonableness of the proposed amendments.

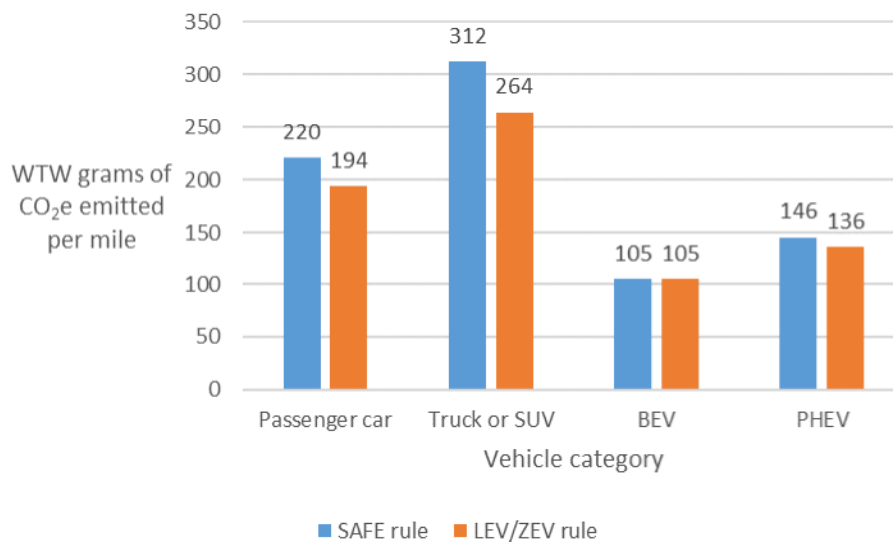
A. General reasonableness of the proposed rule amendments as a whole

As discussed in section 2 of this SONAR, Minnesota's climate is changing and we need to take action to reduce Minnesota's GHG emissions that contribute to this global challenge. Minnesota is not on track to meet our NGEA goals and the transportation sector is now the largest emitter of GHGs in the state. To achieve our NGEA goals and reduce GHG emissions, action will need to happen across all sectors of Minnesota's economy. Because transportation is now the largest emitter, it is reasonable to focus on transportation as the next major area for action on GHG emissions in the state.

Surface transportation, which includes on-road vehicles such as cars, trucks, buses, and motorcycles, accounts for most of the transportation sector's GHG emissions. Within the surface transportation category, light-duty and medium-duty vehicles account for 74% of the subsector's emissions (see Figure 3). To substantively reduce transportation GHG emissions, Minnesota must address emissions from light- and medium-duty vehicles. It is therefore reasonable to adopt the proposed rule, which would reduce emissions from these categories of vehicles.

Section 5 of this SONAR outlines the MPCA's statutory authority to regulate air pollution from vehicles. The MPCA has so far relied on federal vehicle emissions standards to achieve reductions from this sector. However, the federal government recently acted to reduce the environmental protectiveness of these standards. It is reasonable for the MPCA to adopt the California standards to prevent this regulatory backsliding. The actions Minnesota has taken to date to reduce GHG emissions have been insufficient to get the state on track to achieve our NGEA goals, reduce GHG emissions, and help address climate change. It is reasonable for the MPCA to use our air pollution regulatory authorities to help the state achieve these goals.

The 2019 Pathways project mentioned previously included modeling pathways to reducing GHG emissions in the transportation sector and public engagement around solutions to transportation emissions challenges. The project found that reducing GHG emissions from this largest sector and

Figure 8: Average well-to-wheel GHG emissions rate (g/mi), 2025-2034

The MPCA's analysis demonstrates that LEV drives near- and mid-term emissions reductions, but the analysis and discussion throughout also demonstrate that adopting a ZEV standard, along with an early-action credit mechanism and a one-time credit allotment, can help to develop a market and establish the groundwork necessary for future advances in the transportation sector. To achieve the GHG emission reduction goals set by the NGEA, most ICE vehicles may eventually need to be displaced by EVs and where liquid fuels are needed, petroleum may be displaced by biofuels. While the ZEV standard does not require this level of EV adoption, adoption now will make it more likely that the state can meet its GHG emission reduction goals in the future. These two standards therefore work together to support a reduction in emissions from transportation. It is reasonable to adopt both of these standards together to both require cleaner ICE vehicles and to increase the number of EVs. Both of these standards will lead to a clean future transportation system.

The LEV standard has been adopted by 14 states, as well as the District of Columbia and the ZEV standard has been adopted by 12 states. It is reasonable for the MPCA to adopt standards that have been adopted and successfully implemented by other states. The MPCA can ask questions of other state agencies who have been implementing the LEV and ZEV standards for years and can learn from their experiences. Adopting standards that are used in other places also simplifies compliance for vehicle manufacturers, as they can use similar reporting and compliance tools across multiple jurisdictions. It is therefore reasonable to adopt standards that are being used in other states.

i. Reasonableness of using incorporation by reference

In this rulemaking, the MPCA is proposing to use incorporation by reference to adopt California's LEV and ZEV standards. An incorporation by reference is a method of including other publications or documents as part of a rule. Incorporating material by reference makes these publications or documents enforceable parts of Minnesota's rules while sparing the MPCA the time and expense of having to reproduce the text as part of the rule. The MPCA believes incorporation by reference is the most effective way to meet the identity requirements of section 177 of the CAA by ensuring that minor changes California may make to its standards are incorporated into state rules. It is therefore reasonable to use incorporation by reference as a tool to ensure identity, reduce the potential for errors, and save costs.

Minn. Stat. § 14.07, subd. 4, allows agencies to incorporate "publications and documents which are

the manufacturers. Due to the mapping function, these results may double count some EVs at dealerships between two metropolitan areas and include vehicles at dealerships in neighboring states.

Table 3 summarizes EV availability in six representative Minnesota cities on July 9, 2020. As shown, EVs make up less than 1% of cars on the lot in the Twin Cities Metro and less than 0.3% of vehicles on the lot in Greater Minnesota. Significant portions of the state, particularly the southwest and northern Minnesota, have no EVs available for test drive within 50 miles.

Table 3: EV availability in six Minnesota cities as of July 9, 2020 (new vehicles within 50 miles)

	Twin Cities	Duluth	Bemidji	Rochester	Marshall	Fargo/Moorhead
Population	3.6 million	279,000	15,000	220,000	13,500	245,000
Total EVs available	171	0	0	11	0	3
Total vehicles available from manufacturers with at least one EV model	19311	349	94	1910	317	1323
Average % EVs Available	0.89%	0.00%	0.00%	0.58%	0.00%	0.23%

In comparison, dealers in states with ZEV standards are carrying higher numbers of EVs, even in small, rural towns in cold-weather states. Table 4 shows EV availability within 50 miles of towns in ZEV states that have populations of similar sizes to the towns listed in Table 3.

Table 4: EV availability in six ZEV-state cities of comparable size to Minnesota cities in Table 3 as of July 9, 2020 (new vehicles within 50 miles)

	Boston, MA	New London, CT	Bennington, VT	Burlington, VT	Geneva, NY	Binghamton, NY
Population	4.8 million	267,000	15,000	221,000	13,261	240,000
Total EVs available	555	162	67	46	219	74
Total vehicles available from manufacturers with at least one ZEV model	32673	12043	6799	1539	9992	2995
Average % EVs Available	1.70%	1.35%	0.99%	2.99%	2.19%	2.47%

While the numbers in Table 4 are still not large, they do indicate a pattern that dealers in states with the ZEV standard are carrying a higher percentage of EVs on their lots. Vehicle availability is constantly shifting, but these numbers indicate Minnesota trails in access to EV models. According to comments submitted by the Association of Global Automakers, “Estimates from IHS Market suggest that by 2025, over 130 electrified models will be available.” Many of these are planned to be SUVs, crossovers, and pickup trucks, which are the types of vehicles Minnesotans are increasingly choosing to purchase. If past practice holds, Minnesotans would be unlikely to have access to these vehicles when they are released and for an unknown amount of time after. Adopting the ZEV standard would encourage manufacturers to bring those new models to Minnesota to offer them for sale here in order to earn the credits required under the rule. It is reasonable to adopt the ZEV standard to encourage manufacturers to bring more and better options of EVs for sale in Minnesota to increase the numbers of EVs, which have zero tailpipe emissions and thus reduce emissions from transportation.

Table 4 also shows that manufacturers are able to develop plans to comply with the ZEV rule that consider the size of the local market and local interest in purchasing EVs. The MPCA has heard concerns that dealers in rural parts of Minnesota will be forced to carry EVs that their local markets do not want and that carrying EVs will reduce space on dealer lots that could otherwise be used to carry SUVs and

pickup trucks that the local markets prefer. The numbers of EVs being carried in smaller towns in states with the ZEV standard as shown in Table 4 suggest that manufacturers and dealers are able to strike a balance to comply with the ZEV standard: dealers' lots are not being flooded with EVs, while at the same time EVs are more accessible around the state.

In addition, while this proposed rule only focuses on new vehicles, it is reasonable to assume that increasing the supply of new EVs in the market may also eventually lead to more used EVs available in Minnesota, which would bring access to EV technology to a wider population and result in additional emissions benefits in the future.

Research indicates there is demand for additional EV sales. Consumer Reports' comments cited a recent study on consumer demand for EVs in Minnesota.⁸⁶ The survey research indicated 30% of prospective Minnesota car buyers would consider an EV for their next vehicle. The MPCA estimates that under the Clean Cars compliance scenario, approximately 6.0 - 7.5% of total light duty vehicle sales will need to be EVs. Table 5 estimates sales numbers for each year. These estimates do not account for the potential use by manufacturers of early action credits or one-time allotment credits, which are intended to provide compliance flexibility. The ZEV standard is meant to encourage manufacturers to ensure those people have the opportunity to experience and potentially make a choice to purchase an EV for their next vehicle. It is therefore reasonable to adopt ZEV to improve Minnesotans' choices for vehicles that will produce less air pollution.

Table 5: Estimated Minnesota light-duty vehicle and EV sales under Clean Cars compliance scenario

Model year	Light-duty vehicle sales	BEVs	PHEVs	Total EVs	Percent of total LDVs that are EVs
2025	253,385	11,714	7,139	18,852	7.44%
2026	251,104	11,804	6,777	18,581	7.40%
2027	247,840	11,865	6,401	18,266	7.37%
2028	243,379	11,893	6,012	17,904	7.36%
2029	237,538	11,879	5,607	17,486	7.36%
2030	230,649	11,811	5,187	16,998	7.37%
2031	224,883	11,682	4,752	16,434	7.31%
2032	222,634	11,489	4,309	15,798	7.10%
2033	226,641	11,269	3,874	15,143	6.68%
2034	237,067	11,106	3,475	14,581	6.15%

The MPCA used the Minnesota ZEV Compliance Calculator to project the number of BEVs and PHEVs in each MY 2025-2034 that would be required to comply with the standard. These estimates do not include the potential use by manufacturers of early action credits or one-time allotment credits, which are intended to provide compliance flexibility. Because the ZEV standard plateaus in MY 2025, projections of BEVs and PHEVs required for compliance in subsequent model years are based on projected fluctuations in Minnesota light-duty vehicle sales. These compliance projections are used throughout this document in our estimation of emissions and consumer impacts of the ZEV standard.

⁸⁶ Consumer Reports and Union of Concerned Scientists. (n.d.). Electric Vehicle Survey Findings and Methodology: Minnesota. Retrieved from <https://advocacy.consumerreports.org/wp-content/uploads/2019/09/Electric-Vehicle-Survey-Minnesota-1.pdf>

B. Specific Reasonableness

This section addresses each section of the proposed rule and explains each provision and why it is reasonable.

7023.0150 SCOPE AND INCORPORATION BY REFERENCE

Subpart 1 Scope, Subp. 2 Incorporation by reference, Subp. 3 Term substitutions. Section 209 of the CAA allows California to obtain a waiver to develop and enforce vehicle emissions standards that are more stringent than the federal standards. Section 177 of the CAA allows states to adopt the same standards as California as long as they are identical to California's. Subpart 2 incorporates California's rules by reference in order to ensure identity. See the "Statutory Authority" section for a detailed explanation of Minnesota's authority to adopt these standards under Section 177 of the CAA. See section 6(A)(i) for detailed explanation of the reasonableness of incorporating this rule by reference.

Subp. 3 clarifies that the California rules adopted by reference refer to Minnesota data, vehicles, and reporting. It is reasonable to clarify for regulated parties and other readers that compliance is based on Minnesota data, vehicles, and reporting.

Subp. 4 Effective date. As described above, with consideration to the federal action that purports to withdraw California's waiver, an approach has been built into the rule such that the GHG LEV and ZEV standards will not become effective as a typical rule, where the effective date of the rule would be five working days after publication of the notice of adoption to the *State Register*.⁸⁷ Instead, the effective date of this proposed rule has been drafted to take into account the unique circumstances of this rulemaking while also providing for adequate notice once the rule can take effect.⁸⁸

The GHG LEV and ZEV standards would not go into effect until the waiver issue between California and the EPA is resolved. The MPCA has made this clear throughout the rulemaking process to date.⁸⁹ Because the date of resolution is unknown at this time, the effective date for the GHG LEV and ZEV standards has been drafted in a manner to become effective only after California's CAA waiver is restored, or EPA has indicated an intention to restore California's CAA waiver. And even then, the rule would become effective only after the MPCA publishes a notice to the *State Register* that would inform the regulated parties and the public that the waiver has been restored. The proposed rule would become effective on the date indicated in that notice document.

While unusual, this provision is reasonable for the following reasons.

First, the MPCA consulted with staff at the Revisor's Office and with the Interagency Rules Committee (IRC) to get feedback on addressing this issue. Revisor staff and the IRC recommended the MPCA establish an effective date mechanism, like the one proposed, to address the unknown waiver restoration date.

Second, regulated parties would have additional time before compliance with the LEV and ZEV standards is required. This is because section 177 of the CAA requires states wishing to adopt the same standards as California to "adopt such standards at least two years before commencement of such model year." The MPCA has decided to draft the rule in this manner to provide regulated parties

⁸⁷ Minn. Stat. § 14.18 (2019).

⁸⁸ As noted throughout, the early action credit mechanism would go into effect five working days after publication of the final rule to the *State Register*.

⁸⁹ See, e.g., 44 Minn. Reg. 465 (MPCA Request for Comments) (October 7, 2019) ("Any final rule in Minnesota would need to be made contingent on restoration of the state's ability to adopt these measures, including the existence of operative waiver authority under Sections 209(b) and 177 of the Clean Air Act.").

additional time before this two-model year clock begins.⁹⁰

For example, if the California waiver is restored in April 2021, the MPCA notice would be published in the *State Register* later in 2021. Under the proposed rule, the MPCA would designate an effective date for the LEV and ZEV standards in this notice. Because section 177 requires the standards be adopted “at least two years before commencement of such model year,” the effective date would begin the two-model year clock for implementation. Since a new model year begins on January 2nd of a year, the model year definition is the calendar year plus one. In the example presented, if the MPCA designated that the effective date was January 1, 2022, in its notice, the first model year that manufacturers would have to comply would be MY 2025.

This determination of model year compliance may benefit from additional explanation. Two years after January 1, 2022 is January 1, 2024. The two-model year waiting period captures MY 2023 and 2024, as MY 2023 vehicles could be sold starting as early as January 2, 2022, and MY 2024 vehicles could be sold as early as January 2, 2023. Therefore, MY 2025 would be the first effective model year, because MY 2025 vehicles could be sold starting on January 2, 2024.

Because of the complex interaction between the federal CAA and the definition of model year, and because of the MPCA’s decision regarding the effective date, this proposed rule was drafted to take into consideration these unusual circumstances—which are beyond the control of the MPCA. However, the proposed effective date language is reasonable because it provides additional advance notice to regulated parties before the LEV and ZEV standards are implemented and enforced while taking an approach consistent with previous Section 177 states regarding CAA compliance.

The proposed effective date rule language excludes the early action credit mechanism found in 7023.0300, subpart 4, because this mechanism would go into effect before the LEV and ZEV standards. The early action credit mechanism would go into effect five working days after the MPCA publishes a Notice of Adoption in the *State Register* following completion of the rulemaking process.⁹¹

This means that there would be two notices published by the MPCA with regard to the effective date of this rule. First, the Notice of Adoption would be published upon completion of the rulemaking process and the early action credit mechanism would go into effect five working days after publication of that notice. The MPCA anticipates that the Notice of Adoption would be published in early 2021, pending completion of the rulemaking process. Second, the Effective Date notice described in 7023.0150, subp. 4, would be published once the waiver issue is resolved. There is no known timeline for this, but this notice would not affect the LEV and ZEV standards themselves.

The MPCA is authorized to implement an early action credit mechanism before the LEV and ZEV standards because, as discussed elsewhere, courts have made a distinction between standards, which are “regulatory measures intended to lower the level of auto emissions,” and enforcement mechanisms, which are regulatory devices “intended to ensure that the ‘standards’ are effective.”⁹² Because the early action credit system is a voluntary flexibility offered to manufacturers, not a requirement of the rule, it does not require two years between adoption and implementation. The intent is to offer an early incentive to manufacturers to deliver EVs to Minnesota sooner than required by the rule and, once the standards become effective, the early action credit mechanism will help to support manufacturers’

⁹⁰ See, e.g. *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. New York Dep’t of Env’tl. Conservation*, 17 F.3d 521, 533–34 (2d Cir. 1994) (finding that the “plain language of §177” leads to the conclusion that “it is sensible... to adopt the standards prior to the EPA’s having granted a waiver, so long as... no attempt to enforce the plan prior to the time when the waiver is actually obtained” is made).

⁹¹ MINN. STAT. § 14.18, subd. 1 (2019).

⁹² *American Auto. Mfrs. Ass’n v. Cahill*, 152 F.3d 196, 200 (2d Cir. 1998).

vehicle groups as addressed by other section 177 states and to address the vehicle types that produce the most GHG emissions from transportation.

Subp. 1 requires all new motor vehicles of the varieties identified that are produced and then delivered for sale in Minnesota to comply with the emissions standards incorporated by reference at 7023.0150, subp. 2. This requirement would work in tandem with the requirements of Minn. Stat. 168A.085, subd. 1, which requires vehicles registered in Minnesota to comply with “applicable federal emissions standards in force at the time of manufacture as provided by the CAA, United States Code, title 42, sections 7401 through 7642, and regulations adopted pursuant thereto.” Since the CAA allows states to choose to either rely on the federal standards or the more stringent alternative federal standards under CAA section 177, beginning in the first model year, only new vehicles certified under the LEV standards would be allowed by the Department of Public Safety and the Division of Driver and Vehicle Services (DVS) to be registered in Minnesota.

During the RFC period, dealers identified concerns that Minnesotans would go to neighboring states to purchase new vehicles to get around the rule, potentially damaging the business of dealers in Minnesota and preventing Minnesota from achieving the emission reduction goals of the rule. The proposed rule, when considered in context with DVS statutory requirements, is reasonable as it would prevent or reduce the potential influx of non-compliant vehicles into Minnesota. It would defeat the purpose of the rule to reduce vehicle emissions if the rule allowed Minnesotans to cross the border to purchase non-compliant vehicles.

In the MPCA’s discussions with the section 177 states, those states reported having only a very small number of instances where people attempted to register non-LEV certified vehicles in their states. A representative from the Connecticut Department of Energy and Environmental Protection presented at one of MPCA’s technical meetings to share Connecticut’s experiences with the rule. He stated in his presentation that Connecticut had less than five violations in the first few years and essentially none in more recent years. Other states made similar comments, including Maryland, which—like Minnesota—is surrounded by states that have not adopted the LEV standard.

Subp. 2 identifies a list of exceptions to the rule. Exceptions are enforcement mechanisms and not standards and thus can be developed by individual states. Accordingly, this is the same list that many other section 177 states use. Using the same list of exceptions as other states is reasonable to ease implementation for the MPCA and vehicle manufacturers. These exceptions provide reasonable flexibility for manufacturers, dealers, vehicle purchasers, and the state. Based on the experiences of other states and the numbers of vehicles these exceptions would apply to, the MPCA does not expect the exceptions to substantially impact the purpose of the rule or emissions benefits from the rule. These exceptions cover situations that are likely to be uncommon in practice, and represent a reasonable way in which to address specific concerns. These exceptions are reasonable because of the following:

A. The rule being adopted addresses the delivery of new vehicles for sale in Minnesota. It is outside of the scope of this rule to regulate used vehicles or their sale. It is reasonable to clarify for readers and regulated parties that used vehicles are outside of the scope of the proposed rule.

B. It is reasonable to provide this exemption because inter-dealer sales do not affect the intent of this rule, since vehicles that are sold to the final purchaser would still need to comply with the LEV standards.

C, D, and F. It is reasonable to provide these exemptions because these vehicles would not be driven in Minnesota enough to substantively affect our air quality or GHG emissions and it is not the intent of the MPCA to regulate these industries.

E. This exemption would allow dealers to sell non-LEV certified vehicles to people who live in neighboring states. During the RFC period, dealers identified a concern that any potential up-front price difference between LEV and non-LEV vehicles might reduce the number of residents of neighboring states who go to Minnesota dealers to purchase a new vehicle. Dealers near the state border have indicated that sales to people in neighboring states can be a substantial part of their sales. If at some point in the future there is a difference in cost between LEV and non-LEV certified vehicles, this exception is reasonable to allow dealers to stock non-LEV vehicles for sale to neighboring states, thus alleviating these concerns.

G and H. It is reasonable to provide an exemption to ensure that operators of these types of critical safety-oriented fleets would be able purchase whatever vehicle they need in order to accomplish their duties.

I – K. It is reasonable to provide exceptions to avoid unduly burdening Minnesotans who receive a vehicle due to circumstances that are outside of their control.

L. It is reasonable to provide an exception to avoid unduly burdening people moving to Minnesota who are not currently bound by Minnesota law and may not yet know they are moving here or be familiar with the laws of Minnesota.

Subp. 3 Fleet average emissions, Subp. 4 Environmental performance labels, Subp. 5 Warranty requirements, and Subp. 6 Recall requirements. These subparts refer to the applicable California rules adopted by reference in 7023.0150, subp. 2 in order to ensure identicality. It is reasonable to write out these rule parts rather than only relying on the incorporation by reference in 7023.0150, subp. 2 to help clarify that Minnesota-specific data and actions within Minnesota must be used to comply with Minnesota's rules. It is reasonable to require Minnesota-specific data and actions be used to demonstrate compliance with this rule in Minnesota.

Subp. 7 Reporting requirements and Subp. 8 Record availability and retention; reporting noncompliance. Section 177 states have some flexibility in developing enforcement strategies that work for them. To improve ease of implementation for both the MPCA and vehicle manufacturers, when appropriate, the MPCA uses requirements also used by other section 177 states. The dates and requirements listed in this subpart are the same as those used by other section 177 states. It is reasonable to align reporting requirements and dates with those used in other states to provide both ease and consistency in implementation for both manufacturers and the MPCA.

7023.0300 ZERO EMISSION VEHICLES (ZEV) STANDARD

Subp. 1 Requirement. This subpart refers to the applicable California rules adopted by reference in 7023.0150, subp. 2 in order to ensure identicality. It is reasonable to write out this requirement rather than only relying on the incorporation by reference in 7023.0150 subp. 2 to help clarify that Minnesota-specific data must be used to comply within Minnesota.

Subp. 2 Credit bank; reporting requirements and Subp. 3 Requirement to make up ZEV deficit. These subparts clarify how vehicle manufacturers would demonstrate compliance with Subp. 1. These subparts refer to the applicable California rules adopted by reference in 7023.0150, subp. 2 in order to ensure identicality. It is reasonable to write out this requirement rather than only relying on the incorporation by reference in 7023.0150 subp. 2 to help clarify that Minnesota-specific data must be used to comply within Minnesota. Additionally, section 177 states have some flexibility in developing enforcement strategies that work for them. To improve ease of implementation for both the MPCA and vehicle manufacturers, when appropriate, the MPCA uses requirements also used by California and other section 177 states. The dates and requirements listed in this subpart are the same as those used by

Manufacturers are the only group directly regulated by this proposed rule. Manufacturers would need to ensure the vehicles being delivered for sale in Minnesota comply with the LEV standard. They would also need to ensure they are meeting the ZEV credit requirements. They would have some reporting requirements, as well.

ii. Automobile dealers

Automobile dealers may have some costs associated with this proposed rule. However, it is reasonable to expect that most of these costs would be passed on to consumers who purchase vehicles, and who would also benefit from cost savings over the lifetime of the vehicle. This assumption is in line with past analyses conducted by other states and the federal government.

Dealers are not directly regulated by this proposed rule, but they are the interface between the manufacturers and consumers and therefore may experience costs and changes to business. They may experience changes in requirements from manufacturers to ensure only LEV-certified vehicles are offered for sale to Minnesotans. They may also experience limitations on trading vehicles with dealers in other states if those dealers do not carry LEV-certified vehicles. In addition, they may need to invest in infrastructure, tools, and training to support increased EV sales.

iii. Individuals and groups that purchase new vehicles

Individuals and groups that purchase new vehicles would be likely to experience costs associated with increases in up-front costs of vehicles, but would also experience long-term savings from reduced fuel costs. People who purchase new vehicles and plan to register and title them in Minnesota would need to ensure their new vehicle is LEV-certified. Since in most cases dealers are the group that receives new vehicles from manufacturers and typically register and title new vehicles for the purchaser, dealers would help individuals ensure they are not purchasing a non-compliant vehicle.

New vehicle purchasers who choose to buy a new EV would benefit from the adoption of the ZEV standard because the rule encourages manufacturers to provide greater availability of EV models to Minnesotans. Since the ZEV standard would not limit new vehicle options for Minnesota consumers nor require anyone in Minnesota to buy an EV, the ZEV standard would not have any impact on vehicle purchasers who do not choose to purchase a new EV.

The proposed rule would have the same effect on all new vehicle purchasers, whether they are individuals or own vehicle fleets, such as local governments, businesses, and non-profit organizations.

iv. Related industries

Some industries related to vehicles may be indirectly affected by adoption of the proposed rule.

Organizations that manufacture, install, operate, and maintain EV infrastructure may experience increased demand for their products and services, and thus a benefit from the proposed rule.

Mechanics and others who work on vehicles may experience costs from the proposed rule. EVs tend to have less need for maintenance, which may affect demand for services from mechanics.

Companies that build components for vehicles that help cut GHG emissions may experience benefits from the proposed rule from increased demand for their products.

Electric utilities may see increased demand for electricity and thus a benefit from the proposed rule. They already incorporate EV adoption into their Integrated Resource Plans, but may need to adjust the scale of EV adoption in their planning. As EVs become more common, they may also see more interest in programs for time of use rates and EV charging in homes and businesses.

The petroleum industry may experience a cost associated with the proposed rule due to a reduction in

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals

Part 6(A) identifies five categories of parties affected by this rule:

- i. Automobile manufacturers
- ii. Automobile dealers
- iii. Individuals and groups that purchase new vehicles
- iv. Related industries
- v. All Minnesotans

This part of the SONAR addresses the probable costs and benefits of this proposed rule for each of these categories of people. MPCA has conducted an analysis of the costs and benefits of this proposed rule. See Appendix 1 for the methods, assumptions, data sources, and detailed conclusions of this analysis.

Overall, the MPCA's analysis of the costs and benefits of this proposed rule has found a net benefit for adopting both the LEV and the ZEV standards.

i. Automobile manufacturers

Manufacturers are the only group directly regulated by this proposed rule. LEV-certified vehicles and EVs both cost more to manufacture than non-LEV ICE vehicles. However, it is assumed that vehicle technology and compliance costs borne by the manufacturers (and the new vehicle dealers discussed below) would be passed along to new vehicle purchasers in the form of higher purchase prices for LEV-certified vehicles and for EVs (see analysis in part 7(E)(iii)). Vehicle purchasers are also the group that would accrue any benefits from fuel savings from these vehicles. This assumption is consistent with analyses conducted by other states and the federal government when considering vehicle emissions standards.¹⁰⁶

Since this proposed rule is already being implemented in other states, there are no costs associated with research and development of new vehicles to comply with the requirements of the rule. There may be some marginal costs in staff time for increased tracking and reporting of vehicles delivered for sale in Minnesota. However, since this tracking and reporting is the same done for the other section 177 states, the MPCA does not anticipate that the manufacturers would need to hire new staff to manage this additional data. Manufacturers may need to increase marketing and advertising to sell more EVs to comply with the ZEV requirements; however, it is reasonable to assume that most or all of these funds would be shifted from money manufacturers are already investing in marketing and advertising other products in their lines.

The MPCA asked for estimates of costs to businesses for complying with the proposed rule during the RFC. The Alliance of Automobile Manufacturers and the Association of Global Automakers both commented on the RFC and neither stated specific costs they were concerned about bearing. The MPCA therefore anticipates minimal costs for manufacturers to comply with the proposed rule and that any costs borne by the manufacturers would be passed on to consumers.

ii. Automobile dealers

Dealers are not directly regulated by the proposed rule, but may incur costs as the interface between

¹⁰⁶ See for example, *Regulatory Analysis for Proposed Colorado Air Quality Control Commission Regulation Number 20, 5 CCR 1001-24, November 9, 2018*

manufacturers and consumers.

Potential costs to dealers may include marketing and advertising efforts to encourage EV purchasing. Training of both sales and service staff at dealerships is an ongoing process with any new model year introduction, but that training would need to reflect slightly different product characteristics and service needs, as well as a need to increase understanding about EVs, charging, and how to communicate with shoppers about them. As was the case for the vehicle technology and compliance costs borne by vehicle manufacturers, it is assumed that the costs borne by new vehicle dealers would be passed along to new vehicle purchasers.

Dealers offering EVs for sale for the first time may need to invest in infrastructure, training, and tools. The Minnesota Automobile Dealers Association (MADA) submitted comments during our RFC period stating, “Some manufacturers require dealers to make investments in infrastructure and personnel, costing upwards of \$25,000-50,000, to be authorized to sell EVs.”¹⁰⁷ In conversations with MADA, the MPCA requested more detail about these costs, including which manufacturers they apply to and a more specific list of what the costs cover. Specifics on these costs to dealers were not included in written comments received during the RFC or in subsequent discussions. In the absence of more detailed information, it seems that some dealers might be eligible for no- and low-interest loans from the MPCA for small- and medium-sized businesses looking to reduce pollution.

The MPCA acknowledges the potential costs for dealers to develop the infrastructure and expertise to sell EVs. These costs, however, would not be the result solely of this proposed rule. Manufacturers are announcing many new EV models to be released in the coming years and making statements such as the comment by the Auto Alliance that EVs are “an important component of the automaker mission.”¹⁰⁸ Similarly, MADA participates in Drive Electric Minnesota policy committee, which works “to advocate for policies and administration actions to jump start Minnesota’s EV market.”¹⁰⁹ These plans and statements indicate that the market is beginning to increase EV adoption even without the proposed ZEV standard and therefore the costs for dealerships associated with selling EVs are likely even without this proposed rule. The proposed rule provides a floor for EV deliveries in Minnesota and is intended to help accelerate adoption, but would not be the sole driver of increased EV adoption over the coming years. While the intent of this rule is to increase EV adoption in Minnesota more quickly, it is not possible to determine the cost for dealers specific to the adoption of this rule over the costs caused by market forces.

Dealers have also expressed concerns about lost sales resulting from LEV. A LEV-certified vehicle, on average, will be likely to have a higher purchase price than an otherwise-comparable federally-certified vehicle compliant with the final SAFE rule. The dealers have expressed concerns that these potential upfront cost increases could cause diminished sales from Minnesota dealers to people living in surrounding states or that increased upfront costs would cause Minnesotans to purchase fewer new vehicles. The exemption 7023.0250, subp. 2(E) allows dealers to sell non-LEV certified vehicles to purchasers who would register the vehicle out of state. This allows dealers near the state’s borders to address the needs of their out-of-state customers. In addition, because of Minn. Stat. 168A.085, subd. 1, Minnesotans would only be able to register vehicles in Minnesota that comply with LEV. Dealers in surrounding states would be able to carry compliant vehicles if they wish to sell to Minnesotans, but this provision may reduce the number of Minnesotans purchasing vehicles out of state. In addition, as noted below and in Appendix 1, studies have not shown a clear relationship between the upfront cost of

¹⁰⁷ Comment by MADA made during the RFC period, at page 4 (December 6, 2019)

¹⁰⁸ Comment by the Auto Alliance made during the RFC period, at page 1 (December 6, 2019)

¹⁰⁹ Drive Electric Minnesota, 2020 Minnesota Legislative Preview: Electric Vehicles, <https://www.driveelectricmn.org/2020-minnesota-legislative-preview-electric-vehicles/>

vehicles and sales, as vehicle purchases are influenced by many factors, including upfront cost, fuel economy, vehicle function and options, and the strength of the economy as a whole.

Dealers have also expressed concerns that it may be more difficult to trade vehicles with dealers in surrounding states. The MPCA is not able to determine the level of impact; it is unclear how many dealers surrounding Minnesota might stock LEV-certified vehicles, how many trades with out of state dealers could be replaced with trades in state, the costs associated with trading over longer distances, etc.¹¹⁰

The MPCA anticipates costs to dealers associated with the proposed rule would be passed on to consumers.

iii. Individuals and groups who purchase new vehicles

The category of new vehicle purchasers includes a wide range of groups. Individuals purchase new vehicles as do a wide variety of organizations, including businesses large and small; non-profit organizations; and levels of government large and small, state, local, and federal. All of these groups would experience essentially the same costs and benefits. The MPCA assumes in this analysis that all the costs to vehicle manufacturers and dealers that might result from this rule would be passed on to consumers. Consumers are also the group that accrues the benefits associated with operating LEV-certified vehicles and EVs.

The MPCA analyzed the costs and benefits of adopting the LEV and ZEV standards for the first 10 model years of implementation.¹¹¹ EVs are generally cheaper to own and operate over the life of the vehicles due in large part to fuel and maintenance saving and the increased purchase cost of LEV certified vehicles may be mostly or entirely offset by fuel savings over the life of the vehicles. Depending on the choice of discount rate, the analysis estimates that the proposed rule would result in between \$23 million average annual net consumer costs to \$48 million of average net consumer savings per model year over vehicles' lifetimes by model year 2034. The MPCA also estimates that over the first 10 model years of implementation, consumers would accrue between a total cost of \$236 million over vehicles' lifetimes to a total benefit of \$476 million.

The MPCA also analyzed the potential effects of a long-term economic downturn that could result from the current COVID-19 pandemic. Although the soonest these standards could take effect would be model year 2025, it is possible that the pandemic may have far-reaching and long-lasting economic repercussions that could affect the market for new vehicle sales, both ZEVs and ICE vehicles. It could also lead to future reduced fuel prices. The MPCA estimated that under most reasonable assumptions about future economic slowdowns, the consumer savings resulting from these standards are affected only slightly. Details of this analysis can be found in Appendix 1.

The MPCA analyzed the economic effects of the LEV and ZEV standards separately. Both standards would have economic impact on new vehicle purchasers. The mechanisms for these effects would be different for the LEV standard compared to the ZEV standard. Hence, this analysis first evaluates the likely costs and benefits of a LEV standard for purchasers and then considers the likely additional costs

¹¹⁰ In Colorado's LEV rulemaking, the state was also unable to determine what these costs might be. See *Regulatory Analysis for Proposed Colorado Air Quality Control Commission Regulation Number 20, 5 CCR 1001-24*, November 9, 2018, page 27.

¹¹¹ There are many variables that may impact when the proposed rules would go into effect if they are adopted. These variables include rulemaking timeline and the resolution of the litigation over California's waiver under section 209 of the CAA. This analysis assumes the earliest date by which the proposed rules could be in effect. Section 177 of the CAA provides that states must adopt the new standards at least two years prior to their implementation. Therefore, if MPCA adopts the proposed rules in early 2021, they would not be applicable for MY 2022, which begins on January 1, 2021, nor for MY 2023 or model year 2024, but will be applicable to MY 2025, which begins January 1, 2024.

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Minnesota drives forward with clean car standards to reduce greenhouse gas emissions

The Minnesota Pollution Control Agency (MPCA) today announced it is moving forward with its proposed clean car standards similar to those in 14 other states, including Colorado and Maine. If approved by an administrative law judge, Minnesota's clean car standards would apply to new vehicles and are anticipated to take effect beginning with model year 2025 (January 2024).

Minnesota's proposed clean car rule would adopt two new emission standards used in many parts of the country.

Low emission vehicle (LEV) standard fortifies standard for today's new vehicles

The LEV standard regulates the amount of greenhouse gases and other harmful air pollution that new vehicles can emit. The LEV standard only applies to new light- and medium-duty vehicles like cars, SUVs, and pickup trucks. The LEV standard does not apply to off-road or farming equipment, heavy-duty vehicles, or used vehicles, and it does not require emissions testing. It also does not prevent the use of biofuels and other cleaner fuels.

Most importantly, all new vehicles sold in Minnesota since 2012 currently meet the LEV standard. Between 2012 and 2020, the United States only had one, unified standard – meaning the federal standard was aligned with the LEV standard. In March 2020, the federal government rolled back existing emissions standards, which could mean weaker environmental protections for our state if we don't act.

Zero emission vehicle (ZEV) standard brings more hybrid and electric vehicles to Minnesota

The ZEV standard requires auto manufacturers to deliver more battery electric vehicles and plug-in hybrid models for sale in Minnesota, increasing each year. The exact number of vehicles is linked to the automaker's overall sales within the state. The ZEV standard calls for incremental progress over time, not sudden, overnight change.

Minnesota has been on the tail end of receiving electric vehicles, and there are more makes and models available in ZEV states than Minnesotans can easily acquire here. A July 2020 survey found that Twin Cities auto dealers had only 171 new hybrids and electric vehicles on their lots out of more than 19,300 total vehicles for sale. In Greater Minnesota, consumers had even fewer options with no new hybrid and electric vehicles available in Duluth, Marshall, and Bemidji, and just 11 for sale in Rochester. Adopting the ZEV standard would ensure that Minnesota is at the forefront of receiving this new innovation.

"Minnesotans expect action to address our current climate crisis. That's why the MPCA is using every available tool to address greenhouse gas emissions, including clean car standards that reduce emissions and increase electric vehicle options," said Laura Bishop, MPCA commissioner. **"Clean car standards, along with the electric school bus pilot project and supporting homegrown energy like**

biofuels, are part of a multipronged approach to reduce greenhouse emissions in our transportation sector.”

The MPCA’s Notice of the Intent to Adopt Rule will be published in the *State Register* on Monday, December 21. The Office of Administrative Hearings has scheduled a two-day hearing held by the presiding administrative law judge, Judge Palmer-Denig, on February 22-23, 2021 starting at 3 p.m. each day. In January, the MPCA also will hold four online information sessions on the following dates and times:

- Tuesday, January 19, 2021, at 10 a.m.
- Wednesday, January 20, 2021, at 5 p.m.
- Wednesday, January 27, 2021, at 1 p.m.
- Tuesday, February 2, 2021, at 6 p.m.

In 2007, Governor Tim Pawlenty signed the bipartisan Next Generation Energy Act into law, setting statutory goals to reduce greenhouse gas emissions by 15% from 2005 levels by 2015, by 30% by 2025, and by 80% by 2050. Minnesota missed the 2015 target and is not on track to meet future goals, either. Between 2005 and 2018, overall greenhouse gas emissions in Minnesota decreased by just 8%.

To get back on track, Minnesota must take swift action in all sectors, including transportation. Right now the transportation sector is the single largest source of climate-changing pollution in Minnesota. According to public input gathered during the 2019 Pathways to Decarbonizing Transportation in Minnesota project, Minnesotans want and expect action from state leaders for cleaner, lower-carbon transportation options, including adopting clean car standards. Once implemented, Minnesota’s clean car standards will reduce greenhouse gas emissions by 8.4 million tons in the first 10 years, and the clean air and climate benefits will continue to grow over time.

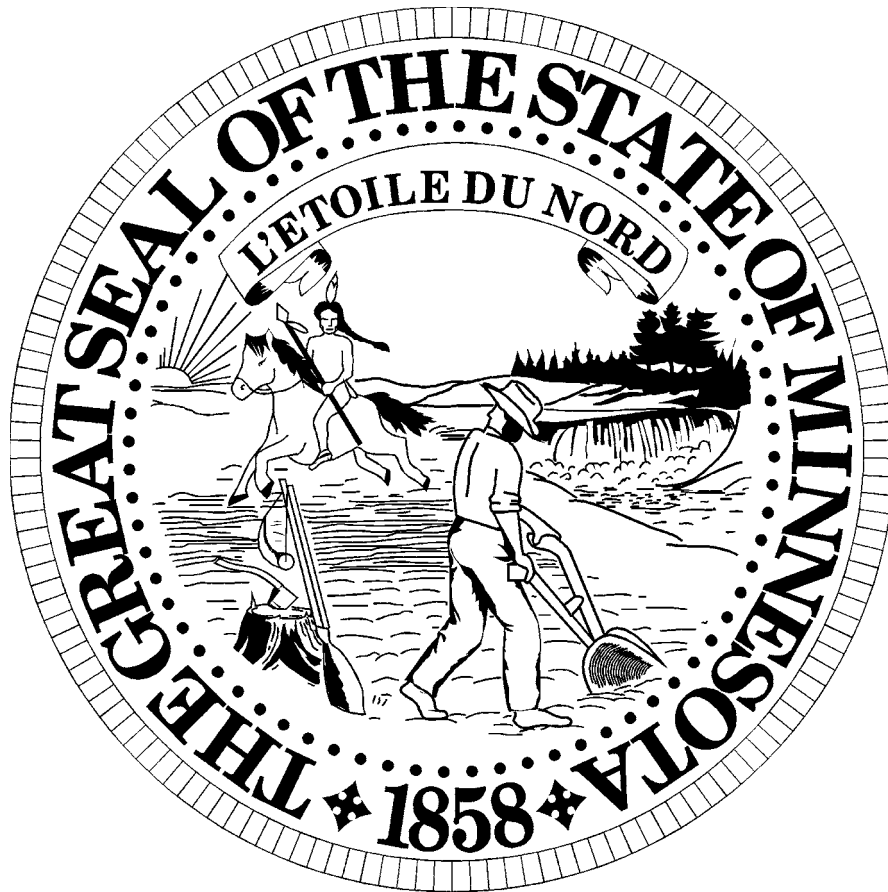
The MPCA works with partners across the private, public, and non-profit sectors to advance electric vehicles in Minnesota, including funding needed for electric vehicle charging infrastructure. In recent years, MPCA has used funding from the national Volkswagen settlement to build more than 1,100 miles of electric vehicle charging corridors in Greater Minnesota, and will continue expanding this statewide network by another 2,500 miles starting next year.

More information about the proposed rule, public hearing, and how to participate in the process will be available on the MPCA's website: mn.gov/cleancars

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Minnesota State Register

Published every Monday (Tuesday when Monday is a holiday)



**Proposed, Adopted, Emergency, Expedited, Withdrawn, Vetoed Rules;
Executive Orders; Appointments; Commissioners' Orders; Revenue Notices;
Official Notices; State Grants & Loans; State Contracts; Non-State Public Bids,
Contracts and Grants**

**Monday 21 December 2020
Volume 45, Number 25
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Minnesota State Register

Judicial Notice Shall Be Taken of Material Published in the Minnesota State Register

The Minnesota State Register is the official publication of the State of Minnesota's Executive Branch of government, published weekly to fulfill the legislative mandate set forth in Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400. It contains:

- **Proposed Rules**
- **Adopted Rules**
- **Exempt Rules**
- **Expedited Rules**
- **Withdrawn Rules**
- **Executive Orders of the Governor**
- **Appointments**
- **Proclamations**
- **Vetoed Rules**
- **Commissioners' Orders**
- **Revenue Notices**
- **Official Notices**
- **State Grants and Loans**
- **Contracts for Professional, Technical and Consulting Services**
- **Non-State Public Bids, Contracts and Grants**

Printing Schedule and Submission Deadlines

Vol. 45 Issue Number	Publish Date	Deadline for: all Short Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical- Consulting Contracts, Non-State Bids and Public Contracts	Deadline for LONG, Complicated Rules (contact the editor to negotiate a deadline)
#26	Monday 28 December	Noon Tuesday 22 December	Noon Thursday 17 December
#27	Monday 4 January	Noon Tuesday 29 December	Noon Thursday 24 December
#28	Monday 11 January	Noon Tuesday 5 January	Noon Thursday 31 December
#29	Tuesday 19 January	Noon Tuesday 12 January	Noon Thursday 7 January

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NOTICE: How to Follow State Agency Rulemaking in the State Register

The State Register is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the State Register. Published every Monday, the State Register makes it easy to follow and participate in the important rulemaking process. Approximately 80 state agencies have the authority to issue rules. Each agency is assigned specific Minnesota Rule chapter numbers. Every odd-numbered year the Minnesota Rules are published. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the State Register.

An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (Minnesota Statutes §§ 14.101). It does this by publishing a notice in the State Register at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as Proposed Rules, along with a notice of hearing, or a notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules, and withdrawn proposed rules, are also published in the State Register. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the State Register as Adopted Rules. These final adopted rules are not printed in their entirety, but only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the State Register, the issue the rule appeared in as proposed, and later as adopted.

The State Register features partial and cumulative listings of rules in this section on the following schedule: issues #1-26 inclusive (issue #26 cumulative for issues #1-26); issues #27-52 inclusive (issue #52, cumulative for issues #27-52 or #53 in some years). A subject matter index is updated weekly and is available upon request from the editor. For copies or subscriptions to the State Register, contact the editor at 651-201-3204 or email at sean.plemmons@state.mn.us

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(Rules Appearing in Vol. 44 Issues #27-53 are
in Vol. 44, #53 - Monday 29 June 2020)

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Proposed Rules

Comments on Planned Rules or Rule Amendments. An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

Rules to be Adopted After a Hearing. After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rule. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record then is closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

Rules to be Adopted Without a Hearing. Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.1414.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated “all new material.” **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Minnesota Pollution Control Agency (MPCA)

Proposed Permanent Rules Relating to Clean Cars; Notice of Intent to Adopt Rules with a Hearing

Proposed Rules Adopting Vehicle Greenhouse Gas Emissions Standards—Clean Cars Minnesota, Minnesota Rules, chapter 7023; Revisor’s ID Number 04626, OAH docket number 71-9003-36416

Overview. This notice is the Minnesota Pollution Control Agency’s (MPCA’s) legal notice of its intent to adopt amended air rules after a hearing. The purpose of these rule amendments, known as Clean Cars Minnesota, is to reduce greenhouse gas (GHG) and other air pollutant emissions from light-duty and medium-duty vehicles by adopting the Low-Emission Vehicles (LEV) and Zero-Emission Vehicles (ZEV) standards adopted by the California Air Resources Board, as allowed under section 177 of the Clean Air Act (CAA). This notice provides you the opportunity to submit comments on this rule to the Administrative Law Judge (ALJ), either orally at the hearing or in writing at any time before the close of the hearing record. The **Subject of Rules** section provides further description of these proposed rules. If the proposed rule changes affect you in any way, the MPCA encourages you to participate in the rulemaking process.

View the **Alternative Format/Accommodation** and **MPCA Contact Person** sections of this notice for information on requesting this document in an alternative format.

Subject of Rules and Statutory Authority. The proposed rules would adopt two emissions standards for GHGs

Proposed Rules

and other air pollutants from light-duty and medium-duty vehicles. The LEV standard would require automobile manufacturers to deliver for sale in Minnesota only vehicles that meet the more stringent GHG and other air pollutant emissions standards established by California and later adopted by several other states, as allowed under the CAA. The ZEV standard would require automobile manufacturers to deliver for sale in Minnesota each year a certain percentage of vehicles with zero tailpipe emissions, including battery electric vehicles, plug-in hybrid electric vehicles, and hydrogen-fueled vehicles.

Minnesota Statutes, section 116.07, subdivision 4 authorizes the MPCA to adopt rules for the prevention, abatement, and control of air pollution. Minnesota statutes, section 116.07, subdivision 2 authorizes the MPCA to adopt “maximum allowable standards of emission of air contaminants from motor vehicles.”

Public Information Webinars and Legislative Hearings. The MPCA intends to hold several public information webinars on Clean Cars Minnesota before the administrative hearing(s) in order to provide an overview of the proposed rules, the rulemaking process, and how to submit comments to the ALJ. **NOTE:** The webinars are opportunities to learn more about the proposal and the process; they are not opportunities to provide formal comment, and in order to ensure everyone has access to the same information about the rule proposal, MPCA staff will only be able to answer questions on topics that are covered in the publically available documents. Comments must be provided directly to the ALJ either at a hearing or in writing (see the **Public Hearing** and **Comments** sections below for details). Dates and times for the informational webinars are listed on the rulemaking webpage at <https://www.pca.state.mn.us/air/clean-cars-mn-rulemaking>; links, presentations and other materials related to the webinars will also be posted on the webpage once they are available.

During the Notice period, the MPCA may be asked by the Minnesota Legislature to appear at one or more legislative hearings on this proposed rule or on related issues. Because the MPCA does not control this process, dates and times of legislative hearings are not known in advance and cannot be included in this public notice. Notice of legislative hearings, including dates and times and agendas, are posted by the Legislature at <https://www.leg.state.mn.us/>. Any interested person may attend a legislative hearing at which MPCA is requested to appear.

Public Hearing. The MPCA intends to adopt these rules after two days of public hearings, following the procedures in the rules of the Office of Administrative Hearings (OAH), *Minnesota Rules* parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.131 to 14.20. The ALJ will conduct the hearing by WebEx on February 22 and 23, 2021, beginning at 3 p.m. both days.

- February 22 hearing link: ***Webex Hearing Link***
- February 23 hearing link: ***Webex Hearing Link***

The hearing continues until all parties are heard, or until the ALJ adjourns the hearing (no earlier than 6 p.m.). All interested or affected parties will have an opportunity to participate by submitting either oral or written data, statements, or arguments. You may submit a statement without appearing at the hearing. Refer to the **Comments** section for information on submitting statements. Additional information regarding the proposed rules and the hearing is provided at <https://www.pca.state.mn.us/air/clean-cars-mn-rulemaking>.

Administrative Law Judge. ALJ Jessica A. Palmer-Denig will conduct the hearing. Judge Palmer-Denig’s Legal Assistant, Anne Laska, can be reached at the OAH, 600 N. Robert St., P.O. Box 64620, St. Paul, MN 55164-0620, telephone 651-361-7881, and fax 651-539-0310. The rule hearing procedure is governed by *Minnesota Statutes*, sections 14.131 to 14.20, and by the rules of the OAH, *Minnesota Rules*, parts 1400.2000 to 1400.2240. You should direct questions about the rule hearing procedure to the ALJ.

Availability of Rules and Statement of Need and Reasonableness. A copy of the proposed rules is published in the *State Register* with this notice. The statement of need and reasonableness (SONAR) summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost and benefit of the proposed rules. Electronic copies of the proposed rules and the SONAR are on the MPCA’s website at

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<https://www.pca.state.mn.us/public-notice>, and at <https://www.pca.state.mn.us/air/clean-cars-mn-rulemaking>. A print copy of the proposed rules is available for free upon request (one copy per request) by contacting the **MPCA contact person**; a print copy of the SONAR is available for the cost of reproduction.

Comments. You and all interested or affected people, including representatives of associations and other interested groups, will have an opportunity to participate. The ALJ will accept your views either orally at the hearing or in writing at any time before the close of the hearing record. Comments received at the hearing will be considered equally with written comments. You are strongly encouraged to submit written comments to the ALJ through the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions>. If it is not possible for you to use the eComments website, you may submit your written comments in person, via U.S. mail, or by fax to Judge Palmer-Denig at the address provided in the **Administrative Law Judge** section. All evidence that you present should relate to the proposed rules. **NOTE: Comments regarding the MPCA's proposal must be sent to the ALJ. Comments sent to the MPCA alone will not be part of the rulemaking record.** Comments submitted after the close of the comment period will not be accepted or considered part of the record. After the ALJ sets the closing date, the MPCA will update the rule website at <https://www.pca.state.mn.us/air/clean-cars-mn-rulemaking> to notify interested parties of the deadline to comment.

You may submit written comments to the ALJ to be recorded in the hearing record for five working days after the public hearing ends. At the hearing, the ALJ may order this period extended for a longer time, but for no more than 20 calendar days. After the comment period, there is an additional five-working-day rebuttal period during which the MPCA and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period.

The OAH must receive all comments and responses submitted to the ALJ no later than 4:30 p.m. on the date the ALJ sets for the end of the comment period. All comments or responses received are public and will be available for review at <https://minnesotaoah.granicusideas.com/discussions> or at the OAH. You may view frequently asked questions about the OAH Rulemaking eComments website at https://mn.gov/oah/assets/ecommments-faq_tcm19-82012.pdf. Any questions about submitting comments via the OAH Rulemaking eComments website should be directed to the OAH at 651-361-7900.

MPCA Contact Person. The MPCA contact person is Katie Izzo, MPCA Rule Coordinator, 520 Lafayette Rd. N, St. Paul, MN 55155-4194; telephone 651-757-2595; email cleancarsmn.pca@state.mn.us. You may also call the MPCA at 651-296-6300 or 1-800-657-3864; use your preferred relay service.

Modifications. The MPCA may modify the proposed rules as a result of the rule hearing process. It must support modifications by data and views presented during the rule hearing process. The adopted rules may not be substantially different than these proposed rules, unless the MPCA follows the procedure under *Minnesota Rules*, part 1400.2110. The public is also advised that, depending upon the comments received, the MPCA may withdraw the proposed changes.

Adoption Procedure After the Hearing. After the close of the hearing record, the ALJ will issue a report on the proposed rules. You may ask to be notified of the date when the ALJ's report will become available, and can make this request at the hearing or in writing to the ALJ. You may also ask to be notified of the date that the MPCA adopts the rules and files them with the Secretary of State, or ask to register with the MPCA to receive notice of future rule proceedings. You may make these requests at the hearing or in writing to the **MPCA contact person**.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions regarding this requirement to the Campaign Finance and Public Disclosure Board at Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-539-1180 or 1-800-657-3889.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the **MPCA contact person**.

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Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Date: December 14, 2020

Laura Bishop, Commissioner
Minnesota Pollution Control Agency

7023.0150 SCOPE AND INCORPORATION BY REFERENCE.

Subpart 1. **Scope.** To reduce air pollution from vehicles in the state, parts 7023.0150 to 7023.0300 establish standards for low-emission vehicles and zero-emission vehicles.

Subp. 2. **Incorporation by reference.** California Code of Regulations, title 13, sections 1900, 1956.8(h) (medium-duty vehicle greenhouse gas emission standards only), 1961.2, 1961.3, 1962.2, 1962.3, 1965, 1968.2, 1976, 1978, 2035, 2037 to 2041, 2046, 2062, 2109, 2111 to 2121, 2122 to 2135, 2139, and 2141 to 2149, as amended, are incorporated by reference. The regulations are not subject to frequent change and are available online at <https://oal.ca.gov/publications/ccr/>.

Subp. 3. **Term substitutions.** In applying the incorporated sections of the California Code of Regulations, unless the context requires otherwise:

A. “California” means “Minnesota”;

B. “CARB,” “ARB,” or “Air Resources Board” means the agency; and

C. “Executive Officer” means the commissioner.

Subp. 4. **Effective date.** Parts 7023.0150 to 7023.0300, except part 7023.0300, subpart 4, are effective on the date given in a commissioner’s notice published in the State Register after the standards incorporated by reference in subpart 2 are granted a waiver by the U.S. Environmental Protection Agency under United States Code, title 42, section 7543. The commissioner’s notice must also designate the first effective model year in accordance with United States Code, title 42, section 7507.

7023.0200 DEFINITIONS.

Subpart 1. **Applicability.** For parts 7023.0150 to 7023.0300, the terms in this part have the meanings given. The definitions in parts 7000.0100 and 7005.0100 and California Code of Regulations, title 13, section 1900, apply to parts 7023.0150 to 7023.0300 unless the terms are otherwise defined in this part.

Subp. 2. **Authorized emergency vehicle.** “Authorized emergency vehicle” has the meaning given in Minnesota Statutes, section 169.011.

Subp. 3. **CARB.** “CARB” means the California State Air Resources Board as defined in California Health and Safety Code, division 26, part 1, chapter 1, section 39003.

Subp. 4. **First effective model year.** “First effective model year” means the first model year for which the standards adopted in parts 7023.0150 to 7023.0300 are effective according to the commissioner’s notice under part 7023.0150, subpart 4.

Subp. 5. **Light-duty truck.** “Light-duty truck” has the meaning given under California Code of Regulations, title 13, section 1900(b)(11).

Subp. 6. **Medium-duty passenger vehicle.** “Medium-duty passenger vehicle” has the meaning given under California Code of Regulations, title 13, section 1900(b)(12).

Subp. 7. **Medium-duty vehicle.** “Medium-duty vehicle” has the meaning given under California Code of Regula-

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tions, title 13, section 1900(b)(13).

Subp. 8. **Military tactical vehicle.** “Military tactical vehicle” means a land combat or transportation vehicle, excluding a rail-based vehicle, that is designed for and used by a branch of the United States armed forces or used as an authorized emergency vehicle by or for a governmental agency.

Subp. 9. **Model year.** “Model year” means the manufacturer’s annual production period that includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. The model year for a motor vehicle manufactured in two or more stages is the model year in which the chassis is completed.

Subp. 10. **Motor vehicle manufacturer.** “Motor vehicle manufacturer” means a small, independent low, intermediate, or large volume manufacturer as defined under California Code of Regulations, title 13, section 1900(b)(8), (9), (10), and (22).

Subp. 11. **New motor vehicle.** “New motor vehicle” means a first effective model year or later model year motor vehicle with less than 7,500 miles of use accumulated as of the date of sale or lease.

Subp. 12. **Passenger car.** “Passenger car” has the meaning given under California Code of Regulations, title 13, section 1900(b)(17).

Subp. 13. **Transitional zero-emission vehicle or TZE.** “Transitional zero-emission vehicle” or “TZE” has the meaning given under California Code of Regulations, title 13, section 1962.2(c).

Subp. 14. **Used motor vehicle.** “Used motor vehicle” means a first effective model year or later model year motor vehicle with 7,500 miles or more of use accumulated as of the date of sale or lease.

Subp. 15. **Zero-emission vehicle or ZEV.** “Zero-emission vehicle” or “ZEV” has the meaning given under California Code of Regulations, title 13, section 1962.2(a).

7023.0250 LOW-EMISSION VEHICLE STANDARDS.

Subpart 1. **Requirement.** Beginning with the first effective model year, all of the following that are produced by a motor vehicle manufacturer and delivered for sale or lease in the state must be certified to the standards incorporated by reference under part 7023.0150, subpart 2, except as provided under subpart 2:

A. new motor vehicles that are passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles;

B. new light- or medium-duty motor vehicle engines; and

C. motor vehicles with a new motor vehicle engine.

Subp. 2. **Exceptions.** This part does not apply to:

A. a used motor vehicle;

B. a new motor vehicle sold to another dealer;

C. a new motor vehicle sold to be wrecked or dismantled;

D. a new motor vehicle sold exclusively for off-highway use;

E. a new motor vehicle sold for registration out-of-state;

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F. a new motor vehicle that has been certified to standards adopted under authority granted in United States Code, title 42, section 7521, and that is in the possession of a rental agency in the state and that is next rented with a final destination outside of the state;

G. an authorized emergency vehicle;

H. a military tactical vehicle;

I. a new motor vehicle transferred by inheritance;

J. a new motor vehicle transferred by court decree;

K. a new motor vehicle acquired by a state resident to replace a motor vehicle that was registered to the resident and that, while out of state, was damaged, became inoperative beyond reasonable repair, or was stolen if the replacement motor vehicle is acquired out of state at the time the previously owned vehicle was damaged, became inoperative, or was stolen; or

L. a new motor vehicle purchased and registered in another state by a person who is a resident of that state and who subsequently establishes residency in Minnesota. Upon registering the new motor vehicle in Minnesota, the person must provide evidence to the commissioner of the previous residence and registration.

Subp. 3. Fleet average emissions.

A. For first effective model year motor vehicles and all subsequent model year motor vehicles to which this part applies, a motor vehicle manufacturer must not exceed the fleet average non-methane organic gas plus oxides of nitrogen emission values under California Code of Regulations, title 13, section 1961.2. Credits and debits may be accrued and used based on a manufacturer's sales in the state of motor vehicles subject to this part according to California Code of Regulations, title 13, section 1961.2(c).

B. For first effective model year motor vehicles and all subsequent model year motor vehicles to which this part applies, a motor vehicle manufacturer must not exceed the fleet average greenhouse gas exhaust emission values under California Code of Regulations, title 13, section 1961.3. For first effective model year motor vehicles and all subsequent model year motor vehicles, manufacturers of medium-duty vehicles produced by a motor vehicle manufacturer and delivered for sale or lease in the state must not exceed the greenhouse gas emission standards under California Code of Regulations, title 13, section 1956.8(h)(6). Credits and debits may be accrued and used based on a manufacturer's sales in the state of motor vehicles subject to this part according to California Code of Regulations, title 13, section 1961.3.

Subp. 4. **Environmental performance labels.** Beginning with the first effective model year and all subsequent model years, all new motor vehicles subject to this part produced by a motor vehicle manufacturer and delivered for sale or lease in the state must be affixed with emission control labels and environmental performance labels according to California Code of Regulations, title 13, section 1965.

Subp. 5. **Warranty requirements.** For all motor vehicles subject to this part, the motor vehicle manufacturer must provide defect warranty coverage that complies with California Code of Regulations, title 13, sections 2035, 2037 to 2041, and 2046.

Subp. 6. **Recall requirements.** For all motor vehicles subject to this part and subject to recall in California, the motor vehicle manufacturer must undertake a recall campaign in this state according to California Code of Regulations, title 13, sections 2111 to 2121 and 2122 to 2135, unless the manufacturer demonstrates to the commissioner that the recall is not applicable to motor vehicles registered in Minnesota.

Subp. 7. Reporting requirements.

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A. By May 1 of the calendar year after the end of the model year, a motor vehicle manufacturer must annually submit to the commissioner a report demonstrating that the motor vehicle manufacturer has met the requirements of subpart 3, item A, for its fleet delivered for sale in the state.

B. By May 1 of the calendar year after the end of the model year, a motor vehicle manufacturer must annually submit to the commissioner a report demonstrating that the motor vehicle manufacturer has met the requirements of subpart 3, item B, for its fleet delivered for sale in the state.

C. If requested by the commissioner, a motor vehicle manufacturer must provide reports in the same format as provided to CARB on all assembly-line emission testing and functional test results collected as a result of compliance with this part, warranty claim reports, recall reports, and any other reports required by CARB under the regulations incorporated by reference under part 7023.0150. The reports must be supplemented with data on motor vehicles delivered for sale or registered in Minnesota.

D. If the commissioner deems it necessary to administer and enforce this part, the commissioner must require a motor vehicle manufacturer subject to this part to submit additional documentation, including all certification materials submitted to CARB.

Subp. 8. Record availability and retention; reporting noncompliance.

A. Upon oral or written request of the commissioner, a person subject to this part must furnish to the commissioner or allow the commissioner to access and copy all records that relate to the motor vehicles that are subject to this part and that are relevant for determining compliance with this part. Unless otherwise specified, a person subject to this part must retain all relevant records for at least five years after creating the records.

B. If a report issued by a motor vehicle manufacturer under subpart 7 demonstrates noncompliance with the fleet average under subpart 3 for a model year, the manufacturer must, within 60 days, file a report with the commissioner to document the noncompliance. The report must identify all motor vehicle models delivered for sale or lease in the state, the models' corresponding certification standards, and the percentage of each model delivered for sale in this state and California in relation to total fleet sales in the respective state.

7023.0300 ZERO-EMISSION VEHICLE STANDARDS.

Subpart 1. **Requirement.** Beginning with the first effective model year, a motor vehicle manufacturer's sales fleet of passenger cars and light-duty trucks produced by motor vehicle manufacturers and delivered for sale or lease in the state must contain at least the same applicable percentage of ZEVs required under California Code of Regulations, title 13, section 1962.2.

Subp. 2. Credit bank; reporting requirements; record availability and retention.

A. Beginning in the first effective model year, a motor vehicle manufacturer subject to this part must open an account in the California ZEV credit system for banking credits earned in Minnesota. The account must be opened no later than March 1 of the calendar year after the end of the first effective model year. A motor vehicle manufacturer must notify the commissioner within 30 days of opening an account in the California ZEV credit system for the manufacturer's Minnesota ZEV credits.

B. At least annually by May 1 of the calendar year after the close of a model year, a motor vehicle manufacturer must submit a report to the commissioner that identifies the necessary delivery and placement data of all motor vehicles generating ZEV credits and all transfers and acquisitions of ZEV credits, according to California Code of Regulations, title 13, section 1962.2. The report may be amended based on late sales.

C. Upon oral or written request of the commissioner, a person subject to this part must furnish to the commissioner or allow the commissioner to access and copy all records that relate to the motor vehicles that are subject to this part and that are relevant for determining compliance with this part. Unless otherwise specified, a person subject to this part

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must retain all relevant records for at least five years after creating the records.

Subp. 3. Requirement to make up ZEV deficit. A motor vehicle manufacturer that delivers for sale in the state fewer ZEVs or TZEVs than required to meet its ZEV credit obligation in a given model year must make up the deficit by submitting a commensurate amount of ZEV credits to the commissioner according to California Code of Regulations, title 13, section 1962.2(g)(7). The number of motor vehicles not meeting the ZEV credit obligation must be equal to the manufacturer's credit deficit, rounded to the nearest 1/100th and calculated according to the equation in California Code of Regulations, title 13, section 1962.2(g)(8).

Subp. 4. Early-action credits.

A. Beginning with model year 2022 and ending at the beginning of the first effective model year, a motor vehicle manufacturer may earn early-action ZEV credits for delivering ZEVs for sale in the state. A motor vehicle manufacturer choosing to earn early-action ZEV credits under this subpart must notify the commissioner to open an account to track early-action ZEV credits in Minnesota no later than March 1 of the calendar year after the close of the first model year for which the manufacturer intends to accrue early-action credits.

B. New motor vehicles delivered for sale in the state under this subpart earn early-action ZEV credits with the same values established in California Code of Regulations, title 13, section 1962.2.

C. A motor vehicle manufacturer that notifies the commissioner under item A must submit a report to the commissioner at least annually by May 1 of the calendar year after the close of the model year that identifies the necessary delivery and placement data of all motor vehicles generating early-action ZEV credits under this subpart, according to California Code of Regulations, title 13, section 1962.2. The report may be amended based on late sales.

D. After the reporting deadline under item C during the first effective model year and after receiving notice from a motor vehicle manufacturer under subpart 2, item A, the commissioner must load the ZEV credits earned by the motor vehicle manufacturer under this subpart into the manufacturer's California ZEV credit system account.

E. This subpart is effective beginning with a motor vehicle manufacturer's model year 2022.

Subp. 5. Onetime credit allotment.

A. For the first effective model year, the commissioner must deposit into each motor vehicle manufacturer's account a credit allotment equivalent to the first effective model year's ZEV credit requirement for that motor vehicle manufacturer.

B. The credit amount under item A must be calculated for the first effective model year according to California Code of Regulations, title 13, section 1962.2(b)(1)(A) and (B).

C. The commissioner must deposit the onetime credit allotment at the same time that the commissioner loads the ZEV credits earned by the motor vehicle manufacturer under subpart 4, item D, into the manufacturer's California ZEV credit system account.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-79-20

WHEREAS the climate change crisis is happening now, impacting California in unprecedented ways, and affecting the health and safety of too many Californians; and

WHEREAS we must accelerate our actions to mitigate and adapt to climate change, and more quickly move toward our low-carbon, sustainable and resilient future; and

WHEREAS the COVID-19 pandemic has disrupted the entire transportation sector, bringing a sharp decline in demand for fuels and adversely impacting public transportation; and

WHEREAS as our economy recovers, we must accelerate the transition to a carbon neutral future that supports the retention and creation of high-road, high-quality jobs; and

WHEREAS California's long-term economic resilience requires bold action to eliminate emissions from transportation, which is the largest source of emissions in the State; and

WHEREAS the State must prioritize clean transportation solutions that are accessible to all Californians, particularly those who are low-income or experience a disproportionate share of pollution; and

WHEREAS zero emissions technologies, especially trucks and equipment, reduce both greenhouse gas emissions and toxic air pollutants that disproportionately burden our disadvantaged communities of color; and

WHEREAS California is a world leader in manufacturing and deploying zero-emission vehicles and chargers and fueling stations for cars, trucks, buses and freight-related equipment; and

WHEREAS passenger rail, transit, bicycle and pedestrian infrastructure, and micro-mobility options are critical components to the State achieving carbon neutrality and connecting communities, requiring coordination of investments and work with all levels of governments including rail and transit agencies to support these mobility options; and

WHEREAS California's policies have contributed to an on-going reduction in in-state oil extraction, which has declined by over 60 percent since 1985, but demand for oil has not correspondingly declined over the same period of time; and

WHEREAS California is already working to decarbonize the transportation fuel sector through the Low Carbon Fuel Standard, which recognizes the full life cycle of carbon in transportation emissions including transport into the State; and

WHEREAS clean renewable fuels play a role as California transitions to a decarbonized transportation sector; and

WHEREAS to protect the health and safety of our communities and workers the State must focus on the impacts of oil extraction as it transitions away from fossil fuel, by working to end the issuance of new hydraulic fracturing permits by 2024; and

WHEREAS a sustainable and inclusive economic future for California will require retaining and creating high-road, high-quality jobs through sustained engagement with communities, workers and industries in changing and growing industries.

NOW THEREFORE, I, GAVIN NEWSOM, Governor of the State of California by virtue of the power and authority vested in me by the Constitution and the statutes of the State of California, do hereby issue the following Order to pursue actions necessary to combat the climate crisis.

IT IS HEREBY ORDERED THAT:

1. It shall be a goal of the State that 100 percent of in-state sales of new passenger cars and trucks will be zero-emission by 2035. It shall be a further goal of the State that 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks. It shall be further a goal of the State to transition to 100 percent zero-emission off-road vehicles and equipment by 2035 where feasible.
2. The State Air Resources Board, to the extent consistent with State and federal law, shall develop and propose:
 - a) Passenger vehicle and truck regulations requiring increasing volumes of new zero-emission vehicles sold in the State towards the target of 100 percent of in-state sales by 2035.
 - b) Medium- and heavy-duty vehicle regulations requiring increasing volumes of new zero-emission trucks and buses sold and operated in the State towards the target of 100 percent of the fleet transitioning to zero-emission vehicles by 2045 everywhere feasible and for all drayage trucks to be zero-emission by 2035.
 - c) Strategies, in coordination with other State agencies, U.S. Environmental Protection Agency and local air districts, to achieve 100 percent zero-emission from off-road vehicles and equipment operations in the State by 2035.

In implementing this Paragraph, the State Air Resources Board shall act consistently with technological feasibility and cost-effectiveness.

3. The Governor's Office of Business and Economic Development, in consultation with the State Air Resources Board, Energy Commission, Public Utilities Commission, State Transportation Agency, the

Department of Finance and other State agencies, local agencies and the private sector, shall develop a Zero-Emissions Vehicle Market Development Strategy by January 31, 2021, and update every three years thereafter, that:

- a) Ensures coordinated and expeditious implementation of the system of policies, programs and regulations necessary to achieve the goals and orders established by this Order.
 - b) Outlines State agencies' actions to support new and used zero-emission vehicle markets for broad accessibility for all Californians.
4. The State Air Resources Board, the Energy Commission, Public Utilities Commission and other relevant State agencies, shall use existing authorities to accelerate deployment of affordable fueling and charging options for zero-emission vehicles, in ways that serve all communities and in particular low-income and disadvantaged communities, consistent with State and federal law.
5. The Energy Commission, in consultation with the State Air Resources Board and the Public Utilities Commission, shall update the biennial statewide assessment of zero-emission vehicle infrastructure required by Assembly Bill 2127 (Chapter 365, Statutes of 2018) to support the levels of electric vehicle adoption required by this Order.
6. The State Transportation Agency, the Department of Transportation and the California Transportation Commission, in consultation with the Department of Finance and other State agencies, shall by July 15, 2021 identify near term actions, and investment strategies, to improve clean transportation, sustainable freight and transit options, while continuing a "fix-it-first" approach to our transportation system, including where feasible:
 - a) Building towards an integrated, statewide rail and transit network, consistent with the California State Rail Plan, to provide seamless, affordable multimodal travel options for all.
 - b) Supporting bicycle, pedestrian, and micro-mobility options, particularly in low-income and disadvantaged communities in the State, by incorporating safe and accessible infrastructure into projects where appropriate.
 - c) Supporting light, medium, and heavy duty zero-emission vehicles and infrastructure as part of larger transportation projects, where appropriate.
7. The Labor and Workforce Development Agency and the Office of Planning and Research, in consultation with the Department of Finance and other State agencies, shall develop by July 15, 2021 and expeditiously implement a Just Transition Roadmap, consistent with the recommendations in the "Putting California on the High Road: A Jobs and Climate Action Plan for 2030" report pursuant to Assembly Bill 398 (Chapter 135, Statutes of 2017).

8. To support the transition away from fossil fuels consistent with the goals established in this Order and California's goal to achieve carbon neutrality by no later than 2045, the California Environmental Protection Agency and the California Natural Resources Agency, in consultation with other State, local and federal agencies, shall expedite regulatory processes to repurpose and transition upstream and downstream oil production facilities, while supporting community participation, labor standards, and protection of public health, safety and the environment. The agencies shall report on progress and provide an action plan, including necessary changes in regulations, laws or resources, by July 15, 2021.
9. The State Air Resources Board, in consultation with other State agencies, shall develop and propose strategies to continue the State's current efforts to reduce the carbon intensity of fuels beyond 2030 with consideration of the full life cycle of carbon.
10. The California Environmental Protection Agency and the California Natural Resources Agency, in consultation with the Office of Planning and Research, the Department of Finance, the Governor's Office of Business and Economic Development and other local and federal agencies, shall develop strategies, recommendations and actions by July 15, 2021 to manage and expedite the responsible closure and remediation of former oil extraction sites as the State transitions to a carbon-neutral economy.
11. The Department of Conservation's Geologic Energy Management Division and other relevant State agencies shall strictly enforce bonding requirements and other regulations to ensure oil extraction operators are responsible for the proper closure and remediation of their sites.
12. The Department of Conservation's Geologic Energy Management Division shall:
 - a) Propose a significantly strengthened, stringent, science-based health and safety draft rule that protects communities and workers from the impacts of oil extraction activities by December 31, 2020.
 - b) Post on its website for public review and consultation a draft rule at least 60 days before submitting to the Office of Administrative Law.

IT IS FURTHER ORDERED that as soon as hereafter possible, the Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 23rd day of September 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

Minnesota Pollution Control Agency

REQUEST FOR COMMENTS

On Planned New Rules Governing Passenger Vehicle Greenhouse Gas Emissions, *Minnesota Rules*, chapter 7023; Revisor's ID Number 04626

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is requesting comments on possible new air rules, *Minnesota Rules*, chapter 7023. This rulemaking is referred to as the Clean Cars Minnesota Rule and is intended to reduce greenhouse gas (GHG) and other harmful air pollutant emissions from passenger vehicles by adopting the Low-Emission Vehicles (LEV) and Zero-Emission Vehicles (ZEV) standards adopted by the California Air Resources Board, as allowed under section 177 of the Clean Air Act (CAA). The MPCA requests comments on the proposed rules from affected or interested parties. See the [Comments](#) and [MPCA Contact Person](#) sections of this notice for information on how to submit comments.

This request for comments is the MPCA's legal notice of its intent to begin rulemaking. This is the first of several opportunities for public comment and input on this rulemaking. At this stage, we do not have a formal draft of the rule ready to propose; we want your feedback to inform us about the ideas described under the [Subject of Rules](#) section.

If you have other ideas related to this rulemaking that we need to consider, please submit them in writing. For example, because we recognize that costs to regulated parties can be a concern with rulemaking, if you have cost information or data related to this rulemaking that you wish to share with us to inform our decisions, please submit that information. Submitting your ideas and information at this early stage in rulemaking allows us more time to address issues that may come up, and helps to ensure informed decision-making on our part. If the proposed rules affect you in any way, the MPCA encourages you to participate in the rulemaking process.

View the [Alternative Format/Accommodation](#) and [MPCA Contact Person](#) sections of this notice for information on requesting this document in an alternative format.

Public meetings. The MPCA plans to hold public meetings to gather input on this proposed rule. Details about those meetings, including dates and locations, will be posted on the rulemaking page at <https://www.pca.state.mn.us/air/clean-cars-mn-rulemaking> as they are scheduled. To receive updates about the meetings, sign up to receive emails at https://public.govdelivery.com/accounts/MNPCHA/subscriber/new?topic_id=MNPCHA_375.

Subject of rules. The MPCA requests comments on its possible new rules governing emissions of GHGs and other air pollutants from passenger vehicles, called Clean Cars Minnesota. The MPCA is considering adopting rules that require vehicle manufacturers to deliver for sale in Minnesota vehicles that emit fewer GHGs and other air pollutants.

The main focus of the Clean Cars Minnesota rulemaking is to reduce GHG emissions from passenger vehicles. Minnesota statute 116.07 directs the MPCA to "adopt standards of air quality, including maximum allowable standards of emission of air contaminants from motor vehicles" and more broadly, standards "relevant to the prevention, abatement, or control of air pollution." GHGs are harmful air pollutants that contribute to global climate change. MPCA therefore has the authority under Minnesota statute to regulate emissions of GHGs from motor vehicles.

In addition, the Next Generation Energy Act (NGEA), Minnesota statute 216H.02, subd. 1 establishes a statewide goal "to reduce statewide greenhouse gas emissions across all sectors producing those emissions to a level at least 15 percent below 2005 levels by 2015, to a level at least 30 percent below 2005 levels by 2025, and to a level at least 80 percent below 2005 levels by 2050." Minnesota did

EXHIBIT E

not meet its 2015 goal and is not on track to achieve the 2025 or 2050 goals. Transportation is the largest emitter of GHGs in Minnesota and passenger vehicles are the largest source of GHG emissions within that sector. State-level regulation is needed in order to achieve the necessary emission reductions in this sector. The Clean Cars Minnesota rulemaking will help get the state on track to achieve its statutory goals.

This rulemaking will reduce tailpipe emissions of not just GHGs, but also other harmful air pollutants, including fine particles and the pollutants that form ground-level ozone. MPCA and the Minnesota Department of Health recently released the “Life and Breath” report that showed that fine particles and ground-level ozone contributed to roughly 2,000-4,000 deaths in Minnesota in 2013 as well as hundreds of increased hospital visits. Reducing emissions of these pollutants is therefore important for protecting the health of Minnesotans. Reducing air pollution from vehicles is especially critical for addressing environmental justice. MPCA research shows that communities of color and lower-income communities are disproportionately exposed to pollution from vehicles because those communities are disproportionately located near busy roadways. Adopting this rule is necessary to help reduce exposures in these vulnerable and overburdened communities.

Under the CAA, the responsibility to regulate emissions from vehicles is given to the federal government. However, section 209 of the CAA also allows California to develop its own, more stringent, vehicle emissions standards, and section 177 of the CAA allows other states to adopt California’s standards. States can only adopt California’s standards if they do so exactly and avoid creating any requirements different from those established by California. Any final rule in Minnesota would need to be made contingent on restoration of the state’s ability to adopt these measures, including the existence of operative waiver authority under Sections 209(b) and 177 of the Clean Air Act.

The Clean Cars Minnesota rulemaking has two parts: the LEV standard and the ZEV standard. The LEV standard would require automobile manufacturers to deliver for sale in Minnesota only vehicles that meet the more stringent GHG and other air pollutant emissions standards established by California. The LEV standard applies to emissions of GHGs and other air pollutants for all passenger vehicles and gets more stringent every year. The LEV standard does not establish any requirements directly for vehicle owners and does not require a personal vehicle inspection program.

The ZEV standard would require automobile manufacturers to deliver for sale in Minnesota a certain number of vehicles with ultra-low or zero tailpipe emissions each year, including battery electric vehicles (EVs), plug-in hybrid electric vehicles (PHEVs), and hydrogen-fueled vehicles. These vehicles are collectively considered “zero emission vehicles” (ZEVs). Manufacturers are given ZEV credit quotas based on their average annual sales (i.e., big manufacturers must earn more credits annually than smaller ones), and the quotas get more stringent every year. Manufacturers generate different numbers of credits for delivering different types of vehicles for sale, based on vehicle technology and maximum range per charge. For instance, long-range full battery EVs receive the most credits while PHEVs with short electric ranges receive the least. Manufacturers can bank credits to meet requirements in future years and are able to buy and sell them from other manufacturers. The ZEV standard would result in additional ZEVs sold in Minnesota, but does not require any individual to purchase a ZEV.

The MPCA may adopt the LEV standard, the ZEV standard, both, or neither. Since the CAA requires states wishing to adopt California’s standards to do so exactly, however, Minnesota has no flexibility within the rules to adopt Minnesota-specific changes. The one area where Minnesota does have some limited flexibility is in how the state establishes initial ZEV credit banks for manufacturers.

The MPCA has developed proposed concepts for adopting the LEV and ZEV standards. More information about these concepts and specific questions posed by the agency are provided on the rulemaking webpage at <https://www.pca.state.mn.us/air/clean-cars-mn-rulemaking>.

Parties affected. This new rule would regulate automobile manufacturers and potentially dealerships.

The Clean Cars Minnesota rule would reduce GHG emissions that contribute to global climate change. Climate change impacts all Minnesotans and people around the world. It first and especially affects communities that are already overburdened with pollution and other stressors. Adopting this rule will not in itself halt climate change, but it is an important part of reducing Minnesota's contribution to this global problem.

The rule does not require any action from the general public; Minnesotans will continue to be able to purchase the vehicle types that best suit their needs and preferences. Clean Cars Minnesota will result in more options for cleaner vehicles in Minnesota. Adopting the LEV standard would ensure that Minnesotans have access to the cleanest vehicles across all passenger vehicle types. Studies conducted in other states indicate that the GHG emissions standards have led to saving money on gasoline and diesel fuel. Adopting the ZEV standard does not require any individual to purchase an EV. However, it would bring more EV options to the state, which means that Minnesotans who wish to purchase an EV will be able to do so more easily and will be better able to find an EV that suits their needs. Increasing the supply of EVs in the market may also help lead to more used EVs available in Minnesota, further increasing EV options for consumers, particularly people who are interested in used vehicles.

The rule will also reduce emissions of air pollutants that are directly harmful to human health. Therefore, the rule will benefit air quality across the state and especially for people who live close to busy roadways. Busy roadways disproportionately pass through and near communities of color and lower income and MPCA research indicates that these communities are disproportionately exposed to vehicle pollution. This rule is therefore especially important in addressing environmental justice and reducing air pollution burdens in these communities.

Comments. Interested people or groups may submit comments or information on these possible rules in writing until **4:30 p.m. on December 6, 2019**. During the public comment period associated with this request for comments, submit written comments to:

1) the Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions>; or

2) OAH Legal Assistant Sheena Denny, OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, telephone 651-361-7881, fax 651-539-0310, or sheena.denny@state.mn.us.

You may view frequently asked questions about the OAH Rulemaking eComments website at https://mn.gov/oah/assets/ecommments-faq_tcm19-82012.pdf. Any questions about submitting comments via the Rulemaking eComments website should be directed to the OAH at 651-361-7900.

Comments received are public and will be available for review at the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions> and at the OAH at the address listed above.

The MPCA will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments. The MPCA does not plan to appoint an advisory committee to comment on the possible rules

The MPCA does not anticipate that the new rule will require a local government to adopt or amend an ordinance or other regulation under *Minnesota Statutes*, section 14.128. Local governments may submit written information to the contrary.

The MPCA requests any information pertaining to the cumulative effect of the rule amendments with other federal and state regulations related to the specific purpose of the rule. *Cumulative effect*

means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

NOTE: While the MPCA will take all comments received in response to this notice into consideration, they will be not necessarily be included in the formal rulemaking record that the agency submits to the Administrative Law Judge (ALJ) if and when a proceeding to adopt rules is started. The MPCA is required to submit to the ALJ only the written comments received in response to the draft rules after they are proposed in a Notice of Hearing or a Notice of Intent to Adopt Rules. If you submit comments during the development of the rules and want to ensure that the ALJ reviews your comments, you should resubmit them after the rules are formally proposed in a Notice of Hearing or Notice of Intent.

Rules drafts. Although the MPCA has not yet drafted specific rule language for the potential Clean Cars Minnesota rulemaking, the CAA requires that the standards be identical to those adopted in California. More information on the required rule language can be found on the rulemaking webpage: <https://www.pca.state.mn.us/air/clean-cars-mn-rulemaking>. Parties interested in being notified when a draft of the rules is available and of other activities relating to this rulemaking are encouraged to sign up for relevant emails at https://public.govdelivery.com/accounts/MNPCHA/subscriber/new?topic_id=MNPCHA_375.

MPCA contact person. The contact person for questions about this rulemaking is Katie Izzo at the MPCA, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194; telephone 651-757-2595; email cleancarsmn.pca@state.mn.us. You may also call the MPCA at 651-296-6300 or 1-800-657-3864; use your preferred relay service.

1. During the public comment period associated with this request for comments:
 - a) Submit all comments in response to this notice as described under Comments.
 - b) Submit any clarification questions or requests for more information to the MPCA contact person listed above.
2. After the public comment period closes, route communications to the following staff:
 - a) Rulemaking process: Katie Izzo at 651-757-2595 and cleancarsmn.pca@state.mn.us
 - b) Technical subject matter: Amanda Jarrett Smith at 651-757-2486 and cleancarsmn.pca@state.mn.us

Alternative format/accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the MPCA contact person.

Statutory authority. *Minnesota Statutes*, section 116.07, authorizes the MPCA to adopt rules for the prevention, abatement, and control of air pollution. Section 177 of the CAA allows states to adopt California's vehicle emissions standards.



Laura Bishop, Commissioner
Minnesota Pollution Control Agency
09/30/2019
Date

From: Kuskie, Melissa (MPCA) <melissa.kuskie@state.mn.us>
Sent: Tuesday, February 11, 2020 9:22 AM
To: Dammel, Joseph (MPCA); Smith, Amanda (MPCA); Hotz, Anna (MPCA)
Subject: RE: CCM rule language for your review

I would vote for no mention in the SONAR of the “what if” bad scenario...I don’t want to provide any additional cause to have an ALJ ask, “THEN WHY DO THIS NOW?!?!?”

From: Dammel, Joseph (MPCA) <Joseph.Dammel@state.mn.us>
Sent: Tuesday, February 11, 2020 9:02 AM
To: Smith, Amanda (MPCA) <amanda.smith@state.mn.us>; Kuskie, Melissa (MPCA) <melissa.kuskie@state.mn.us>; Hotz, Anna (MPCA) <Anna.Hotz@state.mn.us>
Subject: RE: CCM rule language for your review

I think it’s ok to have it be effective once the standards become effective. We won’t know the first effective model year until the waiver is restored anyway and the credits won’t be deposited until the year after, so it should be ok. That way too, no other parts of the rule have to be updated.

As for what happens in the future, I don’t think we can say at this time given the number of scenarios in flux.

From: Smith, Amanda (MPCA) <amanda.smith@state.mn.us>
Sent: Monday, February 10, 2020 8:19 PM
To: Kuskie, Melissa (MPCA) <melissa.kuskie@state.mn.us>; Hotz, Anna (MPCA) <Anna.Hotz@state.mn.us>
Cc: Dammel, Joseph (MPCA) <Joseph.Dammel@state.mn.us>
Subject: RE: CCM rule language for your review

One thing I’m thinking on the effective date is that maybe it should be early since we’re saying we’ll deposit the credits at the same time as the early action credits? Although that will be after implementation begins. Sigh. Not sure it really matters?

Yeah, I think we chatted at some point about this, but I don’t think it’s in the SONAR. Maybe it should be? I think the thinking was that we would probably have to revoke the whole rule at some point if the waiver issue really ends badly. Thoughts?

a

From: Kuskie, Melissa (MPCA) <melissa.kuskie@state.mn.us>
Sent: Monday, February 10, 2020 10:52 AM
To: Smith, Amanda (MPCA) <amanda.smith@state.mn.us>; Hotz, Anna (MPCA) <Anna.Hotz@state.mn.us>
Cc: Dammel, Joseph (MPCA) <Joseph.Dammel@state.mn.us>
Subject: RE: CCM rule language for your review

This looks ok to me (Anna’s review will be more useful on this!) . Regarding start date – just to make sure I understand – the early action credit system’s effective date will be the “normal” effective date (i.e. 5 business date after publish the notice of adoption...seemingly sometime late 2020/early 2021)?

EXHIBIT F

I'm not sure if there is a better or worse option...perhaps it is more "true" to our intent to not have most things effective early on if we give it the same effective date as the standards themselves...if the CA waiver issue is resolved negatively, it's one less thing that has gone into effect that shouldn't have.

On that note – how are we handling the early action credit system being in effect in the scenario where the waiver goes the unfortunate way? (apologies if this is fully addressed in SONAR and I missed it entirely...feel free to respond with "re-read the SONAR, dunce!") Is it then an obsolete rule?

From: Smith, Amanda (MPCA) <amanda.smith@state.mn.us>

Sent: Monday, February 10, 2020 10:42 AM

To: Kuskie, Melissa (MPCA) <melissa.kuskie@state.mn.us>; Hotz, Anna (MPCA) <Anna.Hotz@state.mn.us>

Cc: Dammel, Joseph (MPCA) <Joseph.Dammel@state.mn.us>

Subject: CCM rule language for your review

Hi Anna and Melissa,

Joe and I have been working over some new rule language for the new proposed one-time allotment of ZEV credits. Draft language attached.

Would you two have time to look this over today? If you want to discuss in person, I could set up a meeting. Joe and I are also considering if we need to have the start date for this as the effective date of the rule overall or the effective date of the early action credit system. Or if it matters. Thanks in advance for your review.

a

Amanda Jarrett Smith

Climate and Energy Policy Planner

Minnesota Pollution Control Agency

(651) 757-2486 | amanda.smith@state.mn.us

Pronouns: she/her/hers

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JS 44 (Rev. 09/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Minnesota Auto Dealers Association

(b) County of Residence of First Listed Plaintiff Dakota
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
See Attachment

DEFENDANTS

State of Minnesota, by and through the Minnesota Pollution Control Agency and the Minnesota Pollution Control Agency Commissioner Laura Bishop

County of Residence of First Listed Defendant Ramsey
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
See Attachment

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC §§ 2201, 2202; 42 U.S.C. 28 USC §§ 7507, 7543(a)

VI. CAUSE OF ACTION

Brief description of cause:
Injunction/declaratory judgment to prevent adoption or enforcement of federally-preempted state standards relating to the control of emissions from new motor vehicles

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 0 CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S)

2054106.0018/163862392.1

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/06/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Byron E. Starns

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

JS 44 Reverse (Rev. 09/19)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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