

COLORADO COURT OF APPEALS

2 East 14th Avenue  
Denver, Colorado 80203

DATE FILED: July 26, 2019 10:22 AM  
FILING ID: B683C40DD6267  
CASE NUMBER: 2019CA1386

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**Name and Address of Lower Court:**

District Court, City and County of Denver, CO  
1437 Bannock Street, Denver, CO 80202

**Trial Court Judge:** The Honorable Martin F. Egelhoff

**Case Number:** 2019CV30343

**Plaintiff/Appellant:**

COLORADO AUTOMOBILE DEALERS  
ASSOCIATION

v.

**Defendants/Appellees:**

THE COLORADO DEPARTMENT OF PUBLIC  
HEALTH AND ENVIRONMENT, THE COLORADO  
AIR QUALITY CONTROL COMMISSION, and THE  
AIR POLLUTION CONTROL DIVISION.

**Intervenor/Appellees:**

THE ENVIRONMENTAL DEFENSE FUND, THE  
NATURAL RESOURCES DEFENSE COUNCIL, and  
THE SIERRA CLUB

↑ COURT USE ONLY ↑

<p><b><i>Attorneys for Plaintiff/Appellant:</i></b>  Paul M. Seby, #27487  Matt Tieslau #47483  GREENBERG TRAUIG, LLP  1200 Seventeenth Street, Suite 2400  Denver, Colorado 80202  Phone Number: 303.572.6500  Fax Number: 303.572.6540  Email: <a href="mailto:sebyp@gtlaw.com">sebyp@gtlaw.com</a>; <a href="mailto:tieslaum@gtlaw.com">tieslaum@gtlaw.com</a></p>	<p>Case Number:</p>
<p><b>NOTICE OF APPEAL</b></p>	

Appellant, Colorado Automobile Dealers Association (“CADA”), by and through its undersigned counsel, hereby submits this Notice of Appeal pursuant to Colorado Appellate Rule 3(a), (b) and (f) and C.R.S. § 24-4-106(9).

**I. DESCRIPTION OF THE NATURE OF THE CASE.**

**A. Nature of the Controversy.**

CADA participated as a party in the agency rulemaking for the Colorado Low Emission Automobile Regulation (“CLEAR” or “Final Rule”), 5 CCR 1001-24, developed and promulgated by the Colorado Air Quality Control Commission (“Commission”), Colorado Department of Public Health and Environment (“CDPHE”), and the Colorado Air Pollution Control Division (“Division”). CLEAR imposes (a) motor vehicle emission standards for all new motor vehicles sold in Colorado after model year 2022; and (b) compliance requirements on all

aftermarket catalytic converters sold, offered for sale, or advertised for sale in Colorado for any model year motor vehicles sold after January 1, 2021.

CLEAR's several new requirements apply to CADA and its several hundred dealer members throughout Colorado, as expressly recognized in the text of the Final Rule. As a result, CADA and its members will suffer injury to their legally-protected business and economic interests due to the direct adverse impacts the Final Rule imposes on the distribution, purchase, sale and maintenance of new and existing vehicles and the operations of dealerships, and on all aftermarket catalytic converters sold, offered for sale, or advertised for sale in Colorado.

Pursuant to C.R.S. § 25-7-120, C.R.S. § 24-4-106, and C.R.C.P. 106(a)(2) and (4), CADA petitioned the District Court for judicial review of the Final Rule as an "aggrieved" party on behalf of itself and its several hundred dealer members.

**B. Order Being Appealed and Statement Indicating the Basis for the Appellate Court's Jurisdiction.**

Prior to first certifying the administrative record for the underlying agency rulemaking proceeding, the Commission, CDPHE, and the Division filed a Motion to Dismiss CADA's complaint, alleging CADA lacked standing. The District Court granted the Motion to Dismiss on the stated basis that CADA failed to establish an injury-in-fact to either it or its members legally protected interests. CADA seeks review of the District Court's dismissal of its complaint.

The Court of Appeals has jurisdiction to hear this appeal pursuant to C.R.S. § 24-4-106(9) and Colorado Appellate Rule 1(a)(1), which provide that an appeal to the appellate court may be taken from a final judgment of any district court.

**C. Whether the Order Resolved All Issues Pending before the District Court.**

Because the District Court dismissed CADA's request for judicial review without reaching the merits of the case, none of the claims alleged in CADA's complaint were resolved. CADA's unresolved merits claims are as follows:

First Claim for Relief - failure of the Division to complete motor vehicle emission control studies, and failure of the Commission to make recommendations based on the Division's motor vehicle emissions control studies for adopting CLEAR, as required under the Colorado Air Pollution Prevention and Control Act ("Colorado Air Act") prior to the Commission under-taking motor vehicle emission control rulemakings. *See* C.R.S. § 25-7-130.

Second Claim for Relief - failure of the Division to complete motor vehicle emission control studies, and failure of the Commission to make recommendations based on the Division's motor vehicle emissions control studies for aftermarket catalytic converter standards, as required under the Colorado Air Act prior to the Commission undertaking motor vehicle emission control rulemakings. *See* C.R.S. § 25-7-130.

Third Claim for Relief – failure of the Division to comply with the statutory requirements of the Colorado Air Act and Colorado Administrative Procedures Act (“Colorado APA”) in its Revised Final Economic Impact Analysis (“EIA”), Cost Benefit Analysis (“CBA”) and Regulatory Analysis (“RA”). *See* C.R.S. § 24-4-103(2.5)(a), (C.R.S. § 24-4-103(4.5)(a), C.R.S. § 25-7-110.5(4)(c).

Fourth Claim for Relief - the Commission’s reliance on the Division’s statutorily flawed and invalid Revised Final EIA, CBA, and RA render the Commission’s decision to adopt CLEAR arbitrary and capricious in violation of the Colorado APA.

Fifth Claim for Relief - the Commission’s rigid adherence to the Governor’s Executive Order violated the separation of powers required by the Colorado Constitution and was arbitrary and capricious under the Colorado APA.

**D. Whether the Order is Final for Purposes of Appeal.**

The District Court’s Order is final pursuant for purposes of appeal pursuant to C.R.C.P. 54(b).

**E. Date Order Entered.**

The District Court’s Order was entered on July 8, 2019.

**F. Post-Trial Relief**

No post-trial relief was requested.

**G. Date Notice of Intent to Seek Appellate Review Was Filed with the District Court.**

The Notice of Intent to Seek Appellate Review was filed with the District Court on July 26th, 2019.

**II. ADVISORY LISTING OF THE ISSUES TO BE RAISED ON APPEAL**

1. Whether the District Court erred in granting Appellees' Motion to Dismiss.

2. Whether the District Court erred in concluding that CADA failed to establish injury-in-fact.

3. Whether the District Court erred in concluding that CADA lacked a legally protected interest under Colorado law as to its claims against the Commission, CDPHE, and Division.

4. Whether the District Court erred in failing to consider the aftermarket catalytic converter provisions of CLEAR as separate evidence of injury to CADA and its members.

5. Whether the District Court erred in concluding that CADA's state law claims are wholly superseded by the federal Clean Air Act.

6. Whether the District Court erred in finding *New York State Auto. Dealers Ass'n v. New York State Dep't of Env'tl. Conservation*, 827 F. Supp. 895, 896 (N.D.N.Y. 1993) dispositive of the CADA's case.

7. Whether the District Court erred in concluding that CADA could not initiate a pre-enforcement challenge to the validity of CLEAR under *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, 610 P.2d 85 (1980).

8. Whether the District Court erred in deciding legal and factual issues in the Motion to Dismiss relating to the requirements of the Colorado Air Act and Colorado APA without first having before it the underlying administrative record for the agency rulemaking.

9. Whether the District Court erred in concluding that CADA's injuries only exist to the extent that CLEAR and current federal standards differ.

### **III. TRANSCRIPTS**

The District Court decided this case on the pleadings and no hearing was held, hence there is no transcript.

### **IV. COUNSEL FOR THE PARTIES**

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**V. APPENDICES TO THIS NOTICE OF APPEAL**

- A. Order of the District Court.
- B. Colorado Low Emission Automobile Regulation, Regulation 20, 5 CCR 1001-24.
- C. Colorado Governor Hickenlooper's Executive Order B 2018 006.



Respectfully submitted this 26th day of July 2019.

COLORADO AUTOMOBILE DEALERS  
ASSOCIATION

*s/ Paul M. Seby*

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**ATTORNEYS FOR  
PLAINTIFF/APPELLANT**

**CERTIFICATE OF SERVICE**

This is to certify that I have duly served Appellant's **NOTICE OF APPEAL** upon all parties herein electronically via the Colorado Courts E-Filing System on this 26<sup>th</sup> day of July 2019.

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*s/ Paul M. Seby* \_\_\_\_\_

**APPENDIX A**

**ORDER OF THE DISTRICT COURT**

<p><b>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</b></p> <p>Court Address: City and County Building 1437 Bannock Street Denver, CO 80202</p>	<p>DATE FILED: July 8, 2019 12:44 PM CASE NUMBER: 2019CV30343</p>
<p>Plaintiffs: COLORADO AUTOMOBILE DEALERS ASSOCIATION</p> <p>v.</p> <p>Defendants: THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THE COLORADO AIR QUALITY CONTROL COMMISSION, and THE COLORADO AIR POLLUTION CONTROL DIVISION</p>	<p>^ COURT USE ONLY ^</p> <p>Case Number: <b>19CV30343</b></p> <p>Courtroom: <b>424</b></p>
<p><b>ORDER RE: DEFENDANT'S MOTION TO DISMISS</b></p>	

This is before the Court on the Defendants' Motion to Dismiss. Upon consideration of the motion, the Response and the Reply filed thereto, as well as the attachments appended to the pleadings, and having reviewed the applicable authorities and being sufficiently advised, the Court finds and orders as follows.

**I. Background and Facts**

The Plaintiff seeks judicial review the Colorado Air Quality Control Commission's ("the Commission) adoption of Regulation Number 20, the Colorado Low Emission Automobile Regulation ("CLEAR"), under the Air Pollution Prevention and Control Act (APPCA), the State Administrative Procedure Act, and Rules 57 and 106(a).<sup>1</sup> The challenged regulations require

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<sup>1</sup> The Defendants assert that, to the extent the Plaintiff has standing to assert its claims, jurisdiction is appropriate only pursuant to C.R.S. § 24-4-106(4). Although the Complaint appears to seek judicial review pursuant to C.R.C.P. 57 and 106, as well as under the statute, the Plaintiff appears to concede that judicial pursuant to the Rules is not appropriate because there is an adequate remedy available under section 24-4-106(4). Complaint ¶ 17. The Court agrees that, to the extent that standing exists, judicial review is applicable only pursuant to the statute.

automobile manufactures build and certify light and medium-duty vehicles sold in Colorado that comply with the California vehicle emissions standards, beginning with 2022 model year vehicles. The regulations also require aftermarket catalytic converters sold or installed in Colorado be certified pursuant to the California standards for such devices.

The regulation of new vehicle emission standards is governed by the federal Clean Air Act. *See* 42 U.S.C. § 7543. The Act preempts the states from imposing such standards, with the exception of California, which is permitted to seek a waiver from the federal Environmental Protection Agency (EPA) to tailor and impose its own standards for new vehicles. However, once California obtains a waiver, other states may adopt the California standards so long as the standards are identical to the California standards for which a waiver has been granted and the standards are adopted at least two years in advance of the model year vehicles to which they apply.

As alleged in the Complaint, the federal and California standards currently are essentially the same for model year 2017 – 2025 vehicles. [Complaint ¶ 24 – 25.] However, in apparent response to a proposal by the EPA and the National Highway Traffic Safety Administration to decrease the stringency of applicable federal standards,<sup>2</sup> the Colorado Department of Public Health and Environment was directed to develop and propose regulations consistent with the California standards. Following a rulemaking process, the Commission adopted CLEAR, which took effect December 30, 2018.

The Plaintiff is a non-profit association that represents Colorado automobile dealers. Its Complaint asserts five claims for relief challenging the Commission’s final agency action in its adoption of CLEAR, and seeks declaratory and injunctive relief finding that the regulations were adopted in violation of the APPCA and the APA. The Defendants’ assert that the Complaint must be dismissed because the Plaintiff lacks standing to assert its claims.

## **II. Motion to Dismiss**

In order for the Court to have jurisdiction over this dispute, the Plaintiff must have standing to bring its claims. To establish standing for judicial review

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<sup>2</sup> The proposed decrease in the stringency of the federal standards remains pending with no final action having been taken.

of final agency action under the APA, the Plaintiff must establish that (1) it suffered an injury-in-fact; and (2) that injury must be to a legally protected interest. *Wimberly v. Ettenberg*, 570 P.2d 535 (Colo. 1977).

The Plaintiff asserts that, should the federal standards be revised to differ from the California standards as adopted by CLEAR, its members will suffer economic injury inasmuch as its members will be precluded from engaging in “cross border trading” because dealers will only be able to trade for California compliant inventory. As a result, the Plaintiff alleges that the transaction costs and overall costs of new vehicles in Colorado will increase [Complaint ¶ 151-152]; the enforcement of the new standards will increase manufacturer’s costs and thereby increase the cost of new vehicles for Colorado dealers and consumers [Complaint ¶ 153]; and California certified vehicles will be more expensive than federally certified vehicles, thereby placing its members at a competitive disadvantage relative to out-of-state dealers and increase “cross-border sales.” [Complaint ¶ 154.]

In evaluating substantially similar allegations, a federal district court considered the New York Automobile Dealers Association’s challenge to the state’s adoption of California’s vehicle emission standards and concluded that the Association’s allegations regarding the asserted economic impacts did not constitute injuries-in-fact sufficient to confer standing to challenge the regulations. *New York Auto. Dealers Ass’n v. New York State Dep’t of Envtl. Conversation*, 827 F. Supp. 895, 898 - 900 (N.D.N.Y. 1993). More significantly for this Court’s analysis, the federal district court also concluded that, even assuming that the state’s adoption of the regulations caused harm to the plaintiff’s members, they “do not have any right under the Constitution or any statute to be free from such harm;” i.e. the claimed harm was not to a legally protected interest. *Id.* at 901.

The court reasoned that, while the federal Clean Air Act was intended to protect interstate commerce from the burdens of different state standards, the amendment to the Act permitting different state standards recognized the comparable importance of protecting the environment. The amendment, while imposing somewhat of a burden on interstate commerce, balances “these two important interests.” *Id.* The federal district court found no statutory or legislative history of “Congressional concern that granting states the authority to adopt California’s new motor vehicle standards would impose a burden on automobile dealers.” *Id.* at 902. The court reasoned:

[n]ot only was Congress primarily concerned with motor vehicle manufacturers, but it implicitly accepted what plaintiffs now argue is a burden on interstate commerce. The harm for which plaintiffs seek redress is the inherent consequence of Congress' passage of § 177 . . . By permitting states like New York to adopt California's new vehicle emission standards, Congress implicitly accepted the consequences of that action which were that automobile dealers in such adopting states would be limited to selling California certified vehicles and consumers in such states would be limited to registering only those vehicles. Consequentially, even assuming that Congress sought to protect automobile dealers' interests in selling federally certified vehicles by enacting § 209, by enacting § 177 Congress effectively sacrificed that interest in favor of the legitimate police powers of states.

*Id.*

The Court finds the reasoning of the federal district court persuasive and dispositive of the issue in this case. Even if the claimed injuries asserted by the Plaintiff are sufficiently distinguishable from those asserted in the federal district case, and even if those allegations are sufficient to constitute cognizable injuries-in-fact, the Court is not persuaded that the asserted injury is to a legally protected interest.

“While the economic impact of lawful competition may, as a practical matter, inflict an injury, it cannot confer standing under *Wimberly* unless the economic interest harmed is protected by a statutory or constitutional provision - i.e., unless a legislative intent to protect economic interests from competitive harm is explicit or fairly inferable from the statutory provisions under which an agency acts or if the legislature expressly confers standing on competitors to seek review of agency action.” *Cloverleaf Kennel Club, Inc. v. Colorado Racing Commission*, 620 P.2d 1051, 1057 (Colo. 1980). Here, the Court discerns no principled distinction between the consequences resulting from the rules adopted in New York from those anticipated under Colorado's adoption of CLEAR. In both instances, Congress has “effectively sacrificed” the automobile dealer's interest in favor of the “legitimate police powers of the states.” 827 F. Supp. At 902. Nor does the Court discern any principled distinction between

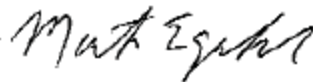
the analysis of the federal district court, which replied upon federal law, from the state principles requiring injury to a legally protected as a precondition for standing to assert a claim.

### **III. Conclusion**

For the foregoing reasons, the Court concludes that the Plaintiff has failed to establish an injury-in-fact that to its legally protected interest. Accordingly, the Defendants' Motion to Dismiss is **granted**.

Dated this 8th day of July, 2019.

BY THE COURT:



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Martin F. Egelhoff  
District Court Judge

cc: all counsel via e-filing



**APPENDIX B**

**COLORADO LOW EMISSION AUTOMOBILE REGULATION,  
REGULATION 20 – 5 CCR 1001-24**

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**Air Quality Control Commission**

**REGULATION NUMBER 20 COLORADO LOW EMISSION AUTOMOBILE REGULATION**

**5 CCR 1001-24**

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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Outline of Regulation

- I. GENERAL PROVISIONS
- II. APPLICABILITY
- III. CERTIFICATION TESTING
- IV. FLEET AVERAGE EMISSIONS
- V. REPORTING REQUIREMENTS
- VI. SURVEILLANCE AND ENFORCEMENT
- VII. EMISSION CONTROL SYSTEM WARRANTY AND RECALL REQUIREMENTS
- VIII. ENVIROMENTAL PERFORMANCE LABELS
- IX. AFTERMARKET CATALYTIC CONVERTERS AND DIESEL PARTICULATE FILTERS
- X. SEVERABILITY
- XI. OPTIONAL COMPLIANCE WITH THE 2017 THROUGH 2025 MODEL YEAR NATIONAL GREENHOUSE GAS PROGRAM
- XII. INCORPORATIONS BY REFERENCE
- XIII. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

**I. GENERAL PROVISIONS**

- I.A. All provisions of this regulation apply throughout the State of Colorado.
- I.B. This regulation applies to all 2022 and subsequent model year motor vehicles that are Passenger Cars and Light-Duty Trucks, motor vehicle engines; to all 2022 and subsequent model year motor vehicles which are Medium-Duty Passenger Vehicles, Medium Duty Vehicles, or motor vehicle engines offered for sale or lease, or sold, or leased for registration in Colorado, and to all sales or installation of Aftermarket Catalytic Converters for any model year vehicle.
- I.C. The provisions of this regulation also apply to all 2022 and subsequent model year motor vehicles sold or leased to the United States government or an agency thereof, or to the State of Colorado or any agency or political subdivision thereof that would be registered or required to be registered in the State.

- I.D. This regulation is a state-only regulation and is not contained in any State Implementation Plan.
- I.E. Definitions
- I.E.1. *2017 through 2025 MY National Greenhouse Gas Program* means the national program that applies to new 2017 through 2025 model year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles as adopted by the U.S. Environmental Protection Agency as codified in 40 CFR Part 86, Subpart S, except as follows:
- For model years 2021 through 2025, the “2017 through 2025 MY National Greenhouse Gas Program” means the national program that applies to new 2021 through 2025 model year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles as adopted by the U.S. Environmental Protection Agency as codified in 40 CFR Part 86, Subpart S, as last amended on October 25, 2016 that incorporates 40 CFR Part 86, Sections 86.1818-12 (October 25, 2016), 86.1865-12 (October 25, 2016), 86.1866-12 (October 25, 2016), 86.1867-12 (October 25, 2016), 86.1868-12 (October 25, 2016), 86.1869-12 (October 25, 2016), 86.1870-12 (October 25, 2016), and 86.1871-12 (October 25, 2016).
- I.E.2. *Aftermarket Catalytic Converter* means a catalytic converter not designed and built to perform exactly as the original equipment manufacturer catalytic converter.
- I.E.3. *Emissions Control System* means equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine, or a system or engine modification on a motor vehicle or motor vehicle engine which causes a reduction of air contaminants emitted from the motor vehicle or motor vehicle engine, including but not limited to exhaust control systems, fuel evaporation control systems and crankcase ventilating systems.
- I.E.4. *Authorized Emergency Vehicle or Emergency Vehicle* means such vehicles of the fire department, police vehicles, ambulances, and other special-purpose vehicles as are publicly owned and operated by or for a governmental agency to protect and preserve life and property in accordance with state laws regulating Emergency Vehicles; said term also means the following if equipped and operated as Emergency Vehicles in the manner prescribed by state law:
- I.E.4.a. Privately owned vehicles as are designated by the state motor vehicle licensing agency necessary to the preservation of life and property; and
- I.E.4.b. Privately owned tow trucks approved by the public utilities commission to respond to vehicle emergencies.
- I.E.5. *CARB* means the California Air Resources Board as defined in California's Health and Safety Code, Section 39003.
- I.E.6. *Department* means the Colorado Department of Public Health and Environment (CDPHE).
- I.E.7. *Executive Director* means the Executive Director of the Colorado Department of Public Health and Environment.
- I.E.8. *Greenhouse Gas or GHG* means the following gases: carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons.

- I.E.9. *Light-Duty Truck* means any motor vehicle certified to the standards in California Code of Regulations, Title 13, Section 1961(a)(1) or 1961.2 rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle, rated at 6,000 pounds gross vehicle weight or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.
- I.E.10. *Medium-Duty Passenger Vehicle* means any medium-duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The Medium-Duty Passenger Vehicle definition does not include any vehicle which: (1) is an "incomplete truck" i.e., is a truck that does not have the primary load carrying device or container attached; or (2) has a seating capacity of more than 12 persons; or (3) is designed for more than 9 persons in seating rearward of the driver's seat; or (4) is equipped with an open cargo area of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area, for purposes of this definition.
- I.E.11. *Medium-Duty Vehicle* means any heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in California Code of Regulations, Title 13, Section 1961.2 or 1956.8(h) having a manufacturer's gross vehicle weight rating between 8,501 and 14,000 pounds.
- I.E.12. *Military Tactical Vehicles and Equipment* means all land combat and transportation vehicles, excluding rail-based, which are designed for and are in use by any of the United States armed forces, or in use as an Authorized Emergency Vehicle by or for a governmental agency.
- I.E.13. *New Motor Vehicle* for purposes of this regulation means a 2022 model year or later motor vehicle that has accumulated less than 7500 miles of use as of the date of sale or lease.
- I.E.14. *Passenger Car* means any motor vehicle designed primarily for transportation of persons and having a design capacity of twelve persons or less.
- I.E.15. *Used Motor Vehicle* means a 2022 model year or later motor vehicle that has accumulated 7500 miles or more of use as of the date of sale or lease.

## II. APPLICABILITY

- II.A. Low Emissions Vehicle Sales - It is unlawful for any person to sell or register, offer for sale or lease, import, deliver, purchase, lease, acquire or receive a 2022 or subsequent model year new Passenger Car, or a Light Duty Truck, Medium Duty Passenger Vehicle, or a Medium Duty Vehicle; new light- or medium-duty motor vehicle engine or motor vehicle with a New Motor Vehicle engine in the State of Colorado which is not certified to California Code of Regulations, Title 13, Sections 1961.2 ("LEV III Criteria emissions") and 1961.3 ("GHG emissions") and meets all other applicable requirements of California Code of Regulations, Title 13, Sections 1900, 1956.8(h), 1965, 1968.2, 1976, 1978, 2035, 2037 through 2041, 2046, 2062, 2109, 2111 through 2121, 2122 through 2135, 2139, 2141 through 2149, and 2222(h) and (i), unless the vehicle is sold to another dealer, sold for the purpose of being wrecked or dismantled, sold exclusively for off-highway use or sold for registration out of state. Vehicles that have been certified to standards promulgated pursuant to the authority contained in 42 U.S.C. Section 7521 (November 15, 1990) and that are in the possession of a rental agency in Colorado that are next rented with a final destination outside of Colorado will not be deemed as being in violation of this prohibition.

- II.B. Exceptions - This regulation does not apply to:
- II.B.1. A vehicle acquired by a resident of this State for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this State; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen; or
  - II.B.2. A vehicle transferred by inheritance; or
  - II.B.3. A vehicle transferred by court decree; or
  - II.B.4. Any vehicle sold after the effective date of this regulation if the vehicle was registered in this State before such effective date; or
  - II.B.5. Any motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. Section 7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this State and who upon registration of the vehicle in this State provides satisfactory evidence to the Department of Revenue or its assigned designee of the previous residence and registration; or
  - II.B.6. A Used Motor Vehicle (7500 or more miles accumulated); or
  - II.B.7. Authorized Emergency Vehicles; or
  - II.B.8. Military Tactical Vehicles and Equipment.
- II.C. Transfer to ultimate purchaser - For purposes of this regulation, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.
- II.D. No Conversion - In accordance with 42 U.S.C. Section 7507 under no circumstances will a Colorado action require the conversion of a vehicle to a standard different from that to which it is certified for sale in California.
- II.E. Aftermarket Catalytic Converters - applies after January 1, 2021 to all Aftermarket Catalytic Converters that are sold, offered for sale, or advertised for sale or use in Colorado on any model year vehicle.

### **III. CERTIFICATION TESTING**

- III.A. Assembly-line quality audit emission testing and reporting shall be performed for 2022 and subsequent model years.
- III.A.1. All manufacturers of new motor vehicles subject to this regulation produced and delivered for sale in Colorado shall conduct inspection testing in accordance with California Code of Regulations, Title 13, Section 2062.
  - III.A.2. The Department shall accept the results of quality audit testing and inspection testing determinations and findings made by CARB.

- III.B. Remedial action plans for model year 2022 and subsequent model years are required. If the State of California requires a remedial action plan based upon full calendar or partial calendar quarter testing, under the California Code of Regulations, Title 13, Section 2109, such plan will apply to all vehicles certified to the California standards intended for sale in Colorado. Such plan will not apply to vehicles that have previously been sold to ultimate purchasers in Colorado.

#### IV. FLEET AVERAGE EMISSIONS

- IV.A. For each model year, manufacturers of Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles produced and delivered for sale in Colorado shall not exceed the fleet average non-methane organic gas plus oxides of nitrogen emission values as set forth in California Code of Regulations, Title 13, Section 1961.2. Credits and debits may be accrued and utilized based upon each manufacturer's sales of vehicles subject to this regulation in Colorado, pursuant to the provisions set forth in California Code of Regulations, Title 13, Section 1961.2(c).
- IV.B. For each model year, manufacturers of Passenger Cars, Light-Duty Trucks and Medium-Duty Passenger Vehicles produced and delivered for sale in Colorado shall not exceed the fleet average greenhouse gas exhaust emission levels set forth in California Code of Regulations, Title 13, Section 1961.3. For each model year, manufacturers of Medium-Duty Vehicles produced and delivered for sale or lease in Colorado shall not exceed the CO<sub>2</sub> emission standards set forth in California Code of Regulations, Title 13, Section 1956.8 (h)(6). Credits and debits may be accrued and utilized based upon each manufacturer's sales of vehicles subject to this Rule in Colorado, pursuant to the provisions set forth in California Code of Regulations, Title 13, Section 1961.3.

#### V. REPORTING REQUIREMENTS

- V.A. Certification Reporting

For the purposes of determining compliance with this regulation, the Department may require any vehicle manufacturer subject to this regulation to submit any documentation the Department deems necessary to the effective administration and enforcement of this regulation including, but not limited to all certification materials submitted to CARB.

- V.B. Fleet average reporting

Commencing with the 2022 model-year, each manufacturer must report to the Department using the same format used to report this information to CARB, the fleet average non-methane organic gas plus oxides of nitrogen pollutant and greenhouse gas emissions of its fleet delivered for sale in Colorado. If the "Pooling Provision" option number two in the California Code of Regulations, Title 13, Section 1961.2 is chosen, or the "Calculation of Fleet Average Carbon Dioxide Value" option number two in California Code of Regulations, Title 13, Section 1961.3 (5)(D) is chosen, manufacturers must report the data for the entire pool as well as the Colorado specific portion. Non-methane organic gas plus oxides of nitrogen reports must be submitted to the Department by no later than March 1 of the calendar year succeeding the end of the model year. Carbon dioxide reports must be submitted to the Department by no later than May 1 of the calendar year succeeding the end of the model year.

- V.C. Assembly line testing reporting

Upon request by the Department, commencing with the 2022 model year, vehicle manufacturers are required to provide reports on all assembly-line emission testing and functional test results collected as a result of compliance with this regulation and California Code of Regulations, Title 13, Section 2062. Reports must be provided to the Department or to the Department's designee.

V.D. Warranty Reporting

Upon request by the Department, commencing with the 2022 model year, each manufacturer shall submit warranty claim reports submitted to CARB to the Department as required by California Code of Regulations, Title 13, Sections 2141 through 2149.

V.E. Recall Reporting

Upon request by the Department, commencing with the 2022 model year, each manufacturer shall submit recall plans and progress reports submitted to CARB to the Department, using the same format and information as required by California Code of Regulations, Title 13, Sections 2119 and 2133.

**VI. SURVEILLANCE AND ENFORCEMENT**

VI.A. Surveillance of motor vehicle dealers.

VI.A.1. For the purpose of enforcing or administering any Federal or State law, order, regulation, or rule relating to vehicular sources of emissions, the Department or an authorized representative of the Department of Revenue, has the right of entry for the purpose of inspecting any 2022 and subsequent model year vehicles to any premises owned, operated, used, leased, or rented by any new or used car dealer.

VI.A.2. Nothing in Section VI. or elsewhere in this regulation is intended to limit the Department's authority to enter and inspect pursuant to 25-7-111, C.R.S, effective June 3, 2009.

VI.B. Enforcement

VI.B.1. For the purpose of developing the provisions of this regulation, any person subject to the provisions of this regulation must, upon oral or written request of any authorized officer or employee or designee of the Department, when properly identified and duly designated, furnish or permit such officer or employee or designee at all reasonable times to have access to, and to copy all records relating to those vehicles which are subject to this regulation.

VI.B.2. Unless otherwise specified, any person subject to the provisions of this regulation must retain all relevant records for at least three years from the creation of those records. Such records will be provided to the Department upon its request.

VI.C. Fleet average enforcement

VI.C.1. If the report issued by a manufacturer under Section V.B. of this regulation demonstrates noncompliance with the fleet average contained in this regulation during a model year, the manufacturer must within 60 days file a fleet average enforcement report with the Department documenting such noncompliance. Fleet average enforcement reports must identify all vehicle models delivered for sale or lease in Colorado and their corresponding certification standards and the percentage of each model delivered for sale in Colorado and California in relation to total fleet sales in the respective state.

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**VII. EMISSION CONTROL SYSTEM WARRANTY AND RECALL REQUIREMENTS**

- VII.A. Emissions control system warranty requirements - For all 2022 and subsequent model year Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, and motor vehicle engines subject to this regulation, each manufacturer shall provide defect warranty coverage. For vehicles registered or principally operated in the Front Range AIR Program area, performance warranty coverage that complies with California Code of Regulations, Title 13, Sections 2035, 2037 through 2041, and 2046 shall apply.
- VII.B. Recalls - For all 2022 and subsequent model year Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, and motor vehicle engines subject to recall in California, each manufacturer shall undertake recall campaigns in Colorado pursuant to California Code of Regulations, Title 13, Sections 2111 through 2121 and 2122 through 2135, unless the manufacturer demonstrates to the Department that such recall is not applicable to vehicles registered in Colorado.

**VIII. ENVIRONMENTAL PERFORMANCE LABELS**

- VIII.A. It is unlawful for any person to sell or register, offer for sale or lease, import, deliver, purchase, rent, lease, acquire, or receive a 2022 and subsequent model year new Passenger Car, Light-Duty Truck, Medium-Duty Passenger Vehicle, or Medium-Duty Vehicle in Colorado to which emissions control labels and environmental performance labels have not been affixed pursuant to the requirements of California Code of Regulations, Title 13, Section 1965.

**IX. AFTERMARKET CATALYTIC CONVERTERS**

- IX.A. Applicability - This regulation applies to all Aftermarket Catalytic Converters that are sold, offered for sale, or advertised for sale or use in Colorado on any model year vehicle.
- IX.B. Prohibition
- IX.B.1. It is unlawful for any person to install, sell, offer for sale, or advertise any Aftermarket Catalytic Converter intended for use on any motor vehicle originally equipped with catalytic converter(s) in Colorado unless it has been exempted pursuant to the requirements of California Code of Regulations, Title 13, Section 2222 (h) (i.e. a "California Aftermarket Catalytic Converter").
- IX.B.2. It is unlawful for any person to install, sell, offer for sale, or advertise any used, recycled, or salvaged catalytic converter in Colorado pursuant to the requirements of California Code of Regulations, Title 13, Section 2222 (h), (i), and (k).
- IX.B.3. This Aftermarket Catalytic Converter policy shall go into effect January 1, 2021

**X. SEVERABILITY**

Each provision of this regulation shall be deemed severable, and in the event that any provision of this regulation is held to be invalid, the remainder of this regulation shall continue in full force and effect.



**XI. OPTIONAL COMPLIANCE WITH THE 2017 THROUGH 2025 MODEL YEAR NATIONAL GREENHOUSE GAS PROGRAM**

For the 2017 through 2025 model years, a manufacturer may elect to demonstrate compliance with Regulation Number 20 and California Code of Regulations, Title 13, Section 1961.3 by demonstrating compliance with the 2017 through 2025 MY National Greenhouse Gas Program as follows:

- XI.A. A manufacturer that selects compliance with this option must notify the Department of that selection, in writing, prior to the start of the applicable model year or must comply with California Code of Regulations, Title 13, Sections 1961.3 (a) and (b);
- XI.B. The manufacturer must submit to the Department all data that it submits to EPA in accordance with the reporting requirements as required under 40 CFR Section 86.1865-12, incorporated by reference in and amended by the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles,” for demonstrating compliance with the 2017 through 2025 MY National Greenhouse Gas Program and the EPA determination of compliance. All such data must be submitted within 30 days of receipt of the EPA determination of compliance for each model year that a manufacturer selects compliance with this option;
- XI.C. The manufacturer must provide to the Department separate values for the number of vehicles in each model type and footprint value produced and delivered for sale in Colorado, California, the District of Columbia, and each individual state that has adopted California's greenhouse gas emission standards for that model year pursuant to Section 177 of the federal Clean Air Act (42 U.S.C. Section 7507), the applicable fleet average CO<sub>2</sub> standards for each of these model types and footprint values, the calculated fleet average CO<sub>2</sub> value for each of these model types and footprint values, and all values used in calculating the fleet average CO<sub>2</sub> values.
- XI.D. The optional compliance approach provided by this Section XI. and California Code of Regulations, Title 13, Section 1961.3(c) shall not be available for 2021 through 2025 model year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles if the “2017 through 2025 MY National Greenhouse Gas Program” is altered via a final rule published in the *Federal Register* subsequent to October 25, 2016.

**XII. INCORPORATIONS BY REFERENCE**

This Regulation Number 20 incorporates by Reference the following California Code of Regulations, Title 13, Sections 1961.2 and 1961.3, 1900, 1956.8(h), 1965, 1968.2, 1976, 1978, 2035, 2037 through 2041, 2046, 2062, 2109, 2111 through 2121, 2122 through 2135, 2139, 2141 through 2149, and 2222(h) and (i), identified in the following table. All references to the California Code of Regulations in this Regulation Number 20 mean the versions specified in the table.

For the purposes of applying the incorporated sections of the California Code of Regulations, unless the context requires otherwise, “California” means “Colorado”. Depending on context, “CARB” or “AIR Resources Board” means Colorado Department of Public Health and Environment, and “Executive Officer” means the Executive Director of the Colorado Department of Public Health and Environment.

Code of California Regulations, Title 13. Motor Vehicle, Division 3. Air Resource Board

Section	Title	Section Amended Date
<b>Chapter 1 Motor Vehicle Pollution Control Devices</b>		
Article 1. General Provisions		
1900	Definitions	July 25, 2016
Article 2. Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		
1956.8	Exhaust Emissions Standards and Test Procedures -1985 and Subsequent Model Heavy-Duty Engines and Vehicles – (Medium Duty Vehicle GHG standards only)	October 16, 2017
1961.2	Exhaust Emission Standards and Test Procedures – 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	September 28, 2018
1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	September 28, 2018
1965	Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles	October 8, 2015
1968.2	Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	July 25, 2016
1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	October 8, 2015
1978	Standards and Test Procedures for Vehicle Refueling Emissions	October 8, 2015
Article 6. Emission Control System Warranty		
2035	Purpose, Applicability and Definitions	November 9, 2007
2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	December 5, 2014
2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	August 7, 2012
2039	Emission Control System Warranty Statement	December 26, 1990
2040	Vehicle Owner Obligations	December 26, 1990

2041	Mediation; Finding of Warrantable Condition	<i>December 26, 1990</i>
2046	Defective Catalyst	<i>February 15, 1979</i>
<b>Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing</b>		
Article 1. Assembly-Line Testing		
2062	Assembly-line Test Procedures 1998 and Subsequent Model years	<i>August 7, 2012</i>
Article 2. Enforcement of New and In-use Vehicle Standards		
2109	New Vehicle Recall Provisions	<i>December 30, 1983</i>
Article 2.1. Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
2111	Applicability	<i>December 8, 2010</i>
2112	Definitions	<i>December 5, 2014</i>
2113	Initiation and Approval of Voluntary and Influenced Emission-Related Recalls	<i>January 26, 1995</i>
2114	Voluntary and Influenced Recall Plans	<i>November 27, 1999</i>
2115	Eligibility for Repair	<i>January 26, 1995</i>
2116	Repair Label	<i>January 26, 1995</i>
2117	Proof of Correction Certificate	<i>January 26, 1995</i>
2118	Notification	<i>January 26, 1995</i>
2119	Recordkeeping and Reporting Requirements	<i>November 27, 1999</i>
2120	Other Requirements Not Waived	<i>January 26, 1995</i>
2121	Penalties	<i>January 26, 1995</i>
Article 2.2. Procedures for In-Use Vehicle Ordered Recalls		
2122	General Provisions	<i>December 8, 2010</i>
2123	Initiation and Notification of Ordered Emission-Related Recalls	<i>January 26, 1995</i>
2124	Availability of Public Hearing	<i>January 26, 1995</i>
2125	Ordered Recall Plan	<i>January 26, 1995</i>
2126	Approval and Implementation of Recall Plan	<i>January 26, 1995</i>

2127	Notification of Owners	<i>January 26, 1995</i>
2128	Repair Label	<i>January 26, 1995</i>
2129	Proof of Correction Certificate	<i>January 26, 1995</i>
2130	Capture Rates and Alternative Measures	<i>November 27, 1999</i>
2131	Preliminary Tests	<i>January 26, 1995</i>
2132	Communication with Repair Personnel	<i>January 26, 1995</i>
2133	Recordkeeping and Reporting Requirements	<i>January 26, 1995</i>
2134	Penalties	<i>January 26, 1995</i>
2135	Extension of Time	<i>January 26, 1995</i>
<b>Article 2.3. In-Use Vehicle Enforcement Test Procedures</b>		
2139	Testing	<i>December 5, 2014</i>
<b>Article 2.4. Procedures for Reporting Failure of Emission-Related Components</b>		
2141	General Provisions	<i>December 8, 2010</i>
2142	Alternative Procedures	<i>February 23, 1990</i>
2143	Failure Levels Triggering Recall	<i>November 27, 1999</i>
2144	Emission Warranty Information Report	<i>November 27, 1999</i>
2145	Field Information Report	<i>August 7, 2012</i>
2146	Emissions Information Report	<i>November 27, 1999</i>
2147	Demonstration of Compliance with Emission Standards	<i>December 5, 2014</i>
2148	Evaluation of Need for Recall	<i>November 27, 1999</i>
2149	Notification of Subsequent Action	<i>February 23, 1990</i>
<b>Chapter 4. Criteria for the Evaluation of Motor Vehicle Pollution Control Devices and Fuel Additives</b>		
<b>Article 2. Aftermarket Parts</b>		
2222 (h) and (i)	Add-On Parts and Modified Parts	<i>April 17, 2017</i>

Regulation Number 20 does not include any later amendments or editions of the regulations incorporated by reference. The incorporated regulations are available for inspection at the Division during normal business hours at:

Colorado Department of Public Health and Environment  
Air Pollution Control Division, Mobile Sources Section  
4300 Cherry Creek Drive South, Denver, CO, 80220

Or online at:

<https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I88D700E0D46911DE8879F88E8B0DAAAE&originationContext=documenttoc&transitionType=Default&contextData=%28sc.Default%29>

Copies of the above incorporated regulations are also available for a reasonable charge from the Department and from:

Barclays Official California Code of Regulations  
50 California Street Second Floor  
San Francisco, CA 94111

## **XII. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE**

### **XII.A. November 15, 2018 (Adoption of all Sections)**

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act, Section 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, Sections 25-7-110 and 25-7-110.5, C.R.S. and the Air Quality Control Commission's ("Commission") Procedural Rules.

#### Basis

On June 18, 2018, Governor John Hickenlooper, by Executive Order B 2018 006, directed the Colorado Department of Public Health and Environment to develop and propose a regulation for the implementation of a Colorado low emission vehicle ("LEV") program, incorporating the requirements of the California LEV program. The Executive Order declared the need for adopting the LEV program as a response to the federal governments announced intention to roll back vehicle greenhouse gas ("GHG") standards for model years 2022 and beyond. Currently, the federal and California vehicle standards establish essentially the same emission limits. Colorado's adoption of the California vehicle standards for light- and medium-duty vehicles is intended to maintain the standards already in place for these vehicle in Colorado.

However, the Commission notes that it spent considerable time gathering input from the auto industry, environmental groups, local governments, and the Division regarding the potential implications of this rule prior to the issuance of the Executive Order. The Commission's decision to embark upon this rulemaking hearing was deliberate and well considered, and all interested parties and members of the public had significant opportunity to provide input to the Commission in its consideration of whether to adopt this regulation.

The Commission determines adoption of Regulation Number 20, Colorado Low Emission Automobile Regulation Number ("CLEAR") will reduce vehicle GHG emissions in Colorado by retaining vehicle standards demonstrated through comprehensive analyses as being economically reasonable, technologically feasible and to provide the co-benefit of reducing costs for Colorado drivers.

### Statutory Authority

Section 177 of the federal Clean Air Act (“CAA”), 42 U.S.C. Section 7507, provides states the option of requiring compliance with either federal or approved California standards for vehicles sold within their borders. The Colorado Air Pollution Prevention and Control Act, Sections 25-7-101, C.R.S., et seq., (“Act”) at Section 25-7-105(1), directs the Commission to promulgate emission control regulations consistent with the legislative declaration set forth in Section 25-7-102 and in conformity with Section 25-7-109. The legislative declaration identifies, among other objectives, the need to “achieve the maximum practical degree of air purity in every portion of the State ....” Section 25-7-102, C.R.S. Sections 25-7-109(1)(a) and (2) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, and emission control regulations pertaining to carbon oxides. Section 25-7-106 further provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. Section 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution.

While there were arguments made as part of the proceeding that vehicle emission control studies and a resulting recommendation from the Commission are prerequisites to the adoption of Regulation Number 20 pursuant to Section 25-7-130, the Commission disagrees, based on both the plain language and the legislative history of the statute. Section 25-7-130 pertains to inspection and maintenance programs for in-use vehicles, and this regulation is solely applicable to new vehicles. In addition, while Section 25-7-130 requires the Division to conduct studies and pilot programs and the Commission to create recommendations based upon the results of those efforts, nothing in the statute directly requires those studies, programs, and recommendations to be performed and developed before the Commission can propose and adopt a rule.

### Purpose

The following section sets forth the Commission’s purpose in adopting Regulation Number 20, and includes the technological and scientific rationale for the adoption of the regulation. The Commission determines adoption of Regulation Number 20 CLEAR will reduce vehicle emissions in Colorado. The Commission is utilizing the option that CAA Section 177 provides states to choose between the federal and approved California vehicle standards. Nothing in CLEAR is intended to differ in any substantive way from the provisions adopted by California as of the effective date of these revisions adopted by the Commission. The Commission determines adopting the California standards will retain the vehicle standards currently in place in Colorado and avoid the disbenefits of the anticipated roll back of federal standards.

In accordance with C.R.S. Sections 25-7-105.1 and 25-7-133(3) the Commission states the rules in Regulation Number 20 adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado’s State Implementation Plan (SIP).

As part of adopting the revisions to Regulation Number 20, the Commission has taken into consideration each of the factors set forth in C.R.S. Section 25-7-109(1)(b). The Commission considered information in the record regarding the state policy regarding air pollution (“...to achieve the maximum practical degree of air purity in every portion of the state, to attain and maintain the national ambient air quality standards...”), federal recommendations and requirements, the degree to which altitude, topography, climate, or meteorology requires different more or less stringent regulations in different parts of the state, the degree to which these types of emissions are subject to treatment and the availability and feasibility of treatment, the significance of the emissions to be controlled, the continuous nature of the emissions to be controlled, the economic, environmental, and energy costs of complying with the rule, and whether the rule should be statewide or apply only to portion of the state.

The Division provided an economic impact analysis for this rule, as well as a cost-benefit analysis pursuant to Section 24-4-103(2.5), C.R.S. and a regulatory analysis pursuant to Section 24-4-103(4.5), C.R.S. The Division made a good faith effort to provide the most complete and accurate analyses based on the information reasonably available to it. Expert testimony presented to the commission raises serious questions about cost estimates from the August 2018 SAFE Rule proposal (83 FR 48578). The commission did not rely on these estimates. Nevertheless, the division's cost benefit analysis, revised final economic impact analysis, and regulatory analysis and other evidence in the record amply support the conclusion that Regulation Number 20 is a practical measure that will cost effectively reduce GHG emissions.

To the extent that C.R.S. Section 25-7-110.5(5)(b) requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

- (I) *Any federal requirements that are applicable to this situation with a commentary on those requirements;*

Section 177 of the Federal Clean Air Act permits states the option of adopting California car standards. Twelve other states and the District of Columbia made this adoption of California standards in the past 14 years.

Auto manufacturers typically build two models of a particular car – one for sale in California, and another to sell elsewhere. California cars have been historically slightly lower-emitting than their federally certified counterparts. However, the standards for both were harmonized in 2017. The U.S. Environmental Protection Agency (“US EPA”) is taking action to roll back a standards change proposed for the 2021 model year. California cars would retain the standards-change that further reduces GHG emissions. California's rules previously allowed for manufacturers to comply with California's program by complying with the equivalent federal standards; however, California recently revised its rules to disallow compliance with federal standards to satisfy compliance with California standards in the event of a roll back.

- (II) *Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;*

The federal Clean Air Act grants authority to US EPA to establish new vehicle emissions standards. California mandated its own emissions standards, predating the federal Act. Car manufacturers have been engineering to federal or California emissions standards for 50 years, with tremendous technological innovation during that time. These are performance-based emissions standards – vehicles may not emit more than x grams per mile of the various criteria and GHG emissions for either certification.

- (III) *Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;*

The Executive Order requires the Commission to consider adopting California Low Emission Vehicle standards. Because the ozone-forming criteria emissions standards are essentially the same between California and federal cars, there is little ozone benefit for Colorado in this rule. The emission reduction benefit to be derived from this regulation is primarily for GHG reductions. GHG are contributing to climate change, which is a concern to many Coloradoans. The extent to which Colorado's concerns and issues will be specifically addressed in the federal proposal is unclear.

- (IV) *Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;*

The regulatory burden of the proposed rule falls on auto manufacturers and dealers. The proposed rule does not significantly improve nor inhibit manufacturer's and Dealers' ability to comply, since these cars are being built for consumers in 13 states and the District of Columbia already.

- (V) *Whether there is a timing issue which might justify changing the time frame for implementation of federal requirement;*

The federal administration formally proposed rollback options for the 2021 GHG standards on August 2, 2018. This proposed federal rule also considers revoking California's waiver to set their own standards. The federal Clean Air Act, Section 177 allows a state to adopt California new car emissions standards in lieu of federal standards. There is a mandated two-model-year lead time when a state makes the Section 177 adoption to California standards. Those standards are due to lapse after the 2025 model year. So In order for Colorado to maximize the benefits from this new rule, it should be adopted before January 1, 2019.

- (VI) *Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;*

The proposed rule will reduce GHG emissions in support of Colorado's Climate Action Plan and Executive Order D 2017-015. As the Colorado vehicle fleet turns over and newer, lower-emitting vehicles are brought into use, overall emissions are reduced.

- (VII) *Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;*

The proposed rule affects a single source category, mobile sources. Therefore there are no equity issues between these sources. However, if the federal vehicle standards are rolled back and this proposed rule is not adopted, additional GHG emissions reductions will be required from other emission source categories to make up for the loss of approximately 30 million tons of benefit in GHG reduction projected to be achieved through this rule, in order to meet the Governor's Executive Order D2017-015.

- (VIII) *Whether others would face increased costs if a more stringent rule is not enacted;*

As a contributor to climate change, GHG emissions present a cost to Coloradoans and Colorado businesses. In order to meet the goals of the Climate Action Plan, GHG emissions reductions not gained from the Mobile source sector may need to be taken from other industries.

- (IX) *Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;*

Although California-certified Low Emission Vehicles will be built to different standards than their federally-certified counterparts, the processes and procedures are very similar. There will be some additional monitoring, averaging, and reporting requirements, although vehicle manufacturers and dealers are already meeting those requirements in 13 other states and the District of Columbia.



There will be additional workload on state and county staff, performing surveillance and enforcement, new vehicle titling and registration requirements, and monitoring vehicles sales.

- (X) *Whether demonstrated technology is available to comply with the proposed requirement;*

Both US EPA and the California Air Resources Board have found that the standards in the proposed rule are appropriate based on existing and maturing technologies. EPA has reversed themselves stating in April 2018 that the 2021 GHG standards change is inappropriate.

- (XI) *Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain; and*

The proposed rule is estimated to reduce GHG emissions by approximately 30 million tons over the lifetime of vehicles built for model years 2022 through 2031. A co-benefit to reducing GHG emissions is a savings to Colorado motorists, resulting in a savings over the life of a LEV vehicle that more than offsets the increase in purchase price of the vehicle.

- (XII) *Whether an alternative rule, including a no-action alternative, would address the required standard.*

Other than retaining the federal standards, there is no regulatory alternative to adopting California LEV standards for Colorado. Assuming the proposed rollback of the federal standards occurs, no action would result in a significant increase in vehicle GHG emissions in Colorado.

To the extent that C.R.S. Section 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

- (I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.
- (II) Evidence in the record supports the finding that the rules result in a demonstrable reduction of emissions.
- (III) Evidence in the record supports the finding that the rules bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.
- (IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.
- (V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

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### Editor's Notes

#### History

New rule eff. 12/30/2018.

**APPENDIX C**

**COLORADO GOVERNOR HICKENLOOPER'S  
EXECUTIVE ORDER B-2018-006**

# STATE OF COLORADO

## OFFICE OF THE GOVERNOR

136 State Capitol  
Denver, Colorado 80203  
Phone (303) 866-2471  
Fax (303) 866-2003



## B 2018 006

### EXECUTIVE ORDER

John W. Hickenlooper  
Governor

#### Maintaining Progress on Clean Vehicles

Pursuant to the authority vested in me by Article IV, Section 2 of the Colorado Constitution, I, John W. Hickenlooper, Governor of the State of Colorado, hereby issue this Executive Order to ensure that the State of Colorado maintains the progress made in achieving a cleaner motor vehicle fleet.

#### I. Background, Need and Purpose

As the highest-elevation state in the country, Colorado has unmatched natural beauty and world-class recreational opportunities, but it also creates unique challenges. Our communities, farms and wilderness areas are susceptible to air pollution and a changing climate. It's critical for Coloradans' health and Colorado's future that we meet these challenges head on. The state has therefore become an innovator in adopting and implementing strategies to protect and improve our air quality. From developing advanced fuel formulation standards in the 1990's, to passage of the first voter approved renewable energy standard in 2004, to the adoption and implementation of the country's first methane regulations for the oil and gas industry in 2014, Colorado has been a clean air leader.

Executive Order D 2017 015, was issued to establish a goal for the State of Colorado to reduce statewide greenhouse gas emissions by more than 26% by 2025. We can achieve this goal by harnessing technological advancements in the clean energy field and implementing cost-effective strategies that reduce our emissions while protecting our vibrant economy. We must continue our progress in reducing greenhouse gas emissions from the transportation and electric generating sectors, which are now, and will continue to be, the largest source of greenhouse gas emissions in Colorado. Over the past several years, Colorado has made tremendous gains in transitioning to cleaner forms of electricity generation while maintaining Colorado's position as one of the lowest energy cost states in the nation. That success has been bolstered by the adoption of the State's Electric Vehicle Plan at the end of January 2018, and ongoing fuel efficiency improvements for gasoline and diesel powered vehicles.

On April 13, 2018, the federal government announced its intention to roll back vehicle greenhouse gas and fuel efficiency standards for model years 2022 and beyond. This decision ran against the conclusions drawn in comprehensive analyses by the Environmental Protection Agency (EPA) and the State of California showing that the existing standards are technologically feasible and will over the life of the vehicle actually save motorists money through reduced fuel costs. This decision could also have serious consequences for Colorado's efforts to meet our clean energy goals by increasing carbon dioxide emissions from Colorado's vehicle fleet by approximately 1.9 million tons a year by 2030.

The Clean Air Act allows states to adopt California's alternative vehicle standards as approved in a waiver from the EPA, instead of adhering to the federal standards where, as here, the federal government's standards fail to meet a state's clean air goals. Twelve other states have already adopted California's alternative vehicle standards. These standards include both a Low Emission Vehicle (LEV) program, which mirrors the current federal vehicle greenhouse gas and other emissions standards, and for nine of the twelve states, a separate Zero Emission Vehicle (ZEV) program, which establishes requirements for manufacturers to sell a specified percentage of electric and other zero emission vehicles. By joining these states, Colorado can continue to make progress toward achieving its clean energy goals.

II. Directives

In order to maintain progress in reducing greenhouse gas emissions from vehicles sold in Colorado, the Colorado Department of Public Health and Environment shall:

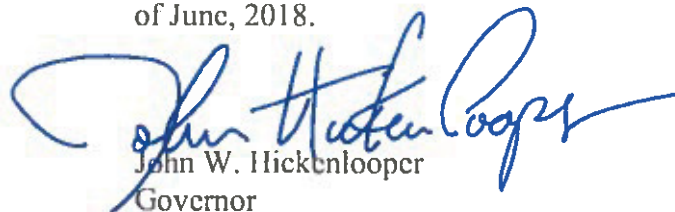
- develop a rule to establish a Colorado LEV program, which incorporates the requirements of the California LEV program; and
- propose that rule to the Colorado Air Quality Control Commission during its August 2018 meeting for possible adoption into the Colorado Code of Regulations by December 30, 2018.

III. Duration

This Executive Order shall remain in effect until modified or rescinded by future Executive Order of the Governor.



GIVEN under my hand and the  
Executive Seal of the State of  
Colorado, this eighteenth day of  
of June, 2018.

  
John W. Hickenlooper  
Governor