

**Subject:** Public Hearing Comments  
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**From:** DoNotReply@delaware.gov  
**To:** HearingComments, DNREC (MailBox Resources), info@NonPartisanDE.org  
**Attachments:** Manufactured Controversy.pdf

Comments on 2022-R-A-0011: Low Emission Vehicle Program

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Organization: Non-Partisan Delaware

Comments:

Wednesday evening there was a Town Hall event hosted by several Republican State Representatives from Kent County at the Camden Wyoming Fire Hall. This was billed out by the promotional materials on Facebook as a Regional Town Hall meeting to discuss proposals in the General Assembly, host a Q and A on any aspect of state government, and as a third item to "Discuss the Electric Vehicle Sales Mandate and Submit Your Opinion to DNREC". One of the Representatives was helpful enough to post the video so you can see that while the video missed the beginning of some of the introductions, it caught the tail end and the introduction of the agenda. The "Electric Vehicle Mandate" had been moved up to item number one. An explanation began. Before hearing their explanation it's helpful to have a basic level of familiarity with what these regulations actually do and what's actually in the proposed updates. The first error should be immediately obvious already. These regulations are not an "Electrical Vehicle Sales Mandate". They are, if anything, a "Zero Emissions Vehicle Sales Mandate". It's a subtle difference, but it's going to be important later. The second one requires a bit more background knowledge than was provided by the Representatives, and perhaps more background knowledge than was provided to them. The second one is the Federal Public Health Code. Specifically 42 USC § 7543 and 42 USC § 7507. These two sections were implemented by the Air Quality Act of 1967 and the Clean Air Act Amendments of 1977. The first initially grandfathered in California's more stringent air quality regulations while prohibiting any other state from adopting or enforcing emissions standards on any vehicle "subject to this part", meaning 42 USC Part A: Motor Vehicle Emission and Fuel Standards. Meaning every vehicle you've ever driven. The second established 10 years later that yes, states can enforce their own standards, as long as they're California's. Note that states are not permitted to establish their own standards based on California's standards; they are permitted to enforce California's exact standards. Whatever your thoughts might be on that particular piece of federal law, that IS the federal law, and Delaware isn't going to be changing it alone before California's new standard becomes California's standard and Delaware's standard will no longer be in compliance with federal law. The standard is allowed to be the federal standard or it can be the new, current California standard. Or we can change federal law. There is no door number three. What the federal standards are that we'd be expected to adhere to and what the consequences are of letting them enforce their standards instead of Delaware enforcing ours (California's) is going to be beyond the scope of this comment; but enforcing "our own", the magical option that was suggested several times, is not actually permitted by federal law. At all. Cannot be enforced. California's can be enforced. So back to what the proposal actually does, since we're going to assume from the Representatives' failure to mention it as an option that defaulting back to federal enforcement is not something anyone wants to do. We've been cruising along following California's old standard for several years and at least we get to enforce it ourselves and we know when California's going to change it up more reliably than we do when the feds are. California is a stable blue while DC oscillates between D and R and the EPA with it. Maybe those aren't good enough reasons, but since "let the feds handle it" wasn't one of the suggestions on offer Wednesday, let's assume that's a bad option and look at the other one we have. Which is to enforce California's current standard. It's not hard to read Delaware's proposed regulations applying all of California's. It's harder, however, to read all the references to the California regulations and figure out what everything is actually doing. The ones about the credits and calculations are particularly relevant but we'll get there. Delaware is not the only state adopting the new ACC II standards and there's lots of information about them. Some of this information admits to this little item that feels interesting in the context of the alleged "ban" on the sale of gas powered vehicles: "As a result of the technology- and range-based credit multipliers, the actual electric-drive vehicle

deployment will be less than that shown in the table.” The table referenced being the one showing that “100%” of vehicles in 2035 must be “ZEVs”. It also helpfully explains (as the draft regulations do as well) that “ZEV” means “Zero Emission Vehicles”. It doesn’t mean “Electric” Vehicles. Most of them now are electric, but that is not the definition of them. ZEVs are, curiously enough, defined to include Plug-In Hybrids; which are not quite “zero” emission vehicles unless you reliably plug them in. While requiring various percentages of the vehicles sold to be “ZEVs” the definition specifically allows up to 20% of these ZEVs to be PHEVs, which in this case DOES actually mean “Plug-In Hybrid Electric Vehicles”. ZEVs also include “FCEVs”, or hydrogen “Fuel Cell Electric Vehicles”. The percentage is also not exactly a percentage of the actual vehicles actually sold in Delaware that are ZEVs either, because different types of ZEVs with longer or shorter ranges can earn...credits. So what are credits? Told you we’d get there. Manufacturers earn credits by selling more ZEVs than they’re required to in the years when they’re not all required to. Except they get extra credits for selling even the nominally required number if they’re longer range vehicles when running in the zero-emissions mode. Finally, they’re being granted to manufacturers in proportional amounts to the credits already banked in California. That’s a nice chunk of ... something ... that they’re getting. But what are they for? These credits can be traded. Oh, ok, there’s the money. These credits can also be redeemed against shortfalls in meeting the required targets. So if some manufacturer goes over the required target, they can sell their credits to another manufacturer falling under it. Fair enough once the target hits 100% and there’s no way to go over the required target anymore, right? Wrong. Remember that 20% of plug-in hybrids that are allowed to count as “ZEVs” even if they’re only able to operate in “ZEV” mode for a few miles? If they sell less than that, they can put the extras in the bank. The same one that allows them to be traded and redeemed against shortfalls in the required production volume. So as long as you bank up the sale of some hybrids, you can afford to sell some of your overall production volume for no credit at all, meaning an OGLEV, the original gangster light emission vehicles you’re already buying for low (?) cost, high (?) resale value, and higher than no pollution. How dare you. So they will actually be able to sell gas powered vehicles, as long as they offset those sales with non-hybrid ZEVs. They still get to CALL it 100% ZEVs though, because even if they didn’t sell one here, this year, someone did, somewhere, some year, and that’s close enough for government work. It’s also worth noting that the “production volume” is based on the manufacturer that marketed the vehicle in the State, not the one that actually produced it. It seems that a manufacturer could create a small subsidiary to sell exclusively non-hybrid battery electric vehicles to bank the 20% that are allowed to be plug-in hybrids as credits, sell them to the parent company, which can then continue selling traditional LEVs without penalty. This is another issue that references California statutes and regulations but isn’t clear how it will be applied in Delaware. The regulations state that holding a credit deficit at the end of a year will cost additional credits, deepening the credit deficit, but it doesn’t actually say specifically what the penalty is for having an active deficit unless that’s in the other regulatory references. How that would apply to Delaware isn’t immediately clear. In any case, it’s hardly true that it will be impossible for an LEV to be sold after 2035. The way a “new” car is defined only requires a vehicle with less than 7,500 miles on it to meet the ZEV standards to be subject to the registration requirements. It’s not even true that you won’t be able to register one. These numbers are configured to be manipulated. It’s also true that any dire warnings about a 100% ZEV future are by their nature overblown. Predicting the future is hard. Technology and infrastructure changes. There are 17 states including Delaware that have signed onto California’s emission standards, creating a massive market for ZEVs through what amount to regulatory incentives and penalties based on the quality of the vehicle and the discounts manufacturers are willing to offer. The acquiescence of the automaker industry and local Delaware dealerships is all the proof that’s needed. These regulations are about creating a market for their newest products, that are more expensive, less resellable, require more infrastructure, and are technologically immature. The Clean Air Act Amendments and the Air Quality Act only require a two year notice for California to change its regulations or for states to opt out of California’s standards and revert to federal ones. The federal option is not even being presented by Delaware’s Republicans, but if their dire predictions of 2035 and a state without gas powered vehicles are anywhere resembling accurate, bet that the entire political landscape underlying these regulations will have shifted too. In the meantime, gas powered new vehicles are likely to get more expensive, ZEVs are going to get cheaper, and the 17 states that have signed onto these standards will have 10 years to make them work with their infrastructure. At Non-Partisan Delaware, we oppose mandates, generally. We see how they make products more expensive by limiting choices. These mandates, however, are really outside of Delaware’s power to escape, but they aren’t as bad as they’re being made out to be. The fact of the matter is that Delaware’s Republicans are not being honest about the choice facing Delaware regarding these regulations. They’re milking it for political advantage and misinforming their voters in the process. Regulators have the authority to issue these mandates because the General Assembly gave it to them. It is not a usurpation of legislative authority but a [possibly unwise] delegation of it; and there is only one very narrow choice in front of us as a state given

current federal law: adopt these standards, or revert to federal enforcement of theirs. We don't really have an opinion on that. All of these regulations—current, former, federal, whatever—are confusing but relatively easily changed. We do object to lies and dishonesty being used to fearmonger and provoke, and to politicians and legislators riling their constituents up with lies for votes instead educating them about the facts and enabling them to be better informed and more effective advocates for their communities. We don't understand most of these regulations, but we do understand that attendees at these Regional Town Halls are not being told the truth.

# Manufactured Controversy

## Delaware's Pending EV "Mandate"

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The second established 10 years later that yes, states can enforce their own standards, as long as they're California's. Note that states are not permitted to establish their own standards based on California's standards; they are permitted to enforce California's exact standards.

Whatever your thoughts might be on that particular piece of federal law, that IS the federal law, and Delaware isn't going to be changing it alone before California's new standard becomes California's standard and Delaware's standard will no longer be in compliance with federal law.

The standard is allowed to be the federal standard or it can be the new, current California standard.

Or we can change federal law.

There is no door number three.

What the federal standards are that we'd be expected to adhere to and what the consequences are of letting them enforce their standards instead of Delaware enforcing ours (California's) is going to be beyond the scope of this comment; but enforcing "our own", the magical option that was suggested several times, is not actually permitted by federal law. At all. Cannot be enforced. California's can be enforced.

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Maybe those aren't good enough reasons, but since "let the feds handle it" wasn't one of the suggestions on offer Wednesday, let's assume that's a bad option and look at the other one we have. Which is to enforce California's current standard.

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Some of this information admits to this little item that feels interesting in the context of the alleged "ban" on the sale of gas powered vehicles: "As a result of the technology- and range-based credit multipliers, the actual electric-drive vehicle deployment will be less than that shown in the table." The table referenced being the one showing that "100%" of vehicles in 2035 must be "ZEVs".

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