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APPENDIX A

STATE OF MINNESOTA
COURT OF APPEALS

Minnesota Automobile Dealers Association,
Petitioner,

vs.

Minnesota Pollution Control Agency,
Respondent.

Appellate Court # A22-0796
Trial Court # OAH 71-9003-36416

JUDGMENT

Pursuant to a decision of the Minnesota Court of Appeals duly made and entered, it is determined and adjudged that the decision of the Minnesota Pollution Control Agency herein appealed from be and the same hereby is rule declared valid and judgment is entered accordingly.

Dated and signed: May 25, 2023

FOR THE COURT
Attest: Christa Rutherford-Block
Clerk of the Appellate Courts
By: /s/
Assistant Clerk

STATE OF MINNESOTA
COURT OF APPEALS
TRANSCRIPT OF JUDGMENT

I, Christa Rutherford-Block, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my signature at the Minnesota Judicial Center,

In the City of St. Paul *May 25, 2023*
Dated

Attest: Christa Rutherford-Block
Clerk of the Appellate Courts
By: */s/*
Assistant Clerk

APPENDIX B

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0796

Minnesota Automobile Dealers Association,
Petitioner,

vs.

Minnesota Pollution Control Agency,
Respondent.

Filed January 30, 2023
Rule declared valid
Segal, Chief Judge

Minnesota Pollution Control Agency
File No. OAH 71-9003-36416

Douglas P. Seaton, James V. F. Dickey, Upper Midwest Law Center, Golden Valley, Minnesota (for petitioner)

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Melissa L. Lorentz, Joy R. Anderson, Jay E. Eidsness, Minnesota Center for Environmental Advocacy, St.

Paul, Minnesota (for amici curiae Fresh Energy, Minnesota Center for Environmental Advocacy, MN350, Clean Up the River Environment, Health Professionals for a Healthy Climate, and Sierra Club North Star Chapter)

Considered and decided by Segal, Chief Judge; Reyes, Judge; and Cleary, Judge.*

SYLLABUS

The Minnesota Pollution Control Agency (MPCA) did not improperly delegate its rulemaking authority to another state when it incorporated by reference California's motor-vehicle emission standards into Minn. R. 7023.0150-.0300 (2021).

OPINION

SEGAL, Chief Judge

This declaratory judgment action presents a challenge by petitioner Minnesota Automobile Dealers Association (MADA) to the validity of rules adopted by respondent MPCA that require automobile manufacturers to deliver for sale in Minnesota (1) only vehicles that meet specified air-pollutant emission standards and (2) a certain percentage of vehicles with ultra-low or zero tailpipe emissions. *See* Minn. R. 7023.0150-.0300 (the Clean Car Rule). The Clean Car

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Rule was adopted under the authority of Minn. Stat. §116.07 (2022) and pursuant to the federal Clean Air Act (the CAA), codified at 42 U.S.C. §§ 7401-7671q (2018).

MADA argues that the Clean Car Rule is invalid because it violates article I of the Minnesota Constitution by improperly delegating the MPCA's rulemaking authority to California or, in the alternative, that Minn. Stat. § 116.07 violates article III of the Minnesota Constitution by improperly delegating legislative authority to the MPCA without adequate guidance. MADA also argues that the Clean Car Rule is invalid because the MPCA lacks statutory authority to establish a uniform statewide standard and that Minnesota does not qualify for the provision in the CAA that allows states to adopt California motor-vehicle emission standards set out in 42 U.S.C. § 7507 (the opt-in provision).

We conclude that the incorporation by reference of California's motor-vehicle emission standards into the Clean Car Rule did not violate the nondelegation doctrine. The fact that the Clean Car Rule incorporates specific California regulations "as amended" does not alter this conclusion. The MPCA has represented, and we interpret, the "as amended" clause in the Clean Car Rule as incorporating only "minor housekeeping updates" and that, before a "major update" could be incorporated, the MPCA would need to initiate rulemaking. We also conclude that the MPCA acted within its statutory authority in adopting a uniform statewide motor-vehicle emission standard and that

Minnesota is an eligible state to adopt the California standards. We thus determine that the Clean Car Rule is valid.

FACTS

The CAA vests exclusive authority in the federal government, specifically the Administrator of the Environmental Protection Agency (EPA), to establish "standard[s] relating to the control of emissions from new motor vehicles." 42 U.S.C. § 7543(a); *see* 42 U.S.C. § 7521 (setting forth administrator's authority); *Am. Auto. Mfrs. Ass'n v. Cahill*, 152 F.3d 196, 198 (2d Cir. 1998) (noting that states are generally preempted from establishing emission standards for new motor vehicles). The CAA, however, contains a waiver that allows California to impose its own, generally more stringent, emission standards on new motor vehicles sold in that state.[1] *See* 42 U.S.C. § 7543(b). The CAA provides that new motor vehicles that comply with California's standard under the waiver shall be treated as compliant with the federal emission standards. *Id.*

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[1] California began regulating emissions from motor vehicles in the 1950s because of areas of severe air pollution in that state; this was well before the enactment of amendments to the CAA requiring national emission standards for new motor vehicles. *See Motor & Equip. Mfrs. Ass'n, Inc. v. E.P.A.*, 627 F.2d 1095, 1109 n.26 (D.C. Cir. 1979) (referring to early California emission provisions); Motor Vehicle Air Pollution Control Act of 1965, Pub. L. No. 89-272, § 202(a), 79 Stat. 992-93 (directing establishment of emission standards); Act effective Sept. 11, 1957, ch. 239, 1957 Cal. Stat. 895-96 (granting air pollution control board power to regulate motor-vehicle equipment to reduce "air contaminants").

(b)(3). And, as relevant here, the CAA allows states with approved nonattainment "plan provisions" to choose to be governed by either the national emission standards set by the Administrator of the EPA or the California standards. 42 U.S.C. § 7507. If a state elects to adopt the California standards,[2] that state's standards must be "identical to the California standards for which a waiver has been granted [by the EPA] for such model year." *Id.*

The MPCA is tasked by statute with, among other things, adopting standards "relevant to the prevention, abatement, or control of air pollution," including air-qualitystandards relating to the "emission of air contaminants from motor vehicles."

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[2] A nonattainment area is defined under the CAA as "any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for [a] pollutant." 42 U.S.C. § 7407(d); *see also*42 U.S.C. § 7501(2). The state in which the nonattainment area is located is responsible for submitting "[nonattainment] plan provisions [that] provide for the implementation of all reasonably available control measures as expeditiously as practicable. . . and shall provide for attainment of the national primary ambient air quality standards" within the Administrator's designated attainment date. 42 U.S.C. § 7502(a), (c). Part D of the CAA, 42 U.S.C. §§ 7501-7515, provides that when a designated area has attained the "national primary ambient air quality standard for [an] air pollutant" the state must submit a maintenance plan "for such air pollutant in the area concerned for at least 10 years after the redesignation" from non attainment to attainment. 42 U.S.C. § 7505a(a). Both implementation and maintenance plans are subject to approval by the EPA administrator. 42 U.S.C. § 7410(k).

Minn. Stat.§ 116.07, subds. 2(a), 4. In 2019, the MPCA initiated rulemaking proceedings to adopt the more stringent California standards for vehicle emissionspursuant to the CAA waiverprovision,42 U.S.C.§ 7543(b). TheMPCA explainedin its statement of need and reasonableness for the Clean Car Rule(the SONAR)that the change was needed because emission standards for new motor vehicles. The EPA adopted the weakened standards in 2020. 85 Fed. Reg. 24174 (Apr. 30, 2020). the federal government had provided notice that it would be weakening its air-pollutant emission standards for new motor vehicles.[3] The EPA adopted the weakened standardsin2020. 85 Fed. Reg. 24174 (Apr. 30, 2020).

The MPCA explained in the SONAR that, historically, the EPA "required increasingly stringent emission reductions" for vehicles but that the EPA's new rule "roll[ed] back the emission standards."The MPCA stated that "[o]ne of the purposes of the [MPCA's] proposed [Clean Car Rule was] to maintain the [former, more stringent EPA] emissions standard in Minnesota."The MPCA also pointed out that Minnesota had failed to meet its statutory goal for the reduction of greenhouse gases for 2015 and was"not on

[3] A statement of need and reasonableness is a document that agencies are required to provide to the public as part of the rulemaking process. Minn. Stat. §§ 14.131, .23 (2022); *see* Minn. R. 1400.2070 (2021)(setting out additional guidance for statements of need and reasonableness).

track to achieve the 2025 or 2050 goals."[4] The MPCA indicated that"[t]ransportation is the largest source of [greenhouse gas] emissions in Minnesota," and passenger cars, light-duty trucks, and medium-duty vehicles "are the largest source of [such] emissions within that sector." Finally, the MPCA stated that "the proposed rule is a necessary step toward achieving substantive emission reductions in Minnesota's transportation sector."

Following the conclusion of the formal rulemaking process, the MPCA adopted the Clean Car Rule in July 2021. *See* 46 Minn. Reg. 66 (July 26, 2021). It applies to new motor vehicles beginning with the 2025 model year.[5] 46 Minn. Reg. 755 (Dec. 27, 2021). To ensure that Minnesota's standards are identical to the California standards as required by the CAA, the Clean Car Rule incorporates by reference the applicable sections of the California Code of Regulations, including both the air-pollutant emission standards (the low-emission vehicle (LEV) standards) and requirements for zero-emission vehicles (ZEVs). *See* Minn. R. 7023.0150.

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[4] The statutory goals are set forth in Minn. Stat. § 216H.02, subd. 1 (2022).

[5] The CAA requires adoption of the standards "at least two years before the commencement of such model year." 42 U.S.C. § 7507.

The LEV standards, set out in Minn. R. 7023.0250, provide that new motor vehicles sold in Minnesota, with certain exceptions, must be "certified to the [California LEV air-pollutant emission standards]." Minn. R. 7023.0250, subp. 1. The ZEV standards, set out in Minn. R. 7023.0300, require that a "manufacturer's sales fleet of passenger cars and light-duty trucks . . . 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." Minn. R. 7023.0300, subp. 1.

The Clean Car Rule, however, did not just incorporate specific sections of the existing California regulations. The Clean Car Rule incorporates by reference those sections of the California regulations as they may be amended.[6] *See* Minn. R. 7023.0150, subp. 2. It also notes that the California "regulations are not subject to frequent change." *Id.* In the SONAR,

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[6] That subpart of the Clean Car Rule provides:

> 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 . . . .

Minn. R. 7023.0150, subp. 2 (emphasis added).

the MPCA explained that incorporating identified California regulations "'as amended' improves administrative efficiency by reducing the need for rulemaking to maintain consistency with the California rules." The MPCA further observed in the SONAR that, "[h]istorically, California has made minor housekeeping updates to its rules every few years," but that when "California has conducted a major update . . . , such as making them more stringent for future model years, California has done so in new rule parts." The SONAR stated that, consequently, only "minor housekeeping updates" would be automatically adopted through the "as amended" clause in Minn. R. 7023.0150, subp. 2, not "major updates."

In June 2022, MADA petitioned this court for a declaratory judgment under Minn. Stat. § 14.44 (2022), arguing that the challenged rules are invalid based on MADA's claims that: (1) the Clean Car Rule constitutes an unconstitutional delegation of rulemaking or, in the alternative, results from an unconstitutional delegation of legislative authority; (2) Minn. Stat. § 116.07 does not allow the MPCA to adopt emission standards on a statewide basis; and (3) Minnesota does not meet the eligibility requirements under the CAA to adopt California's motor-vehicle emission standards.

In August 2022, the MPCA moved to dismiss MADA's action, arguing that MADA lacked standing and failed to state a claim. We denied the motion and

now reach the merits.[7] *Minn. Auto. Dealers Ass'n v. Minn. Pollution Control Agency*, No. A22-0796 (Minn. App. Sept. 20, 2022) (order).

ISSUES

I. Does the Clean Car Rule involve an unconstitutional delegation of rulemaking or lawmaking authority because it incorporates by reference California's motor-vehicle emission standards "as amended"?

II. Does Minn. Stat. § 116.07 allow the MPCA to adopt rules establishing a uniform set of motor-vehicle emission standards with statewide application?

III. Does Minnesota qualify under the CAA to adopt California's motor-vehicle emission standards?

ANALYSIS

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[7] The MPCA continues to assert that MADA lacks standing because the alleged harm is too speculative. The issue of standing was decided when a special term panel of this court denied the MPCA's motion to dismiss on that ground. The MPCA's continued assertion of this issue is akin to a motion for reconsideration. Motions for reconsideration are not allowed under the civil appellate rules. *See State ex rel. Leino v. Roy*, 910 N.W.2d 477, 481 (Minn. App. 2018) (recognizing that Minn. R. Civ. App. P. 140.01 has been applied by this court "to foreclose reconsideration of an issue that a special term panel of this court decided prior to considering the merits of an appeal"). We thus decline to revisit this issue.

MADA's challenge is in the form of a pre-enforcement challenge to the validity of the Clean Car Rule. The scope of review on such a challenge is circumscribed by Minnesota's Administrative Procedure Act, Minn. Stat. §§ 14.001-.69 (2022). *See Coal. of Greater Minn. Cities v. Minn. Pollution Control Agency*, 765 N.W.2d 159, 164 (Minn. App. 2009) (noting that "[t]he standard of review is more restricted than in an appeal from a contested enforcement proceeding in which the validity of the rule as applied to a particular party is adjudicated"), *rev. denied* (Minn. Aug. 11, 2009). As set out in the administrative procedure act, appellate courts are limited in pre-enforcement challenges to determining whether the rule "violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rulemaking procedures." Minn. Stat. § 14.45; *see also Save Mille Lacs Sportsfishing, Inc. v. Minn. Dep't of Nat. Res.*, 859 N.W.2d 845, 850 (Minn. App. 2015). MADA does not challenge the statutory rulemaking process; our review is thus limited to determining the constitutionality of the rule and whether the MPCA exceeded its statutory authority.

I. The MPCA acted within its authority when it incorporated California's motor-vehicle emission standards into the Clean Car Rule, and the "as amended" clause in the rule does not violate the nondelegation doctrine.

MADA argues that the Clean Car Rule violates

article I of the Minnesota Constitution by improperly delegating to a California agency the rulemaking authority of the MPCA. Article I provides that the "[g]overnment is instituted for the security, benefit and protection of the people" of Minnesota. Minn. Const. art. I, § 1. MADA further argues that, if we conclude that the MPCA did not improperly delegate its rulemaking authority, then the legislature violated the separation of powers requirements of article III of the Minnesota Constitution by improperly delegating its lawmaking authority to an executive agency without adequate guidance. *See* Minn. Const. art. III, § 1 (dividing the powers of government into three branches: legislative, executive, and judicial).

In our analysis of these issues, we first provide a brief overview of the nondelegation doctrine and address the scope of the MPCA's authority to incorporate California regulations by reference. We then address MADA's challenge to the "as amended" clause of the Clean Car Rule. This requires us to interpret the scope of the "as amended" clause. In the final step of the analysis, we assess whether the Clean Car Rule as interpreted violates the nondelegation doctrine.

Under Minnesota precedent, the legislature is accorded significant latitude to delegate regulatory authority to state administrative agencies. The Minnesota Supreme Court has instructed that the legislature's power to delegate is not violated so long as "the law furnishes a reasonably clear policy or standard of action which controls and guides the

administrative officers in ascertaining the operative facts to which the law applies." *Lee v. Delmont*, 36 N.W.2d 530, 538 (Minn. 1949); *see Vicker v. Starkey*, 122 N.W.2d 169, 173 (Minn. 1963) (stating that "[i]t is well settled that the legislature has the power to delegate to an administrative agency the right to promulgate such reasonable rules and regulations as may be necessary to accomplish the purposes for which the agency is created"). The court has also repeatedly confirmed that, while the legislature must provide a "reasonably clear policy" to guide the administrative agencies, that policy "may be laid down in very broad and general terms." *Lee*, 36 N.W.2d at 538-39; *see Minn. Energy & Econ. Dev. Auth. v. Printy*, 351 N.W.2d 319, 350 (Minn. 1984) (noting that "Minnesota decisions since *Lee* have consistently followed the principle that adequate statutory standards may be laid down in broad and general terms").

Applying these principles to this case, the MPCA's regulatory authority over motor-vehicle emissions is contained in chapter 116 of the Minnesota Statutes. Minn. Stat. §§ 116.01-.994 (2022). That chapter creates the MPCA and grants the agency broad authority to prevent pollution and manage Minnesota's air quality, in addition to protecting water and land resources. *See* Minn. Stat. § 116.01 (stating policy goal of achieving a reasonable degree of air purity). The MPCA's authority to adopt motor-vehicle emission standards is set out in section 116.07. It authorizes the MPCA to adopt air-quality standards, "including maximum allowable standards of emission of air contaminants from motor vehicles." Minn. Stat.

§ 116.07, subd. 2(a). The section also authorizes the MPCA to adopt rules and standards to prevent, abate, or control air pollution. *Id.*, subds. 2(a), 4.

In addition, Congress effectively mandated in the CAA that states either adopt the EPA's national motor-vehicle emission standards or the California standards. *See* 42 U.S.C. § 7507. The MPCA elected to adopt the California standards in the Clean Car Rule. Instead of repeating the California standards word for word in the Clean Car Rule, however, the MPCA incorporated specific regulations by reference. The MPCA's authority to incorporate provisions by reference is expressly sanctioned in section 14.07 of the Minnesota Administrative Procedure Act, which allows agencies to incorporate provisions by reference into agency rules as long as the incorporated provisions are "conveniently available to the public." Minn. Stat. § 14.07, subd. 4(a). The MPCA was thus well within its authority when it incorporated by reference the existing California regulations into the Clean Car Rule.

We turn next to the question of whether the MPCA acted within its proper authority when it incorporated by reference not just the existing California regulations, but those regulations "as amended."[8] Minn. R. 7023.0150, subp. 2. MADA argues

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[8] The MPCA argues, as a threshold issue, that MADA's challenge to the "as amended" clause in the Clean Car Rule is not yet ripe because no amendments have yet been made by California to its motor-vehicle emission standards. At oral argument, however, the

that the "as amended" clause opens up the rule to automatic adoption of all future California amendments no matter how substantial or draconian those amendments might be. MADA maintains that the clause thus results in an unconstitutional delegation of either rulemaking or lawmaking authority.

The MPCA suggests that the "as amended" clause has a narrower scope. In the SONAR, the MPCA acknowledged that the "as amended" clause "means that any future amendments to the incorporated California regulations automatically become part of Minnesota rules." The MPCA explained, however, that, "[h]istorically, California has made minor housekeeping updates to its rules every few years," but when "California has conducted a major update to the rules, such as making them more stringent for future model years, California has done so in new rule parts." The MPCA stated that, consequently, such "major updates would not be adopted automatically into Minnesota's rules." The

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MPCA acknowledged that California has already indicated an intent to amend its standards. Thus, even assuming that the issue may not yet be ripe, we choose to address the merits of the issue for reasons of judicial economy. *See Midway Nat'l Bank v. Est. of Bollmeier*, 504 N.W.2d 59, 64 (Minn. App. 1993) (addressing issue to serve interest of judicial economy). In this regard, we also note that the administrative procedure act allows pre-enforcement challenges to the validity of a rule "when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner." Minn. Stat. § 14.44.

MPCA further represented that the "decision to incorporate [a major] update[] or revert back to the backstop federal standards would still need to be considered on a case-by-case basis through Minnesota state rulemaking."

MADA and the MPCA thus offer two different interpretations of the "as amended" clause. MADA accords the phrase a broad interpretation that future amendments, no matter how dramatic or far-reaching in scope, would automatically be incorporated into the Clean Car Rule. The MPCA maintains that the "as amended" clause has a more limited and practical scope, allowing the Clean Car Rule to remain identical to the California standards, as the CAA requires, without instituting laborious rulemaking procedures for "minor housekeeping updates" to existing regulations.[9] Because we agree that the "as amended" clause could result in an improper delegation if read too broadly, we must determine which interpretation is correct.

"When interpreting statutes and regulations, we apply our familiar rules." *In re Reissuance of an NPDES/SDS Permit to U.S. Steel Corp.*, 954 N.W.2d 572, 576 (Minn. 2021). Our first task under those rules is to determine if there is an ambiguity. *State v.*

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[9] In this regard, the MPCA notes in its brief that there are numerous references in state regulations to external standards that are subject to change, such as the fire code that incorporates portions of the international fire code, "as amended," Minn. R. 7511.1031.2.1, .1103.4.1, .6101.1 (2021).

Thonesavanh, 904 N.W.2d 432, 435 (Minn. 2017). A provision is ambiguous if it is subject to more than one reasonable interpretation. *Id.* Because we are presented here with two reasonable interpretations of the scope of the "as amended" clause, we conclude that the phrase is ambiguous.

When faced with an ambiguity in the interpretation of a regulation, we "may resort to the canons of statutory construction" and "will defer to the agency's interpretation and will generally uphold that interpretation if it is reasonable." *Reissuance of an NPDES/SDS Permit*, 954 N.W.2d at 576 (quotation omitted). Here, the MPCA represented in the SONAR that, historically, California has only made "minor housekeeping updates" when amending existing "rule parts" and that any "major updates" are made in "new rule parts"—i.e., in differently numbered regulations than the regulations incorporated by reference in the Clean Car Rule—and thus would not be subject to automatic adoption by reason of the "as amended" clause. The MPCA represented in the SONAR that any such "major updates" would "need to be considered on a case-by-case basis through Minnesota state rulemaking."

Given the framework of this case, we defer to the MPCA's description of the scope of the "as amended" clause as set out in the SONAR. We thus interpret the "as amended" clause more narrowly than MADA suggests. Under our interpretation, regardless of whether California were to break with its history and adopt a "major update" in the existing sections of

their regulations instead of a new rule part, a "major update" would not be automatically incorporated into the Clean Car Rule. In the event of a "major update," the MPCA would be required to initiate a rulemaking process to decide whether to adopt the new California standards or "revert back to the backstop federal standards" under the CAA.[10]

Having interpreted the "as amended" clause, we now turn to the question of whether the "as amended" clause results in an improper delegation of the MPCA's rulemaking authority. In this step of our analysis, we are guided by the Minnesota Supreme Court's decision in *Printy*, in which the court upheld an "as amended" clause under an analogous circumstance. *Printy*, 351 N.W.2d at 352. *Printy* involved a Minnesota statute that created a small business loan program. *Id.* at 351. In defining which businesses would qualify as "small businesses" eligible to apply for the loans, the statute "incorporate[d] by reference the definition of small business contained in regulations of the United States small business administration, 'as amended from time to time.'" *Id.* The supreme court determined that this was not an improper delegation of legislative power to the federal government because "[t]he ultimate

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[10] We refrain in this pre-enforcement challenge from delineating the specific parameters of what would constitute a "major update" that would require the MPCA to engage in rulemaking prior to adoption. *See Save Mille Lacs Sportsfishing, Inc.*, 859 N.W.2d at 849 (stating that "the broad and far-reaching scrutiny of a rule or regulation, based upon hypothetical facts, is a premature exercise of the judiciary" (quotation omitted)).

determination as to whether to grant a . . . loan rests with [the state agency] and not with the federal [small business administration]." *Id.* at 352. The court reasoned that "[t]he definition of eligible small business merely specifies what 'size standards' a business must meet in order to be eligible for a loan" and that, "[i]n referencing federal regulations, the Legislature has adopted a generally accepted size standard to broadly define the category of eligible loan applicants." *Id.*

The court upheld the "as amended" clause in *Printy* based in part on its conclusion that the clause was justified by the nature of the government program, noting that "there [were] good reasons to coordinate federal and state eligibility requirements." *Id.* Applying that logic here, there are even stronger reasons to use an "as amended" clause in this case than in *Printy* because the opt-in provision of the CAA requires Minnesota not just to coordinate, but to maintain *identical* motor-vehicle emission standards. 42 U.S.C. § 7507.

MADA cites *Wallace v. Commissioner of Taxation*, 184 N.W.2d 588 (Minn. 1971), in support of its argument. In *Wallace*, the supreme court held that the state legislature could not delegate its legislative powers "to any outside agency, including the Congress of the United States." 184 N.W.2d at 589. MADA contends that, if the state legislature lacks authority to delegate its lawmaking powers to the United States Congress, then the MPCA surely lacks authority to incorporate by reference future California

amendments.

But the supreme court distinguished the *Wallace* decision in *Printy* and at least one other case, noting that *Wallace* was based in part on the express constitutional provision that the power to tax "shall never be surrendered, suspended or contracted away." *Printy,* 351 N.W.2d at 351 (quoting Minn. Const. art. X, § 1); *see Minn. Recipients All. v. Noot*, 313 N.W.2d 584, 586 (Minn. 1981). The court also distinguished *Wallace* on the grounds that "the *Wallace* case itself notes an exception to its rule for statutes which are auxiliary in nature and seek to achieve uniformity in implementation of national programs and policies." *Printy*, 351 N.W.2d at 352 (quotation omitted); *see Minn. Recipients All.*, 313 N.W.2d at 586-87. The *Wallace* holding is thus more limited than MADA suggests and is not inconsistent with our holding in this case. We therefore conclude that the MPCA did not improperly delegate its rulemaking authority in adopting the Clean Car Rule.

Finally, we turn to MADA's alternative argument that the legislature violated the nondelegation doctrine by failing to provide adequate guidance to the MPCA. In making this argument, MADA identifies no specific gaps in the applicable sections of chapter 116. Instead, MADA appears to simply argue that chapter 116 must be deficient if the "as amended" clause of the Clean Car Rule is determined to be valid. But as the MPCA has represented and we have concluded, the "as amended" clause does not allow the automatic incorporation of

"major updates" into the Clean Car Rule. And, as we note above, legislative guidance to administrative agencies "may be laid down in very broad and general terms," a standard that is satisfied by the applicable sections of chapter 116. *Lee*, 36 N.W.2d at 538-39. We thus reject MADA's alternative argument and discern no improper delegation by the legislature to the MPCA.

II. Section 116.07 does not prohibit the MPCA from adopting uniform statewide motor-vehicle emission standards.

MADA next argues that Minn. Stat. § 116.07 does not allow the MPCA to adopt motor-vehicle emission standards having statewide application. That section provides that the MPCA "shall . . . adopt standards of air quality, including maximum allowable standards of emission of air contaminants from motor vehicles, recognizing that due to variable factors, *no single standard of purity of air is applicable to all areas of the state*." Minn. Stat. § 116.07, subd. 2 (emphasis added). MADA argues that the Clean Car Rule violated this provision by establishing a uniform statewide standard.

Our goal in interpreting a statute is to give effect to the legislature's intent. *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013). As we note above, the first task in statutory interpretation is to determine whether a statute's language is ambiguous. *Id.* MADA makes no argument here that the italicized phrase in the above quoted language in Minn. Stat. §

116.07, subd. 2, is ambiguous and we agree. We thus apply the plain language of the statute. *Id.*

Here, the plain language of section 116.07 as a whole leads us to the conclusion that the MPCA acted consistently with the statute in developing a statewide standard. In fact, subdivision 4 of section 116.07 specifically allows the MPCA to adopt air-quality standards having statewide effect. That subdivision provides that rules or standards adopted by the MPCA "may be of *general application throughout the state*" and that such

> rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution.

Minn. Stat. § 116.07, subd. 4(a) (emphasis added). In furtherance of this section of the statute, the MPCA has adopted numerous statewide air-quality standards specifying maximum allowable quantities for air contaminants. *See, e.g.*, Minn. R. 7009.0080 (2021).

In addition, subdivision 2 only requires the MPCA to "*recogniz[e]*" that "no single standard of purity of air" applies to "all areas of the state." Minn. Stat. § 116.07, subd. 2 (emphasis added). It does not prohibit a statewide motor-vehicle emission standard.

The remaining language in section 116.07, subdivision 2, uses similar wording, requiring the MPCA to

> give *due recognition* to the fact that the quantity or characteristics of air contaminants . . . , which may cause air pollution in one area of the state, may cause less or not cause any air pollution in another area of the state, and [the MPCA] shall *take into consideration* in this connection such factors, . . . that a standard of air quality which may be proper as to an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state.

(Emphasis added.) Thus, the plain meaning of the provision is that the MPCA is required to "recognize" and "consider" regional variations in air quality, but that the MPCA is nonetheless permitted to establish statewide standards.

Finally, this interpretation also serves logic because the Clean Car Rule regulates air emissions for new vehicles to be sold in the state and motor vehicles are, at the risk of overstating the obvious, mobile.

III. Minnesota has an approved plan provision under Part D of the CAA and is thus eligible under the opt-in provision of the CAA to adopt California's motor-vehicle emission standards.

MADA's final argument is that Minnesota must follow the federal emission standards because it does not qualify under the opt-in provision of the CAA, 42 U.S.C. § 7507, to adopt California's standards.

The opt-in provision allows states to adopt California's standards if certain requirements are met. *See* 42 U.S.C. §§ 7507, 7543(a)-(b). Among the requirements, a state must have "plan provisions" approved by the EPA "under this part." 42 U.S.C. § 7507. The parties do not dispute that the phrase "this part" in the opt-in provision refers to Part D of the CAA. 42 U.S.C. §§ 7501-7515.

Part D of the CAA concerns plan requirements for "nonattainment areas," which means, in reference to air pollution, "an area which is designated 'nonattainment' with respect to that pollutant within the meaning of section 7407(d) of this title." 42 U.S.C. § 7501(2). Section 7407(d), in turn, concerns the designation of areas as "attainment," "nonattainment," or "unclassifiable" depending on their compliance with the relevant national air-quality standards. 42 U.S.C. § 7407(d). Areas designated as nonattainment are those that exceed the standard or that "contribute[] to ambient air quality in a nearby area" that exceeds the standard. *Id.* (d)(1)(A)(i).

MADA concedes that there is a designated nonattainment area in Eagan for lead emissions and that Minnesota has a nonattainment plan provision approved by the EPA to address those emissions. MADA contends, however, that the plan does not

satisfy the section 7507 requirement because lead emissions were brought into attainment in Eagan in 2015.[11] MADA maintains that the only reason that a plan provision is still in place is because the MPCA "has failed to apply for redesignation." MADA argues that "[t]he MPCA cannot fail to act and then claim refuge in the situation it has manufactured by omission." This argument by MADA, however, is beyond the limited scope of review under section 14.45 of the Minnesota Administrative Procedure Act. *See Save Mille Lacs Sportsfishing, Inc.*, 859 N.W.2d at 850. Because Minnesota has a nonattainment plan provision under Part D of the CAA, MADA's argument is unavailing.[12]

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[11] MADA also argues, without citation, that lead does not have a national air-quality standard "associated with it," which, according to MADA, means the lead nonattainment plan has "even less relevance to regulating air quality." It appears that MADA is mistaken in this regard. *See* 81 Fed. Reg. 71906 (Oct. 18, 2016) (retaining existing national ambient air-quality standards for lead). And, regardless, it would not alter the fact that Minnesota has "plan provisions" approved under "Part D" and thus satisfies that requirement to be eligible to adopt the California standards under section 7507 of the CAA.

[12] The MPCA notes that, in addition to the approved plan provision for the Eagan nonattainment area, Minnesota has several approved maintenance plan provisions aside from the Eagan nonattainment area. *See* 40 C.F.R. § 52.1237 (2020) (setting out approval of Minnesota's maintenance plans). The MPCA maintains that these approved maintenance plans also satisfy the "plan provision" requirement for eligibility to adopt the California standards under 42 U.S.C. § 7507. The MPCA argues that this is because maintenance plans are also included in Part D of the CAA, 42. U.S.C. 7505a. We need not address this

DECISION

The inclusion of the "as amended" clause in Minn. R. 7023.0150, subp. 2, does not violate the nondelegation doctrine. We also hold that the MPCA has the statutory authority to adopt a statewide motor-vehicle emission rule and Minnesota is an eligible state under the CAA to adopt California's motor-vehicle emission standards. We therefore conclude that the Clean Car Rule is valid.

Rule declared valid.

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argument, however, because we conclude that the Eagan nonattainment area plan provision satisfies the CAA's eligibility requirement.

APPENDIX C

STATE OF MINNESOTA
IN SUPREME COURT

A22-0796

[DATE STAMP]
FILED
May 16, 2023
Office of
Appellate Courts

Minnesota Automobile Dealers Association,
Petitioner,

vs.

Minnesota Pollution Control Agency,
Respondent.

O R D E R

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Minnesota Automobile Dealers Association for further review is denied.

IT IS FURTHER ORDERED that the request of respondent Minnesota Pollution Control Agency for

conditional cross-review is denied.

IT IS FURTHER ORDERED that the motion of the National Federation of Independent Business Small Business Legal Center, Inc. to file and serve a brief as amicus curiae in the above-entitled matter is denied.

Dated: May 16, 2023 BY THE COURT:

/s/

Lorie S. Gildea
Chief Justice

APPENDIX D

STATE OF MINNESOTA
IN COURT OF APPEALS

Minnesota Automobile Dealers Association,
Petitioner,

vs.

Minnesota Pollution Control Agency,
Respondent.

PETITION FOR DECLARATORY JUDGMENT

APPELLATE COURT CASE NUMBER:

AGENCY OR BODY NUMBER:
OAH 71-9003-36416

TO: The Court of Appeals of the State of Minnesota:

The above-named petitioner hereby petitions the Court of Appeals pursuant to Minn. Stat. § 14.44 for a declaratory judgment determining the validity of Minn. R. 7023.0150, .0200, .0250, and .0300, adopted by Respondent Minnesota Pollution Control Agency on July 26, 2021 (46 S.R. 66), upon the grounds that the rule exceeds the statutory authority of the agency under Minn. Stat. § 116.07, is not authorized under the federal Clean Air Act, and additionally based on

the following allegations:

The Parties

1. Petitioner Minnesota Automobile Dealers Association ("MADA") is a nonprofit trade association representing 348 franchised new car and truck dealers located across Minnesota (98% of the market). Its members support taking action to keep Minnesota's air clean and help mitigate the impacts of climate change. However, MADA 2 and its members opposed the adoption of the Rules, which are California's regulations for LEV and ZEV.

2. Respondent Minnesota Pollution Control Agency ("MPCA") is a statutory agency created via Minn. Stat. § 116.02 and is responsible for the adoption of the Rules at issue.

Adoption of the Rules

3. On December 21, 2020, the MPCA published in the State Register notice of its intent to adopt rules related to "vehicle greenhouse gas emissions standards" (the "Rules") which follow California's standards adopted based on its waiver from the federal Clean Air Act's uniformity requirement for vehicle tailpipe emissions. 45 S.R. 663-670.

4. After notice, comments, a hearing, and a report of the Administrative Law Judge, the Rules were approved and adopted by publication in the State Register on July 26, 2021. 46 S.R. 66.

Requirements of the Rules

5. These Rules incorporate 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." Minn. R. 7023.0150, Subp. 2. The California standards referenced include standards for Low Emission Vehicles (LEV) and Zero Emission Vehicles (ZEV).

6. Minn. R. 7023.0250, Subp. 1 expressly requires all new motor vehicles "produced by a motor vehicle manufacturer and delivered for sale or lease in the state" to 3 be certified to the California standards incorporated in Minn. R. 7023.0150, Subp. 2. This includes all "passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles; new light- or medium-duty motor vehicle engines; and motor vehicles with a new motor vehicle engine." Minn. R. 7023.0250, Subp. 1.

7. Passenger cars are vehicles designed mostly to transport 12 people or fewer. Light-duty trucks are vehicles with a gross vehicle weight of under 8,500 pounds. Medium-duty vehicles are vehicles with a gross vehicle weight of between 8,501 and 14,000 pounds. Medium-duty passenger vehicles are medium-duty vehicles with a gross vehicle weight of less than 10,000 pounds and designed mostly to transport people.

8. Minn. R. 7023.0250, Subp. 3 expressly forbids a manufacturer from delivering for sale or lease to Minnesota dealers a fleet of vehicles with average nonmethane organic gas plus oxides of nitrogen emission values or greenhouse gas exhaust emission values exceeding the limitations of California Code of Regulations, title 13, sections 1961.2 (nonmethane organic gas) and 1961.3 and 1956.8(h)(6) (greenhouse gases), respectively.

9. Minn. R. 7023.0300, Subp. 1 expressly requires a manufacturer to sell a certain percentage of ZEV to Minnesota dealers as part of its fleet for that model year, following California Code of Regulations, title 13, section 1962.2.

10. Beginning with Model Year 2022 and ending with Model Year 2025, the Rules create an early-action credit system which allows manufacturers to deliver more ZEV to Minnesota immediately to earn credits against future fleet averages. Minn. R. 7023.0300, Subp. 4; MPCA, Statement of Need and Reasonableness, p. 13, available at https://www.pca.state.mn.us/sites/default/files/aq-rule4-10m.pdf.

11. According to the MPCA's SONAR, the rules are designed to mirror and follow the rules promulgated—and amended—by the State of California's Air Resources Board ("CARB"). The SONAR specifically states:

a. The proposed rule requires automobile manufacturers deliver for sale in

Minnesota only passenger cars, light-duty trucks, medium-duty vehicles, and medium-duty passenger vehicles that are certified by California as meeting the LEV standard. SONAR p. 12.

b. Manufacturers also need to meet average emission requirements for the entire fleet of vehicles they deliver for sale in Minnesota. There are separate fleetwide emission standards for passenger cars, light-duty trucks, medium-duty vehicles, and medium-duty passenger vehicles. SONAR p. 12.

c. The MPCA is proposing to adopt the LEV and ZEV standards "as amended." Incorporation "as amended" means that any future amendments to the incorporated California regulations automatically become part of Minnesota rules. Using "as amended" improves administrative efficiency by reducing the need for rulemakings to maintain consistency with the California rules. Historically, California has made minor housekeeping updates to its rules every few years. However, when California has conducted a major update to the rules, such as making them more stringent for future model years, California has done so in new rule parts. Because California uses new rule parts, these major updates

would not be adopted automatically into Minnesota's rules. SONAR p. 41.

12. The adopted Rules do not state that "major updates" to the California standards will not be immediately adopted when effective. Minn. R. 7023.0150, Subp. 2.

13. In testimony before the Minnesota Senate State Government Finance and Policy and Elections Committee on March 1, 2022, MPCA Commissioner Katrina Kessler, Assistant Commissioner for Climate and Air Policy Craig McDonnell, and Climate Director Frank Kohlasch testified related to the meaning and effect of the Rules.[1]

14. Senator Mary Kiffmeyer asked the MPCA how a newly proposed California rule would affect the implementation of the Rule at issue here. Testimony at 19:20. Those proposed rules include proposed changes to California's LEV and ZEV rules, which the Rules claim to adopt "as amended."[2]

15. Commissioner Kessler initially testified that the MPCA is aware of the new California proposal, and that these new California emission standards would

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[1] Committee testimony ("Testimony") available at https://www.youtube.com/watch?v=E BR4kQhDmdA.

[2] *See* https://ww2.arb.ca.gov/events/public-workshop-advanced-clean-cars-ii-1 for background on these newly proposed California LEV and ZEV rules.

not automatically impact Minnesota, and that any changes in Minnesota would have to undergo a "new rulemaking and new process." Testimony at 20:20.

16. Senator Jeff Howe then asked when the MPCA would simply adopt "minor" changes to the California rules "as amended," versus going through a rulemaking process for "major" changes or new California rules. Testimony at 26:35. Commissioner Kessler then stated that "adoption of new standards" would require "new rulemaking" and that these would not be "minor changes." *Id.* Senator Howe followed up, asking who determines what is major and what is minor. *Id.* Climate Director Kohlasch responded that new rules require new rulemaking, but "minor changes to definitions" in the California rules would automatically be incorporated into the Rules. *Id.*

17. Senator Howe followed up again to ask whether a "definition change" which banned gas-powered lawn equipment would be automatically incorporated into the Rules. Testimony at 29:00. Climate Director Kohlasch did not answer the question, stating that California "has never done that." *Id.* He then testified that the *MPCA* would "have to look to see" whether that change would be incorporated by reference. *Id.* Commissioner Kessler confirmed that the MPCA would have the authority to make the decision whether to adopt the California "minor" change. Testimony at 32:00.

18. Commissioner Kessler also testified that if California changed its rules and Minnesota failed to

either adopt the changes "as amended" or go through new rulemaking, Minnesota would "default" to federal rules for LEV. Testimony at 32:35. Senator Kiffmeyer noted that the federal government does not even have a ZEV standard. *Id.* Assistant Commissioner McDonnell then affirmed that in the event Minnesota does not adopt any new ZEV standards adopted by California, it will "lose the ZEV standard that we currently enjoy." *Id.* at 34:00.

19. The MPCA also testified as to its claim of authority under Minn. Stat. § 116.07 related to heavy-duty trucks (Testimony at 37:00) and gas-powered lawn equipment (Testimony at 38:00). When asked, Commissioner Kessler testified that the MPCA has the authority to ban gas-powered heavy-duty trucks and gas-powered law equipment because of its claimed authority to "regulate air pollution," without subject-matter restriction. *Id.*; Testimony at 1:10:00.

Effects of the Rules

20. Under the Rules, beginning in January 2024, with Model Year 2025, no dealer in Minnesota may purchase a new vehicle from a manufacturer unless it is certified according to the standards set by California, which may change whenever California makes a rule change.

21. In addition, dealers may only purchase vehicles based on the fleets which manufacturers are allowed to offer, which will contain far more ZEV and LEV than customers in Minnesota demand.

22. Because of the early-action credit mechanism and its coercive effect, dealers are immediately faced with vehicle fleet and engine options limited based on the requirements of the Rules.

23. MADA, and its members through it, are specifically harmed by the adoption of the Rules in a manner distinct from that of the general public, including as follows:

a. The MPCA admits in its SONAR that "[a]utomobile dealers may have some costs associated with this proposed rule….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 sale." SONAR p. 63.

b. The MPCA admits that the Rules will make the price of all new vehicles sold in

Minnesota more expensive by $900 to 1,200 for ZEV and $1,139 per LEV. SONAR pp. 63, 71. This amount is enough to deter a customer from the purchase of a new vehicle in a hyper-competitive market where consumers will drive hundreds of miles to get the best deal.

c. Dealership members of MADA which border Wisconsin, North Dakota, South Dakota, and Iowa obtain customers from surrounding states. The increase in price of new cars imposed by the adopted Rules will cause those dealerships to lose customers.[3] According to MADA member dealers in Fergus Falls, customers from North and South Dakota comprise approximately 40% of their sales, the loss of which would be enough to put those dealer-members out of business.

d. Dealers purchase their vehicles from manufacturers; they are not bought on consignment. The ZEV Rule requires

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[3] *E.g.,* MPCA, "Notice Comments 2," pp. 66-68 (Affidavit of Douglas Erickson, Jan. 6, 2021, ¶¶ 25-40), 75-77 (Affidavit of Timothy Ciccarelli, Jan. 5, 2021, ¶¶ 21-31), 83-84 (Affidavit of Steve Whitaker, Jan. 8, 2021, ¶¶ 17-36), 89-91 (Affidavit of Chester Lockwood, Jan. 5, 2021, ¶¶ 16-34), 95-96 (Affidavit of Gregory House, Jan. 8, 2021, ¶¶ 13-22), *available at* https://www.pca.state.mn.us/sites/default/files/aq-rule4-10z2.pdf.

MADA dealer-members to purchase electric vehicles for which there is no current demand. Dealers purchase their inventory from manufacturers when they deliver those vehicles for sale, and there are significant interest costs when doing so—tens of thousands of dollars per month for a midsize dealer.[4] When that inventory is not sold due to lack of demand, the dealer's carrying costs mount and limit the number of other new vehicles they can take in, hurting their marketability to consumers.

e. After six months of holding vehicles which customers do not want, dealers could face "curtailment" and be subject to paying significant interest and principal costs that could force them out of business.[5] A recent survey of some Minnesota Chevrolet dealers found EV inventory that had been sitting on their lots in excess of 275 days. With so much credit tied up in EVs, it will be harder for MADA dealer-members to stock vehicles that are in higher demand. This will make the dealerships less profitable and add to the weight these rules are bearing

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[4] *E.g., id.*, p. 63 (Erickson Aff. ¶ 24).

[5] *E.g., id.*, pp. 74-75 (Ciccarelli Aff. ¶¶ 17-20); p. 82 (Whitaker Aff. ¶¶ 12-16); pp. 88-89 (Lockwood Aff. ¶¶ 13-15).

down on them.

f. For some MADA members, as much as one-third of their new car sales are dependent on out-of-state dealer trades to obtain vehicles for sale which meet customers' custom requests, which vary substantially. Trading with other LEV and ZEV states alone is practically impossible because of the transportation costs associated with moving those vehicles. The nearest California-compliant state is Colorado.[6]

The Rules Have Been Promulgated and Are Effective

24. The Rules state that they become 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." Minn. R. 7023.0150, Subp. 4.

25. On December 21, 2021, the United States Department of Transportation's National Highway Traffic Safety Administration finalized a rule repealing the Trump Administration's SAFE I rule,

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[6] *E.g., id.*, pp. 67-68 (Erickson Aff. ¶¶ 31-40), pp. 76-77 (Ciccarelli Aff. ¶¶ 25-31), pp. 83- 84 (Whitaker Aff. ¶¶ 24-36), pp. 90-91 (Lockwood Aff. ¶¶ 25-34), pp. 95-96 (House Aff. ¶¶ 13-21).

which had revoked California's waiver from the Clean Air Act's tailpipe emission regulations uniformity requirement. NHTSA, Corporate Average Fuel Economy (CAFÉ) Preemption, Final Rule, at p. 40, available at https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-12/CAFE-Preemption-Final-Rule-Web- Version-tag.pdf.

26. Thereafter, the MPCA Commissioner published notice in the State Register required by Minn. R. 7023.0150, Subp. 4 and the Note to the rule. 46 S.R. 755 (Dec. 27, 2021). While the notice states that "MPCA will not enforce any part of the Standards unless and until EPA grants a waiver," the notice identifies the "effective date for the Standards is December 31, 2021." 46 S.R. 755.

27. Thereafter, on March 14, 2022, the USEPA rescinded 2019's SAFE I rule as well, and fully restored "California's authority under the Clean Air Act (CAA) to implement its own greenhouse gas emission (GHG) emission standards and zero emission vehicle (ZEV) sales mandate." USEPA, California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision, 87 Fed. Reg. 14332 (Mar. 14, 2022), *available at* https://www.govinfo.gov/content/pkg/FR-2022-03-14/pdf/2022-05227.pdf.

Delegating Rulemaking Authority to Another State Violates Minnesota's Sovereignty, and Federal Law Does

Not Authorize Minnesota to Adopt California's Standards

The Rules Cannot Be Adopted "As Amended"

28. By incorporating the California standards "as amended," the Rules impermissibly delegate the MPCA's authority to a California agency, the CARB. Minn. R. 1400.2100(F); Minn. Const. Art. I sec. 1.

29. The Minnesota Constitution, Article I, section 1, identifies the object of Minnesota's government as "instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good."

30. Rule 1400.2100 prohibits approval of a rule where power is delegated to another body. It states, "[a] rule must be disapproved by the judge or chief judge if the rule:…. is unconstitutional or illegal; [or] … improperly delegates the agency's powers to another agency, person, or group."

31. Further, Minnesota Supreme Court precedent holds that the state may not delegate authority to make future changes to its laws to the Federal government because the people of Minnesota retain that power. *Wallace v. Comm'r of Tax'n*, 184 N.W.2d 588, 591-92 (Minn. 1971). This premise is even stronger when the delegation is to another state. At least with delegations to the Federal government,

Minnesota laws are inherently subordinate to federal laws passed within the scope of federal jurisdiction.

32. Here, the MPCA admits that the "as amended" language requires immediate incorporation of the CARB's rule changes when they are made. SONAR p. 41. This is a clear delegation of rulemaking authority and violates the legal principles just described. It is also a real problem; California has just announced its intent to change California's LEV and ZEV standards incorporated by the Rules by creating new sections 1961.4 and 1962.4 related to LEV and ZEV, based on Governor Newsom's Executive Order N-79-20, which "established a goal that 100 percent of California sales of new passenger car and trucks be zero-emission by 2035, and directed CARB to develop and propose regulations toward this goal." Public Workshop on Advanced Clean Cars II, *available at* https://ww2.arb.ca.gov/events/public-workshop-advanced-clean-cars-ii-1.

33. Despite the MPCA's testimony that it would go through rulemaking if changes to its Rules were "major," as opposed to "minor," the Rules do not say that, and the agency's testimony as to its own arbitrary distinctions between major and minor do not clarify where the line between adoption of California rules and "default" to federal regulations might actually occur. The Rules provide MPCA unbridled discretion, which violates Minnesota law, as described below.

34. Given that the Rules expressly rely on the

current definitions and regulations provided by the California standards, the "as amended" language in the Rules is not severable. "[A] statute cannot be severed if we determine that the valid provisions 'are so essentially and inseparably connected with, and so dependent upon, the void provisions' that the Legislature would not have enacted the valid provisions without the voided language. " *State v. Melchert-Dinkel*, 844 N.W.2d 13, 24 (Minn. 2014).

35. Even if the "as amended" language is severable, it must be struck. If California seeks to amend its standards, Minnesota must consider whether to adopt California's amendments via new rulemaking.

The MPCA Did Not Have the Authority to Make Future Rules Via an "As Amended" Provision

36. And even if the "as amended" language of the Rules is permissible under non-delegation principles, it rests unbridled discretion in the MPCA and is vague as to whether future California rule changes will actually be adopted. More specifically, while the MPCA's SONAR claims that "as amended" "means that any future amendments to the incorporated California regulations automatically become part of Minnesota rules," the SONAR also claims that "major" Rules changes will not be automatically incorporated. SONAR p. 41. Yet the Rules say that they will. Minn. R. 7023.0150, Subp. 2.

37. Granting unbridled discretion to agency

officials to adopt or reject new rules without following rulemaking procedures violates the Administrative Procedure Act and Article III, section 1 of the Minnesota Constitution. Minn. Stat. § 14.05, subd. 1 ("Each agency shall adopt, amend, suspend, or repeal its rules in accordance with the procedures 13 specified in sections 14.001 to 14.69."); Minn. Stat. § 14.03 (nowhere is an "as amended" adoption excepted from the rulemaking process); Minn. Const. Art. III, sec. 1 (legislative power exclusive to Legislature, not executive agencies). Future amendments based on CARB amendments must go through the rulemaking procedure, but the MPCA claims that it will selectively decide which amendments to submit to the rulemaking process. SONAR pp. 40-41. In this way, the MPCA is trying to act exactly like the Legislature. This kind of unbridled discretion is impermissible.

Minnesota Does Not Qualify for Use of California's Waiver Under the Clean Air Act

38. Finally, Minnesota does not meet the Clean Air Act's predicate requirement for adopting California's air quality rules. In order to adopt California's rules under a CAA waiver, the adopting state must have "nonattainment" plan provisions approved by the EPA. 42 U.S.C. § 7507. This is common sense: if a state is meeting all air quality standards, there is no need to adopt stricter rules to clean up the air. The MPCA argued to the Administrative Law Judge that Minnesota had these plans approved by the EPA, so it was able to adopt California's rules related to motor vehicle emissions.

SONAR p. 35. This is deceptive—Minnesota has one "nonattainment" plan which was approved for the City of Eagan alone related to 2008 Lead levels, but Eagan reached "attainment" status in 2015. 80 Fed. Reg. 51127. There are no areas in Minnesota which are not at "attainment" levels for all National Ambient Air Quality Standards (NAAQS). Current Nonattainment Counties for All Criteria Pollutants (December 31, 2021), available at https://www3.epa.gov/airquality/greenbook/ancl.html; Status of Minnesota Designated 14 Areas, available at https://www3.epa.gov/airquality/urbanair/sipstatus/reports/mn_areaby poll.html. Because there are no active nonattainment plans approved for Minnesota, and certainly none related to greenhouse gas emissions, Minnesota does not have the authority to adopt California's rules under 42 U.S.C. § 7507.

Prayer for Relief

Based on the foregoing allegations, the administrative record, and the forthcoming briefs and arguments of counsel, Petitioner respectfully requests that the Court declare and adjudge the Rules to be invalid.

Respectfully submitted,

DATED: June 8, 2022

Minnesota Automobile Dealers Association, by their attorneys:

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APPENDIX E

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.

Statutory Authority: *MS s 116.07*

History: *46 SR 66*

NOTE: This part is effective on the date given in a commissioner's notice published in the State Register after the standards incorporated by reference in part 7023.0150, subpart 2, are granted a waiver by the U.S. Environmental Protection Agency under United States Code, title 42, section 7543.

Published Electronically: *August 11, 2021*

* * *

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 Regulations, 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 TZEV.** "Transitional zero-emission vehicle" or "TZEV" 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).

Statutory Authority: *MS s 116.07*

History: *46 SR 66*

NOTE: This part is effective on the date given in a commissioner's notice published in the State Register after the standards incorporated by reference in part 7023.0150, subpart 2, are granted a waiver by the U.S. Environmental Protection Agency under United States Code, title 42, section 7543.

Published Electronically: *August 11, 2021*

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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;

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 nonmethane 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.**

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.

Statutory Authority: *MS s 116.07*

History: *46 SR 66*

NOTE: This part is effective on the date given in a commissioner's notice published in the State Register after the standards incorporated by reference in part 7023.0150, subpart 2, are granted a waiver by the U.S. Environmental Protection Agency under United States Code, title 42, section 7543.

Published Electronically: *August 11, 2021*

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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 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.

Statutory Authority: *MS s 116.07*

History: *46 SR 66*

NOTE: Subparts 1, 2, 3, and 5 are effective on the date given in a commissioner's notice published in the State Register after the standards incorporated by reference in part 7023.0150, subpart 2, are granted a waiver by the U.S. Environmental Protection Agency under United States Code, title 42, section 7543.

Published Electronically: *August 11, 2021*