

## California Approves Ambitious Plan to Phase Out Sale of New Gas-Powered Cars by 2035

The California Air Resources Board (CARB), on August 25, 2022, voted to adopt the lengthy and complex second iteration of the state's ambitious zero-emission vehicle (ZEV) [regulation](#) now set to fully phase out the sale of conventional gas-powered vehicles by 2035. The regulation, part of the [Advanced Clean Cars II](#) proposal, accelerates the required ZEV sales that automakers must deliver each year, which increases year over year beginning in 2026. Sales of new ZEVs (up to 20% of which can be plug-in hybrid electric vehicles) must account for 35% of new car sales in 2026, climbing to 68% in 2030 and 100% in 2035.

Already in California, ZEVs are on the rise. In Q2 2022, ZEVs accounted for 16.5% of new car sales in California, up from 12.4% last year. But California's new rule is expected to have far-reaching effects beyond its borders. California is the largest auto market in the United States, accounting for 11% of the nation's new vehicle sales market. More than a dozen other states typically follow California's lead when setting their own auto emissions standards, altogether accounting for 40% of the nation's new vehicle sales market. The new regulation, therefore, can be expected to affect automakers selling cars anywhere in the country.

In addition, California's announcement dovetails with the state's [ZEV Market Development Strategy](#) and commitment to invest \$2.7 billion in fiscal year 2022-23, plus \$3.9 billion over the next three years, in ZEVs. At the federal level, the Infrastructure Investment and Jobs Act ([IIJA](#)) and Inflation Reduction Act ([IRA](#)) are expected to provide ZEV-related benefits, including funding to help expand fueling infrastructure. To date, California has over 70,000 public (or shared private) electric vehicle chargers and 60 public hydrogen fueling stations.

### Background

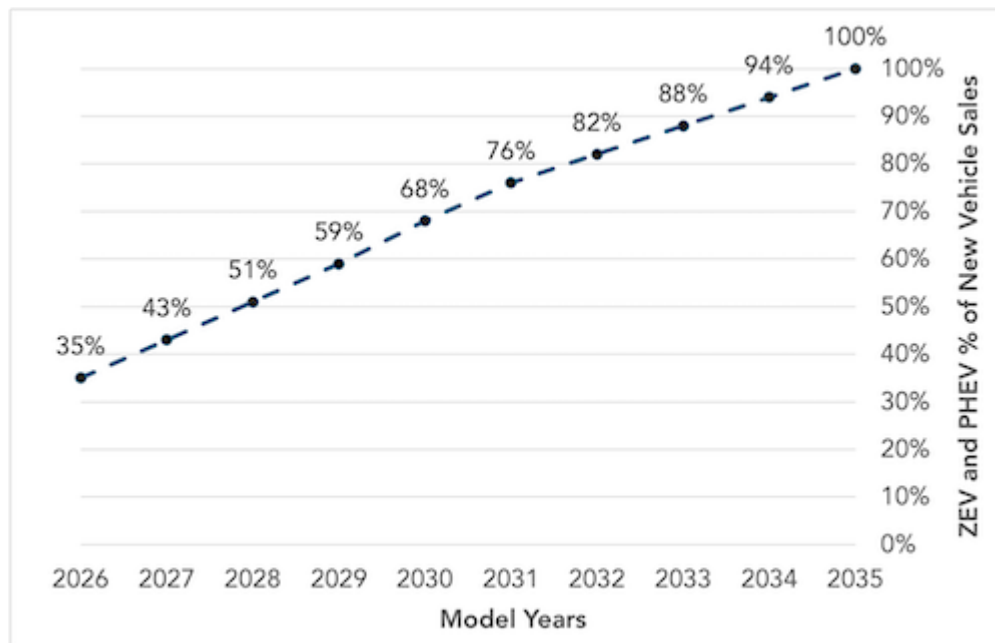
CARB approved the first iteration of its Advanced Clean Cars Program in 2012, which requires automakers to reduce emissions from internal combustion engine vehicles and increase the number of ZEVs and plug-in hybrids sold in California. CARB completed a midterm evaluation of the Advanced Clean Cars Program in 2017, finding that complementary policies should be expanded to assist the growing ZEV market and directing staff to develop more stringent standards for model year 2026 and beyond.

Governor Gavin Newsom issued [Executive Order N-79-20](#) in September 2020, setting a goal to phase out new gas-powered vehicle sales in California by 2035. The Advanced Clean Cars II ZEV regulation marries ongoing regulatory work with the directive under the governor's executive order to produce the next iteration of California's nation-leading vehicle standards.

Section 209 of the Clean Air Act (CAA) allows the U.S. Environmental Protection Agency (EPA) to grant California a waiver to set its own vehicle emission standards, which can be more stringent than those of the federal government. Section 177 of the CAA allows other states to adopt those same standards. To date, 17 states have adopted all or part of California's vehicle regulations, with 15 states adopting the ZEV regulation. In March, the Biden administration restored California's Section 209 waiver, which was previously halted under the Trump administration.

## Sale Requirements for New Zero-Emission and Plug-In Hybrid Electric Vehicles

As noted above, the new ZEV regulation sets accelerated annual targets for new ZEV and plug-in hybrid sales from 2026 through 2035 to maximize the sale of clean passenger vehicles ([see figure below](#)). Under the regulation, ZEVs include full battery-electric vehicles and hydrogen fuel cell electric vehicles. Plug-in hybrids—vehicles that have a rechargeable battery but also a backup gas engine—are also allowed (subject to limitations) to maximize emission reductions. Automakers can fulfill up to 20% of their annual target with plug-in hybrids, so long as the vehicles have at least a 50-mile all-electric range. Like the original Advanced Clean Cars Program, the annual targets below apply to automakers (not dealers) and do not affect existing vehicles, which will remain legal to own and drive.



## Required Standards for Sale of New ZEVs to Accelerate Adoption and Increase Consumer Confidence

The new regulation includes a variety of supplemental regulatory measures (ZEV Assurance Measures) to increase consumer confidence in ZEVs as a full replacement for familiar gas-powered vehicle options.

For example, new ZEVs under the regulation are required to have at least 150 miles of electric range and be designed to retain a majority of that range over the course of 10 years. The regulation also sets new minimum warranty requirements that display the state of the vehicle's battery health to the owner (or a used car buyer) to eliminate uncertainty about the vehicle's battery condition. New ZEVs must be sold with a charging cord capable of Level 1 or Level 2 charging and must at least conform with one fast-charging standard.

Recognizing that other states may adopt California's ZEV requirements, CARB continues to allow automakers to "pool" excess ZEV and plug-in hybrid electric values in one state that has adopted California's ZEV requirements to be used for compliance in another state, up to an allowed cap through the 2030 model year. [According to CARB](#), this will ease the burden of complying with California's ZEV requirements "by helping manufacturers manage year-to-year fluctuations in vehicle volumes in California."

In addition, the regulation includes a new environmental justice component that allows automakers to earn compliance credits when they participate in certain efforts to increase affordable access to ZEVs in communities

most affected by transportation-related air pollution. Options for automakers include: (1) selling ZEVs or plug-in hybrids at a discount to community-based clean mobility programs, (2) providing off-lease ZEVs or plug-in hybrids to dealers for the purpose of participating in a low-income ZEV financial assistance program, or (3) pricing ZEVs or plug-in hybrids under \$20,275 for passenger cars and \$26,670 for light-duty trucks.

## **More Stringent Emission Standards for Remaining Gas-Powered Vehicles**

Concurrent with the changes to the ZEV component of the Advanced Clean Cars II regulations, CARB also voted to further tighten emission standards for remaining internal combustion engine vehicles (the LEV regulation). Under the prior LEV regulation, ZEVs could be included in average fleet calculations for emissions standards. However, with a significant increase in ZEV sales on the horizon, CARB voted to remove ZEVs from certain emissions calculations to prevent potential "emission backsliding" of conventional gas-powered vehicles. Going forward, conventional gas-powered vehicles will have to meet the standards without the benefit of ZEVs in the average fleet calculation. The new LEV regulation also focuses on tightening emission control standards for aggressive driving scenarios and cold starts (when the car's engine is colder than its normal operating temperature), where the majority of vehicle emissions occur.

## **Looking Ahead**

With these new targets and supporting regulatory measures, California becomes one of the first jurisdictions to set out a legally-binding, enforceable roadmap for a future without new gas-powered vehicles. State regulators estimate the new rule will reduce smog-forming pollution from light-duty vehicles 25% by 2037 and greenhouse gas emissions from light-duty vehicles by more than 50% in 2040, compared to baseline levels.

Next, CARB will submit the regulatory package to the California Office of Administrative Law (OAL) for review and approval. California will also seek waiver from the EPA to enforce the regulations, to the extent required by Section 209 of the CAA, and provide the regulations as part of California's implementation plan to attain federal National Ambient Air Quality Standards (NAAQS). It is anticipated that the 17 states that currently follow all or part of California's vehicle regulations via Section 177 of the CAA will look to independently adopt the new regulations through their own state-level processes.

© 2022 Perkins Coie LLP

## **Authors**



### **[Andrew C. Hanson](#)**

Partner

[AHanson@perkinscoie.com](mailto:AHanson@perkinscoie.com) [608.663.7498](tel:608.663.7498)



## **Taylor Jones**

Associate

[TaylorJones@perkinscoie.com](mailto:TaylorJones@perkinscoie.com) [415.344.7079](tel:415.344.7079)



## **Angela Luh**

Associate

[ALuh@perkinscoie.com](mailto:ALuh@perkinscoie.com) [415.344.7104](tel:415.344.7104)

## **Explore more in**

[Climate Law](#) [Infrastructure Development](#) [Energy & Natural Resources](#)

## **Related insights**

Update

**[CFPB Finalizes Proposed Open Banking Rule on Personal Financial Data Rights](#)**

Update

**[FDA Food Import and Export Updates for Industry](#)**