



COMMONWEALTH of VIRGINIA

Office of the Governor

Travis A. Voyles
Secretary of Natural and Historic Resources

MEMORANDUM

To: Stakeholders and Interested Parties in the Commonwealth of Virginia
Department of Environmental Quality
State Air Pollution Control Board

From: Travis A. Voyles
Secretary of Natural and Historic Resources

Date: June 5, 2024

Re: California Air Resources Board (CARB) Advanced Clean Cars Program (ACC) and the
Future of Vehicle Emissions Standards in Virginia

Overview

Governor Glenn Youngkin has announced that at the end of calendar year 2024, the Commonwealth of Virginia will no longer be constrained to California's costly and burdensome vehicle emission standards.

Although a law passed by the General Assembly and signed by then-Governor Northam in 2021 prompted Virginia's State Air Pollution Control Board (Air Board) to adopt regulations tying the Commonwealth to the first iteration of California's auto emissions standards (ACC I), the law does not compel the adoption of the second—and more expansive—iteration of California's standards (ACC II). ACC II would have required 35 percent of the new cars sold in Model Year 2026 to be electric vehicles, with a 100 percent electric vehicle mandate by 2035 for all new light-duty vehicles purchased.

As such, after ACC I expires at the end of 2024, Virginia will default to the federal standards required under the Clean Air Act. Attorney General Miyares also issued an Official Opinion confirming that state law does not require the Air Board to adopt ACC II's expansive new vehicle emissions standards—nor has the Air Board acted under its discretionary authority to do so.

This announcement by the Governor will return to those in the Commonwealth the freedom to choose which vehicles best fit the needs of their families and businesses and provide increased certainty in ensuring that Virginia's laws and regulations are not tied to imprudent policies from states like California.

Background

The federal Clean Air Act prohibits states from adopting their own vehicle emission standards.¹ Congress's purpose in this prohibition was to prevent a patchwork of state-by-state vehicle regulations that would have thwarted interstate commerce. However, the Environmental Protection Agency (EPA) created a waiver for California, provided its emission vehicle standards are "at least as protective of public health and welfare as applicable Federal standards."² The Clean Air Act also provides that any state may opt out of federal vehicle emission standards by adopting California's standards.³ A state that does not adopt California's standards will fall under federal standards by default.

In 2012, the California Air Resources Board (CARB) adopted the Advanced Clean Cars Program I (ACC I), which is now a specific section of the California Code of Regulations and which covers vehicles through Model Year 2025 (calendar year 2024). ACC I provided that, by 2018, the equivalent of 4.5 percent of all sales of new vehicles in California must be electric vehicles; and that this percentage would increase by 2.5 percent each model year until, finally, in 2025 and subsequent years, California would require the equivalent of 22 percent of all new vehicle sales to be electric vehicles.⁴

Virginia has historically fallen under the default federal vehicle emissions standards, instead of California's standards. But on March 18, 2021, then-Governor Northam signed House Bill 1965 (Ch. 263 of the 2021 Acts of Assembly, Special Sess. I) (the Enabling Legislation), which permitted the Air Board to adopt ACC I.

In December 2021, the Air Board adopted regulations in accordance with the Enabling Legislation. The most relevant provision of those regulations simply incorporated California's ACC I regulations by reference and determined that ACC I would become the law in Virginia commencing in January 2024.⁵

An aggressive, forced transition as required by California's standards will have a significant financial impact on consumers since electric vehicles are more costly than standard vehicles.⁶ The cost of a zero-emissions electric vehicle is generally considered on average to be approximately \$10,000 more than for a conventional internal combustion vehicle. With ACC I requiring that 22 percent of new vehicle sales be electric vehicles, and based on Virginia's 2023 automobile sales numbers (approximately 353,194 cars were sold), the total potential additional cost to Virginia consumers resulting from ACC I could amount to up to \$770 million in just one year.

Under the ACC II requirements, beginning in Model Year 2026, the equivalent of 35 percent of the new cars sold would be required to be electric vehicles. If found out of compliance with these restrictions, penalties could total upwards of \$20,000 per vehicle, an increase from the \$5,000

¹ 42 U.S.C. § 7543(a).

² 42 U.S.C. § 7543(b)(1).

³ 42 U.S.C. § 7507.

⁴ 13 C.C.R. § 1962.2.

⁵ See 9VAC5-95 *et seq.*

⁶ See Virginia Department of Environmental Quality (DEQ) Economic Review Form to the Office of Regulatory Management as part of the state regulation implementing ACC I.

per vehicle violation penalty under ACC I. Given that electric vehicles only amounted to nine percent of vehicles sold in Virginia in 2023, the potential for hundreds of millions of dollars in penalties could have accrued.

Status in Virginia

The ACC I standards incorporated by the Air Board expire by the operation of law at the end of 2024. In 2022, CARB adopted new regulations to implement ACC II, which apply beginning in calendar year 2025 and onward, and which are distinct from ACC I. The Air Board's current regulations related to low- and zero-emission vehicles do not reference the ACC II regulations since they were enacted after the Air Board's 2021 adoption of ACC I. While ACC I required 22 percent of new vehicle sales being zero emission in 2024 and subsequent years, ACC II would have required a significantly higher percentage of zero emission sales over time, culminating in a ban of all sales of non-electric vehicles.

As confirmed in the Attorney General's June 4, 2024, official Opinion, Virginia law does not require the Air Board to adopt ACC II. While the Air Board did choose to adopt regulations implementing ACC I, the Air Board did not adopt the subsequent ACC II regulations.

As such, in order to adopt the ACC II program requirements, Virginia would have needed to take affirmative action to do so. Therefore, Virginia will only participate in ACC I for one year, calendar year 2024, until it sunsets at the end of calendar year 2024. Thereafter, Virginia will default to federal standards.

Moving Forward in Virginia

To comply with the Clean Air Act, Virginia must either adopt vehicle emissions standards "identical to . . . California standards," 42 U.S.C. § 7507, or else default to the federal standards.⁷ Although participation in the program is voluntary, § 177 of the Clean Air Act requires that a state choosing to adopt California's standard do so two years before commencement of the model year. The model year effective date is one year before the actual model year. As such, Virginia cannot participate in ACC II in calendar year 2025 since the Air Board did not adopt the subsequent ACC II regulation covering Model Year 2026 (which corresponds to calendar year 2025) prior to the two-year requirement.

Therefore, beginning in calendar year 2025, ACC II will not be applicable in Virginia and car manufacturers will be free to sell new vehicles under current federal regulations.

⁷ 42 U.S.C. § 7543(a).