



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

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# Department of Environmental Protection

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**RESPONSE TO COMMENTS**  
**ON EMERGENCY REGULATION AMENDMENTS TO**

**310 CMR 7.40**

**Low Emission Vehicle Program**

**REGULATORY AUTHORITY:**  
**M.G.L. c. 111 §§142A–142M; M.G.L. c. 21N**

**March 30, 2023**

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.  
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On December 30, 2022, the Massachusetts Department of Environmental Protection (MassDEP) filed emergency regulations with the Massachusetts Secretary of the Commonwealth that amended 310 CMR 7.40, *Low Emission Vehicle Program* to adopt California’s Zero Emission Vehicle (ZEV) and Low Emission Vehicle (LEV) IV regulations, together known as the Advanced Clean Cars II (ACC II) Program. MassDEP’s adoption of these provisions will drive the sales of ZEVs and Plug-In Hybrid Electric Vehicles (PHEVs) to 100% in Massachusetts in model year (MY) 2035, which will reduce emissions of criteria and toxic air pollutants and greenhouse gases (GHG), improve air quality, and reduce the adverse effects of climate change. These amendments were effective upon filing. To make the regulations permanent, MassDEP solicited public comment on the amendments to comply with the public review process requirements under Massachusetts General Laws (M.G.L.) chapter 30A, section 2. MassDEP held two public hearings on the amendments to 310 CMR 7.40 on January 30, 2023, and accepted public comments until February 9, 2023. Notice of the hearing and public comment period was published in the Boston Globe and the Worcester Telegram & Gazette on December 30, 2022, and in the Massachusetts Register on January 20, 2023. MassDEP filed a Notice of Compliance with the Secretary of the Commonwealth on March 30, 2023, which made the regulations permanent.

MassDEP received 193 sets of comments from the individuals and organizations listed in Attachment 1. The majority of comments were similar and supported the regulations. MassDEP has summarized and responded to the comments received below.

1. **Comment:** MassDEP should adopt ACC II as quickly as possible to:
  - Help the state meet the required 2030 50% GHG emissions reduction requirement. ACC II is a key strategy in the *Massachusetts Clean Energy and Climate Plan for 2025 and 2030* (2025/2030 CECP).<sup>1</sup>
  - Protect public health by accelerating the pace by which electric vehicles (EVs) replace internal combustion engine vehicles.
  - Protect Massachusetts consumers by ensuring a full range of choice when it comes to new EV models.
  - Fulfill the obligation of Chapter 111, Section 142K of General Laws, which directs MassDEP to adopt California’s motor vehicle emissions standards if they achieve “greater motor vehicle pollution reductions than the federal standards,” which ACC II does.

**Response:** MassDEP has made the regulations permanent with no changes. Adopting ACC II is a 2025/2030 CECP strategy to reduce GHG emissions, which will also protect public health and meet the requirements of M.G.L. chapter 111, section 142K.

2. **Comment:** MassDEP should adopt ACC II and strengthen the tailpipe emission standards even further, and phase out all internal combustion engine vehicle sales by 2030.

**Response:** MassDEP does not have the authority to strengthen the tailpipe emissions standards beyond those in ACC II or to phase out all internal combustion engine vehicle sales

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<sup>1</sup> <https://www.mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download>

by 2030, which is not a part of ACC II. MassDEP is required to adopt California’s motor vehicle emission standards under M.G.L. chapter 111, section 142K. Section 177 of the federal Clean Air Act requires that if a state adopts California’s motor vehicle emission standards, the standards must be “identical to the California standards.” MassDEP’s amendments to 310 CMR 7.40 directly cite and/or incorporate by reference applicable standards within the California Code of Regulations, ensuring that the Massachusetts standards are identical to California’s standards. MassDEP has made the regulations permanent with no changes.

3. **Comment:** MassDEP should adopt ACC II because it is vital to ensure rapid reductions in climate-changing emissions and air pollution. Making the transition to 100% ZEV sales is a vital step for the Commonwealth to take to ensure Massachusetts is on track to meet its climate goals and protect public health. ZEVs offer significant cost benefits for businesses and consumers compared to their internal combustion engine counterparts by reducing operational expenses through lower fuel and maintenance costs, avoiding the risks associated with fossil fuel price and supply volatility, and creating new jobs. ACC II will improve public health and reduce health costs in our communities. MassDEP should adopt ACC II before the expiration of the three-month emergency rulemaking to comply with the two-year lead time requirement for manufacturers and to avoid missing compliance years. ACC II will offer air quality and public health benefits, move Massachusetts closer to its climate goals, provide manufacturers with flexibilities, and provide cost savings for residents.

**Response:** MassDEP has made the regulations permanent with no changes.

4. **Comment:** Industry needs more incentives and support for regulations like ACC II to be effective. Our shared objective of achieving the ACC II ZEV levels requires collaboration and a sustained commitment to fund and execute supportive programs and policies. There are many important complementary measures needed for success:
  - Adopting private and state fleet purchase requirements.
  - Deploying convenient, reliable, and affordable access to public EV charging and hydrogen refueling stations.
  - Installing 350kW direct current fast charging (DCFC) and hydrogen fueling stations at airports and major transportation hubs to fuel transportation network company EVs and taxis.

**Response:** Massachusetts Executive Order (EO) 594 *Leading by Example: Decarbonizing and Minimizing Environmental Impacts of State Government*<sup>2</sup> requires state government entities to acquire zero emission vehicles (ZEVs) starting July 1, 2022. In furtherance of EO 594, the Massachusetts Office of Vehicle Management (OVM) adopted the *EV First Acquisition Policy*,<sup>3</sup> requiring all Executive Branch agencies under OVM’s purview to purchase EVs whenever such vehicles are available. MassDEP’s Massachusetts Electric Vehicle Incentive Program (MassEVIP)<sup>4</sup> supports EV acquisition and EVSE installation at

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<sup>2</sup> <https://www.mass.gov/executive-orders/no-594-leading-by-example-decarbonizing-and-minimizing-environmental-impacts-of-state-government>

<sup>3</sup> <https://www.mass.gov/doc/electric-vehicle-first-acquisition-policy/download>

<sup>4</sup> <https://www.mass.gov/guides/volkswagen-diesel-settlements-environmental-mitigation#-settlement-funded-grant-&-incentive-programs->

state facilities in preparation for the state fleet transition to EVs. The Department of Energy Resources (DOER) Fleet Electric Vehicle Supply Equipment (EVSE) Deployment Program<sup>5</sup> also supports EVSE installation at state facilities. DOER’s Massachusetts Offers Rebates for Electric Vehicles (MOR-EV)<sup>6</sup> and MOR-EV Trucks<sup>7</sup> programs offers rebates for the purchase or lease of battery and fuel-cell EVs to public and private entities.

Numerous efforts are underway to increase public EV charging station access to support the anticipated increase in ZEVs on Massachusetts roadways:

- MassEVIP Public Access Charging (PAC) funds private, public, and nonprofit entities to install Level 1 and Level 2 charging stations and funded over \$13 million for DCFC stations in a recent competitive offering.<sup>8</sup> Other charging station grant opportunities include MassEVIP Multi-Unit Dwelling and educational Campus (MUDC) charging and MassEVIP Workplace and Fleet (WPF) charging. On hydrogen fueling, Massachusetts is participating in an ongoing cross-state collaborative effort to create a regional clean hydrogen hub to be funded through the federal Infrastructure Investment and Jobs Act.<sup>9</sup>
- MassDOT is in the process of utilizing federal funds for the construction and operation of DCFC stations along major highway corridors under the *National Electric Vehicle Infrastructure* program (NEVI).<sup>10</sup>
- The Massachusetts Department of Public Utilities (DPU) recently approved \$395 million in new funding to accelerate EV charging station deployment across the Commonwealth.<sup>11</sup> This infrastructure investment will support “make-ready” EV programs delivered by Eversource Energy, National Grid, and Unitil for residential, fleet, public, and workplace customers, including targeted components for low-income households and environmental justice (EJ) communities.
- Additional funding also will become available through upcoming federal grant programs.

5. **Comment:** Transportation sector decarbonization should embrace all technologies fit for purpose including low-carbon liquid fuels and other emerging technologies, and not limit transportation sector planning to ZEV. California’s struggles present a cautionary tale for Massachusetts that reliance on a singular electrification technology puts risk of missing out on real carbon reductions available through low-carbon liquid fuels and the development of emerging carbon removal technologies.

**Response:** As indicated in the 2025/2030 CECP,<sup>12</sup> Massachusetts transportation strategy is not limited to ZEV, and is focused on two major goals: first, a reduction in vehicle miles traveled by providing more Massachusetts residents with more alternatives to personal vehicles and second, a rapid transition to EVs, supported by, for example, vehicle emission

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<sup>5</sup> <https://www.mass.gov/info-details/fleet-ev-charging-deployment-grant-program>

<sup>6</sup> <https://mor-ev.org/>

<sup>7</sup> <https://mor-ev.org/mor-ev-trucks>

<sup>8</sup> <https://www.mass.gov/news/baker-polito-administration-awards-over-13-million-for-electric-vehicle-fast-charging-stations-at-150-locations-across-the-commonwealth>

<sup>9</sup> <https://www.nyserda.ny.gov/About/Newsroom/2023-Announcements/2023-2-9-Governor-Hochul-Announces-Vermont-Joins-Multi-State-Hydrogen-Hub>

<sup>10</sup> <https://www.mass.gov/massdot-nevi-plan>

<sup>11</sup> <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/16827694>

<sup>12</sup> p. 32-33 of <https://www.mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download>

standards and rebates for EVs and charging infrastructure. ACC II allows new BEV and PHEV sales as part of its flexible compliance approach. The role of low-carbon liquid fuels is addressed on page 105 of the Appendices to the 2025/2030 CECP,<sup>13</sup> which states, “Not every part of the Massachusetts economy can be electrified in a cost-effective or technologically feasible way. To decarbonize some of these hard-to-electrify sectors, such as aviation, long-haul shipping, and industrial production, new fuels that are renewable and result in fewer net carbon emissions will be crucial. Biofuels are the primary tool used to decarbonize these sectors in the short-term and include a range of fuels such as ethanol, which is produced from corn and is a common additive to gasoline, and renewable diesel, which is produced from feedstocks like leftover restaurant grease and other plant and animal oils and substituted in place of traditional diesel fuel.”

6. **Comment:** MassDEP does not have the authority to adopt a transportation electrification mandate like California’s ACC II standards. The effectiveness of MassDEP’s emergency rulemaking is expressly contingent on EPA granting a preemption waiver for the California ACC II rule. ACC II also includes measures that may violate the Dormant Commerce Clause, the dormant foreign affairs preemption doctrine under the Supremacy Clause, the Takings Clause of the Fifth Amendment and the equal sovereignty doctrine.

**Response:** MassDEP is required to adopt California’s vehicle emissions standards under M.G.L. chapter 111, section 142K. MassDEP will not enforce the standards until California receives a waiver of preemption from EPA to implement the standards rather than relying on federal motor vehicle emission standards. MassDEP’s position is that ACC II does not violate any of the Constitutional provisions cited by the commentor.

7. **Comment:** MassDEP failed to provide for a transparent and reasoned economic analysis to convey the consequences and difficulties associated with ACC II’s major technology transformation.

**Response:** M.G.L. c. 30A and existing Executive Orders do not contain explicit criteria for determining what costs and benefits are acceptable for a regulatory action. M.G.L. c. 111, § 142K requires MassDEP to adopt California’s motor vehicle emission standards; there is no qualifier in that statute about cost. The only condition is that the California standards achieve greater motor vehicle pollution reduction than the federal standards. Nonetheless, DEP summarized some economic impacts of the regulation on pages 13 to 15 of the December 30, 2022 *Background Document on Emergency Regulation Amendments to 310 CMR 7.40*,<sup>14</sup> e.g., that battery EVs (BEVs) have a lower cost of ownership than conventionally fueled vehicles, with a payback to the average consumer of one year, even before accounting for federal, state, local, utility, or other rebates. PHEVs have a higher cost of ownership than conventionally fueled vehicles, but that difference could improve or be eliminated by federal, state, local, utility, or other rebates.

8. **Comment:** Massachusetts should emphasize complementary policies to ensure the broader and more equitable distribution of the benefits of this transition to zero-emissions, including

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<sup>13</sup> <https://www.mass.gov/doc/appendices-to-the-clean-energy-and-climate-plan-for-2025-and-2030/download>

<sup>14</sup> <https://www.mass.gov/doc/310-cmr-740-background/download>

targeted incentives, charging infrastructure and other equity-centered interventions. Massachusetts should ensure that EJ programs are in place before manufacturers can start earning credits in MY 2024. MassDEP should work with EJ community organizations to determine programs that would be eligible to earn EJ credits and ensure charging stations are accessible and reliable with focus on hotspot and overburdened communities.

**Response:** MassDEP held two ACC II stakeholder meetings to enhance community engagement and seek recommendations and feedback, including implementation of the EJ vehicle value provisions in ACC II. The EJ vehicle value provisions are designed to provide manufacturers with incentives associated with the supply of discounted new ZEVs (including to ZEV car sharing, ride-sharing, vanpools, ride-hailing, or on-demand first-mile/last-mile services) and with the sale of affordable used ZEVs when coming off lease. MassDEP is committed to continuing efforts to ensure a just transition occurs, including working with manufacturers, public interest organizations, community-based organizations, EJ groups, and other interested entities to effectively provide the intended benefits.

Massachusetts is building a network of EV charging stations with policies that ensure distribution both regionally and to EJ areas, so everyone can access reliable, convenient, and affordable charging options throughout the state. For example, MassDEP's VW, DERA, and MassEVIP DCFC and competitive public access grants discussed in response 4 have prioritized projects located in areas with EJ populations to equitably distribute the benefits of the projects. Similarly, DPU's recent approval of utility make-ready funding focuses benefits in EJ areas.

9. **Comment:** Cummins has significant concerns with adopting in-use testing requirements in 13 CCR 1961.4 for chassis-certified MDV. It is recommended that Massachusetts and other states remain aligned with the U.S. Environmental Protection Agency's (EPA's) standards for MDV. EPA's new rule for Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles will be proposed next month as part of their Clean Trucks Plan.

**Response:** MassDEP is required to adopt California's motor vehicle emission standards under M.G.L. chapter 111, section 142K. Section 177 of the federal Clean Air Act requires that if a state adopts California's motor vehicle emission standards, the standards must be "identical to the California standards." MassDEP's amendments to 310 CMR 7.40 directly cite and/or incorporate by reference applicable standards within the California Code of Regulations, including the *Exhaust Emission Standards and Test Procedures* of 13 CCR 1961.4, ensuring that the Massachusetts standards are identical to California's standards.

10. **Comment:** MassDEP should not adopt ACC II because rapidly increasing EV adoption will not help the state meet the required 2030 50% GHG emissions reduction requirement, as ACC II will only transfer fuel emissions to oil-, gas- and coal-fired power plants. A Future Grid Reliability Study concluded that in 2040 the electric grid may require a significant amount of gas or stored fuels to support variable electric generation resources. The most cost-effective method for reducing vehicle emissions is more hybrids and PHEVs not EVs. MassDEP should not be directed to adopt California vehicle emissions standards.

**Response:** As summarized in the 2025/2030 CECP and 2050 CECP,<sup>15</sup> Massachusetts has a suite of regulations and supporting programs across sectors to reduce GHG emissions and ensure that total Massachusetts emissions drop when accounting for increases in electrification of vehicle and heating equipment fleets and electric use. As this electrification increases, it will be served by increasing clean and renewable electric generation sources.

As shown in Table 3 of the December 30, 2022 *Background Document on Emergency Regulation Amendments to 310 CMR 7.40*,<sup>16</sup> BEVs have a lower cost of ownership than conventionally fueled vehicles, with a payback to the average consumer of one year, even before accounting for federal, state, local, utility, or other rebates. PHEVs have a higher cost of ownership than conventionally fueled vehicles, but that difference could improve or be eliminated by federal, state, local, utility, or other rebates.

Furthermore, MassDEP is required to adopt California's vehicle emissions standards under M.G.L. chapter 111, section 142K.

11. **Comment:** Massachusetts should increase the gasoline tax or place a surcharge on transfer, purchase or sales of gasoline vehicles. It is important to adopt building codes addressing new construction and retrofit requirements for EV-ready residential and commercial parking and to ensure grid resiliency and utility electric rates that provide low-cost EV charging.

**Response:** Gasoline taxes, vehicle surcharges, building codes, grid resiliency and utility electric rates are beyond the scope of these regulations.

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<sup>15</sup> <https://www.mass.gov/doc/2050-clean-energy-and-climate-plan/download>

<sup>16</sup> <https://www.mass.gov/doc/310-cmr-740-background/download>

## Attachment 1

1. Savannah Brito
2. Tonica Man
3. Ulrik Nielsen
4. Maureen Sundberg
5. Gina Scanlan
6. Peter Smith
7. F Webber
8. Hilary O'Donnell
9. Bronwyn Alfred
10. Dunja Wildt
11. James Tracy
12. Janet Sargent-Tracy
13. Michaela Nielsen
14. Christine Roane
15. Eliza Lewis
16. Bill Sloan
17. Ted Schnitzer
18. James Mitchell
19. Brian Campbell
20. Anna Vanderspek, Green Energy Consumers Alliance
21. Timothy Lundergan
22. Susan Klem
23. Lance Brown
24. Thomas Desellier
25. J Clark
26. Geoffrey Hyatt
27. Alok Saldanha
28. Alan J Nishman
29. Anne Mazar
30. Anne Richards
31. Donald Henrich
32. Jane Nickodemus
33. Janet Kolodner
34. Jean and Lewis Stern
35. Jeffrey Folino
36. Jeremiah Schuur
37. Karyl Stoia
38. Larry Chretien
39. mark fortin
40. Marvin J Ward
41. Ona Ferguson
42. Paul Cormier
43. Phyllis Theermann
44. Rebecca Wish Esche
45. S Kelley
46. Steven Miller
47. Stephen Jones
48. Teresa Rodriguez
49. Rev. Nathan Ives
50. Vid Sivan
51. Winfield Peterson
52. Aliou Niane
53. Andy Bennett
54. Bonnie Miskolczy
55. Carina Campobasso
56. Daniel Verinder
57. David Holzman
58. Denise Conley
59. Eileen Chodos
60. Eileen Velez
61. Jeffrey Bail
62. Jennifer Riley
63. Katherine Fisher
64. Mark Lauritano
65. Maryann Rodrigues
66. Megan Burnett
67. Michael McCarthy
68. Richard Zug
69. Stephanie Smith
70. Thomas Colbert
71. Timothy Groves
72. Russell Donnelly
73. Russell Donnelly
74. Becky Ikehara
75. Elizabeth Coons
76. Gitanjali Joglekar
77. Jean-Pierre Mittaz
78. Judith Aronstein
79. Carole McAuliffe
80. Lee Ketelsen
81. Susan Abrams
82. Lucy Stroock
83. Wendy Johncheck
84. Utah Nickel
85. Michael Stone



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|------|-----------------------|------|--------------------------|
| 86.  | Maureen Quinn-Dupont  | 132. | Gail Fleischaker         |
| 87.  | Lois Grossman         | 133. | Maureen McCarthy         |
| 88.  | Lyman & Katie Jackson | 134. | Brent Siniawski          |
| 89.  | Lori Mattheiss        | 135. | Mikaela Hondros-McCarthy |
| 90.  | Bob Persons           | 136. | Harry Newell             |
| 91.  | Bart Ryan             | 137. | Tim Mangini              |
| 92.  | Carole McAuliffe      | 138. | Renu Bostwick            |
| 93.  | Evan Eisentrager      | 139. | Debra Singer             |
| 94.  | Inge Knudson          | 140. | Christian Roop           |
| 95.  | John MacDougall       | 141. | Christine Roane          |
| 96.  | Jonathan Clapp        | 142. | Michael McCarthy         |
| 97.  | Katherine Cote        | 143. | Carol Ellerbeck          |
| 98.  | Katherine Tildes      | 144. | Jeanne Gamble            |
| 99.  | Ken Canty             | 145. | Don Mallinson            |
| 100. | Lorraine Ferrara      | 146. | Peter Kane               |
| 101. | Megan Lepore          | 147. | Celeste Venolia          |
| 102. | Norman Daoust         | 148. | Larry Chretien           |
| 103. | Ryan Houlette         | 149. | Thayer Scott             |
| 104. | Sheryl Becker         | 150. | Ray Stetkiewicz          |
| 105. | Susi Westwood         | 151. | Russell Donnelly         |
| 106. | Terry Angelli         | 152. | Phyllis Theermann        |
| 107. | Janet Kolodner        | 153. | Karin Hemmingsen         |
| 108. | Anne-Marie Mallon     | 154. | Ally Matteodo            |
| 109. | Julie Bernstein       | 155. | Bryan Cole               |
| 110. | James Hadcroft        | 156. | Andy Bianco              |
| 111. | Brian Gagnon          | 157. | Scott Brown              |
| 112. | Carol Esler           | 158. | Laurie Toner             |
| 113. | Christine Roane       | 159. | Nancy Nolan              |
| 114. | David Harvey          | 160. | Leslie Morgan            |
| 115. | Dennis Rogers         | 161. | John Craig               |
| 116. | Don Thompson          | 162. | Gabriela Romanow         |
| 117. | George Salvat         | 163. | Ellen Rice               |
| 118. | John Warner           | 164. | Donna Parente            |
| 119. | June Davenport        | 165. | Don Thompson             |
| 120. | LeeAllen Meyer        | 166. | David Ball               |
| 121. | Linda Veiga           | 167. | Lloyd Williams           |
| 122. | Liz Field             | 168. | Grace Lu                 |
| 123. | Marc Laverdiere       | 169. | Dennis Rogers            |
| 124. | Peter Townsend        | 170. | Maureen McCarthy         |
| 125. | Sarah Stewart         | 171. | Mark Duffy               |
| 126. | Teresia LaFleur       | 172. | Jessica Hunt             |
| 127. | Virginia Jastromb     | 173. | Denise Brehm             |
| 128. | Andrew Costigan       | 174. | John McGuire             |
| 129. | MaryAnna Foskett      | 175. | Nancy Beals              |
| 130. | David Miller          | 176. | Mary Garcia              |
| 131. | Amy Henry             | 177. | Betsy Smith              |

178. Andrea Wasserman
179. Kozuch
180. Alex Hershey
181. Daniel Fitzgerald, American Lung Association
182. Tom Van Heeke, Rivian Automotive, LLC
183. Tom Miller, Alliance for Automotive Innovation
184. Mandy Garrahan, Valero Energy Corporation
185. Veena Dharmaraj, Joint comments from Zero Emission Vehicles (ZEV) Coalition
186. John Carlson, Ceres
187. Joint comments from Major Businesses and Investors
188. Jackie Yeager, Cummins Inc.
189. Alissa Burger, CALSTART
190. Dr. David and Justine Ross
191. Veena Dharmaraj, Sierra Club
192. Paulina Muratore, Union of Concerned Scientists
193. William Barrett, American Lung Association