



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R01-OAR-2018-0790; FRL-9987-51-Region 1]

#### **Air Plan Approval; Massachusetts; High Occupancy Vehicle Lanes**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision provides for the Massachusetts Department of Transportation (MassDOT) to construct and operate specified transit facilities and high occupancy vehicle (HOV) lanes established therein. Implementation and continued monitoring of these projects will help reduce the use of automobiles and improve traffic operations on the region's roadways, resulting in improved air quality. This action will have a beneficial effect on air quality because it is intended to reduce vehicle miles traveled (VMT) and traffic congestion in the Boston Metropolitan Area.

Massachusetts has adopted these revisions to reduce emissions of volatile organic compounds (VOC), particulate matter (PM), and nitrogen oxides (NO<sub>x</sub>). This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2018-0790 at <https://www.regulations.gov>, or via email to [rackauskas.eric@epa.gov](mailto:rackauskas.eric@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of

submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Eric Rackauskas, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1628, fax number (617) 918-0628, email [rackauskas.eric@epa.gov](mailto:rackauskas.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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## **I. Background and Purpose**

On July 9, 1996, the Massachusetts Department of Environmental Protection (MassDEP) submitted a revision to the Massachusetts State Implementation Plan (SIP) consisting of amendments to 310 CMR 7.37: High Occupancy Vehicle Lanes. The submitted amended 310 CMR 7.37 contains added definitions, revised due dates for certain requirements, minor technical amendments, and clarifying language. This regulation is designed to help reduce the use of automobiles in the Metropolitan Boston Area, and to improve traffic operations on the region's roadways. Reducing the number of vehicles on the road and easing traffic conditions on major highways will result in a reduction in VMT, which eases traffic congestion and will lead to improved air quality by lowering mobile source emissions.

EPA previously approved 310 CMR 7.37 into the Massachusetts SIP on October 4, 1994 (59 FR 50495). That SIP revision required Massachusetts to study the feasibility of constructing HOV lanes on certain roadways to reduce VMT and traffic congestion. The 1994 SIP revision also required the construction of HOV lanes for certain roadways, i.e. on Interstate-93 (I-93) southbound, north of Boston, and south of Boston on I-93 (both northbound and southbound) between Interstate-90 (I-90) and Route 3.

The SIP-approved 310 CMR 7.37 roadway trip time threshold standards were established to reflect a significant increase in traffic volume above baseline roadway conditions which, if

exceeded, would trigger construction of additional HOV lanes. The threshold standards were calculated to represent an average weekday peak trip time increase of 35% from baseline roadway conditions. The SIP-approved regulation also established monitoring and reporting standards to ensure and enforce the successful implementation and desired outcome of HOV lanes, and to determine the feasibility and necessity of constructing additional HOV lanes. The updated regulation being proposed for SIP approval in this rulemaking addresses and incorporates into the regulation a number of comments and suggestions made by the public, including EPA, during the Commonwealth's public comment period on the regulation.

## **II. Administrative Changes**

It is EPA's understanding that in June 2009, Governor Deval Patrick signed Chapter 25 of the Acts of 2009, "An Act Modernizing the Transportation Systems of the Commonwealth of Massachusetts." This transportation reform legislation integrated transportation agencies and authorities into a new, streamlined MassDOT, which is a merger of the Executive Office of Transportation and Construction (EOTC), and its divisions, with the Massachusetts Turnpike Authority (MTA), the Massachusetts Highway Division (MHD), the Registry of Motor Vehicles (RMV), the Massachusetts Aeronautics Commission (MAC), and the Tobin Bridge. On December 8, 2015, EPA approved into the Massachusetts SIP a transportation-related regulation that reflected this reorganization. *See* 80 FR 76225. These changes did not interfere with attainment, reasonable further progress, or any other applicable Clean Air Act (CAA) requirement, satisfying CAA section 110(l) and, for the regulation in question, made the Massachusetts SIP consistent with the Commonwealth's administrative agency organizational structure.

This proposed rulemaking publication will use "MassDOT" in lieu of all references to the former agencies (MTA, MHD, and EOTC) referenced within the submitted 310 CMR 7.37.

Though MassDOT did not exist at the time the regulation was written, it is EPA's understanding that MassDOT has replaced or absorbed all referenced transit agencies found within the regulation we are proposing to approve today.

### **III. Summary of Changes to the Amended High Occupancy Vehicle Lanes Regulation**

The Commonwealth's July 9, 1996 submittal of 310 CMR 7.37 contains several minor changes compared to the SIP-approved version. These changes contain new and revised definitions of certain terms for the existing HOV regulation. The updated regulation also contains revised due dates for certain actions and reporting requirements, and new language clarifying certain sections of the regulation. The main updates are summarized as follows:

*Definitions:* Notably, the updated definitions establish the Baseline Roadway Conditions to be the average weekday peak hour trip time in minutes for each roadway segment based on monitoring of traffic and recording of trip times during the 12 months period from April 1, 1992 to April 1, 1993. This section also establishes the Roadway Threshold Standards to be the Baseline Roadway Conditions increased by 35%.

*Attainment of Performance Standards:* MassDOT is required to monitor the referenced roadways and HOV performance, as measured by trip times, during peak periods of travel, to ensure HOV performance standards are being met. Trip times are required to be measured at least monthly and during at least five sample days each month. MassDOT is required to use all appropriate and feasible measures to maintain compliance with the HOV lane performance standards. MassDOT is also required to submit performance standard reports for each HOV facility or HOV lane being monitored. The updated regulation also removed the language "not increase congestion in general purpose traffic flow lanes," found in the original SIP-approved regulation. EPA and MassDEP believed this language could have been interpreted to mean that

HOV lanes could be moving as slowly or slower than general traffic, without giving MassDOT the ability to take corrective action.

*Substitute HOV Projects:* This section has been updated to include stronger language than in the previous version of the regulation for deeming a substitute project appropriate. If studies demonstrate that an HOV lane is infeasible, MassDOT must substitute an alternative project by petitioning MassDEP. All such petitions shall include a demonstration that the substitute project achieves equal or greater emission reductions of VOC, CO, and NO<sub>x</sub> from mobile sources than the installation of an HOV lane. The petition must also show that the substitute project provides for greater improvement in air quality for these pollutants in the area where the required HOV lane is targeted, both in the short and long term.

EPA's review of this regulation indicates that the implementation and operation of HOV lanes will result in improved air quality by both reducing vehicle trips and easing traffic congestion. A reduction in VMT results in a reduction in total vehicle emissions.

#### **IV. Proposed Action**

EPA is proposing to approve, and incorporate into the Massachusetts SIP, revised regulation 310 CMR 7.37, High Occupancy Vehicle Lanes. This regulation was submitted to EPA on July 9, 1996. This updated regulation includes technical amendments, changes in due dates for certain actions, and clarifying language in relation to the previous SIP-approved version of 310 CMR 7.37. EPA is proposing to approve 310 CMR 7.37 into the Massachusetts SIP because EPA has found that the requirements are consistent with the CAA, including CAA section 110(l) in that the regulation will not interfere with attainment, reasonable further progress, or any other applicable CAA requirement. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting

written comments to this proposed rulemaking by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

## **V. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference of 310 CMR 7.37, High Occupancy Vehicle Lanes. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## **VI. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 10, 2018.

Alexandra Dunn,  
Regional Administrator,  
EPA Region 1.

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