

TABLE 52.385.—EPA-APPROVED REGULATIONS

Connecticut state citation	Title/subject	Dates	Date adopted by State	Date approved by EPA	Federal Register citation	Section 52.370
22a-174-27	Emissions standards for periodic motor vehicle inspection and maintenance.	March 26, 1998.	March 10, 1999.	64 FR 12005	(c)78 ....	Revised Department of Environmental Protection regulation contain I/M emission standards.
14-164c	Periodic Motor Vehicle Inspection and Maintenance.	April 7, 1998. June 24, 1999.	March 10, 1999. October 27, 2000.	64 FR 12005 [Insert FR citation from published date].	(c)78 .... (c)89 ....	Revised Department of Motor Vehicles regulation for the Connecticut I/M Program. Revised subsection (b) of Section 14-164c-11a of the Department of Motor Vehicles regulation concerning emissions repairs expenditure requirement to receive waver.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MA037-01-7211a; A-1-FRL-6891-9]

**Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; New Source Review Revision**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These revisions establish and require the implementation of the 1990 Clean Air Act Amendments (CAAA) requirements regarding New Source Review (NSR) in areas that have not attained the National Ambient Air Quality Standards (NAAQS). In addition, the revisions include other definitions and permitting procedures that make the Massachusetts nonattainment NSR rules consistent with Federal permitting requirements. The intended effect of this action is to approve revisions to 310 CMR 7.00 Appendix A, "Emission Offsets and Nonattainment Review." This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule is effective on December 26, 2000 without further notice, unless EPA receives adverse comment by November 27, 2000. If

adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Steven Rapp, Unit Manager, Air Permits Program, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA New England, One Congress Street, Suite 1100, Boston, MA 02114-2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M-1500, 401 M Street, (Mail Code 6102), S.W., Washington, D.C.; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Brendan McCahill, (617) 918-1652.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 15, 1994, the Massachusetts Department of Environmental Protection (DEP) formally submitted a revision to its State Implementation Plan (SIP) for purposes of meeting the requirements of the Clean Air Act (CAA). The revision consists of changes to Massachusetts' 310 CMR 7.00 Appendix A, "Emission Offsets and Nonattainment Review." The DEP submitted additional changes to 310 CMR 7.00 Appendix A on April

14, 1995. The effect of the revisions is to make the DEP's rules regarding the permitting of new major sources or major modifications in nonattainment areas consistent with CAA requirements. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

*A. General Requirements for Nonattainment NSR Requirements*

The air quality planning requirements for nonattainment NSR are set out in part D of subchapter I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in today's proposal and the supporting rationale.

**Summary of Massachusetts' Regulation**

The general nonattainment NSR requirements are found in sections 172 and 173 of part D of subchapter I of the

Act and must be met by all nonattainment areas. The following paragraphs reference the nonattainment NSR requirements required to be submitted to EPA by November 15, 1992 and explain how Massachusetts' rules meet those requirements.

Massachusetts' existing SIP already contained some of these provisions while others are being approved today.

1. Massachusetts regulation 310 CMR 7.00 appendix A, section (5) (a) & (b), establishes provisions in accordance with section 173(a)(1)(A) of the CAA to assure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of Reasonable Further Progress (RFP).

2. Massachusetts regulation 310 CMR 7.00 appendix A, section (6)(b)1 and 2, establishes provisions in accordance with section 173(c)(1) of the CAA to allow offsets to be obtained in another nonattainment area if: (i) The area has an equal or higher nonattainment classification and, (ii) emissions from the other nonattainment area contribute to an NAAQS violation in the area in which the source would construct.

3. Massachusetts regulation 310 CMR 7.00 appendix A, section (6)(a) and (b), establishes provisions in accordance with sections 173(a) and 173(c)(1) of the CAA that any emissions offsets obtained in conjunction with the issuance of a license to a new or modified source shall be federally enforceable before permit issuance and must be in effect and enforceable by the time the new or modified source commences operation.

4. Massachusetts regulation 310 CMR 7.00 appendix A, section (6)(d), establishes provisions in accordance with section 173(c)(1) of the CAA to assure that emission increases from new or modified sources are offset by real reductions in actual emissions.

5. Massachusetts regulation 310 CMR 7.00 appendix A, section (6)(h), establishes provisions in accordance with section 173(c)(2) of the CAA to prevent emissions reductions otherwise required by the Act from being credited for purposes of satisfying part D offset requirements.

6. The 1990 CAAA modified the Act's provisions on growth allowances in nonattainment areas by (1) eliminating existing growth allowances in the nonattainment area that received a notice prior or subsequent to the Amendments that the SIP was substantially inadequate, and (2) restricting growth allowances to only those portions of nonattainment areas formally targeted as special zones for economic growth (Sections 173(b) and 173(a)(1)(B) of the CAA). Massachusetts' regulations do not contain provisions

for growth allowances and are consequently consistent with the Act.

7. Massachusetts has a practice of supplying information from nonattainment NSR licenses to EPA's RACT/BACT/LAER clearinghouse in accordance with section 173(d) of the CAA.

8. Massachusetts regulation 310 CMR 7.00 appendix A, section (8)(a), establishes provisions, in accordance with section 173(a)(3) of the CAA, to ensure that owners or operators of each proposed new or modified major stationary source demonstrate, as a condition of license issuance, that all other major stationary sources under the same ownership in the State are in compliance with the CAA.

9. Massachusetts regulation 310 CMR 7.00 appendix A, section (8)(b) establishes provisions in accordance with section 173(a)(5) of the CAA that, as a prerequisite to issuing any Part D permit, require an analysis of alternative sites, sizes, production processes and environmental control techniques for proposed sources that demonstrate that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, and modification.

10. Massachusetts regulation 310 CMR 7.00 appendix A, section (8)(c) establishes provisions in accordance with section 173(a)(4) of the CAA that, as a prerequisite to issuing any Part D permit, the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the proposed nonattainment area in which the proposed source is to construct or be modified.

#### *B. General Requirements for Ozone Nonattainment NSR*

EPA is not taking action today on a February 11, 2000 submittal addressing NSR in attainment areas within the Ozone Transport Region (OTR). Because Western Massachusetts is currently designated as a serious nonattainment area, these requirements are not currently relevant there. In addition, as of January 16, 2001, EPA's reinstatement of the one-hour ozone NAAQS in Eastern Massachusetts will be effective and the area will be nonattainment. Consequently, Massachusetts' SIP revisions on the OTR will also not be relevant in the near future in Eastern Massachusetts. Massachusetts is currently applying serious nonattainment NSR requirements to all subject sources statewide. EPA is reviewing the OTR revisions and will take action on them in the near future.

Such action would clearly need to occur before any redesignation to attainment within Massachusetts.

The general nonattainment NSR requirements are found in sections 172 and 173 of part D of subchapter I of the Act and must be met by all nonattainment areas. The requirements for ozone nonattainment areas that supplement or supersede these requirements are found in subpart 2 of part D. In addition to requirements for ozone nonattainment areas, subpart 2 includes section 182(f), which states that requirements for major stationary sources of VOC shall apply to major stationary sources of oxides of nitrogen (NO<sub>x</sub>) unless the Administrator makes certain determinations related to the benefits or contribution of NO<sub>x</sub> control to air quality, ozone attainment, or ozone air quality. States were required under section 182(a)(2)(C) to adopt new NSR rules for ozone nonattainment areas by November 15, 1992.

#### **Summary of Massachusetts' Submittal**

Pursuant to section 172(c)(5) of the CAA, State implementation plans must require permits for the construction and operation of new or modified major stationary sources in nonattainment areas. The federal statutory permit requirements for ozone nonattainment areas are generally contained in revised section 173, and in subpart 2 of subchapter I, part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For all classifications of ozone nonattainment areas, States must adopt the appropriate major source thresholds and offset ratios, and must adopt provisions to ensure that any new or modified major stationary source of NO<sub>x</sub> satisfies the requirements applicable to any major source of VOC, unless a special NO<sub>x</sub> exemption is granted by the Administrator under the provision of section 182(f). For serious and severe ozone nonattainment areas, State plans must implement section 182(c)(6) with regard to modifications of major sources. The Commonwealth of Massachusetts' attainment status is discussed above.

The following paragraphs reference the serious ozone nonattainment requirements that Massachusetts was required to submit to EPA by November 15, 1992 and how Massachusetts has met those requirements.

1. Massachusetts regulation 310 CMR 7.00 appendix A, section (2), definition of "Major Stationary Source," establishes provisions in accordance with the serious nonattainment area requirements provided in sections

182(c) and 182(f) of the CAA, by setting a major source threshold level of 50 TPY for VOC and for NO<sub>x</sub>.

2. Massachusetts regulation 310 CMR 7.00 Appendix A, Section (6)(e), establishes provisions in accordance with sections 183(c)(10) and 182(f) of the CAA, by setting an offset ratio of 1.2 to 1 for major sources or major modifications of VOC or NO<sub>x</sub>.

3. Massachusetts regulation 310 CMR 7.00 Appendix A, Section (2), definition of "Significant," paragraphs (a) and (b), establishes provisions that are consistent with the "De Minimis rule" requirements of section 182(c)(6) of the CAA.

4. Massachusetts regulation 310 CMR 7.00 Appendix A, Sections (3)(e), (f) and (g), establish provisions that are consistent with the special rules for modifications in sections 182(c)(7) and (8) of the CAA.

### C. Miscellaneous Permit Requirements

#### Background

Massachusetts also added or revised definitions and permitting procedures to clarify specific requirements of 310 CMR 7.00 Appendix A and to make the rule consistent with the nonattainment NSR permit requirements set forth in 40 CFR 51.165. The list of the new or revised definitions includes: Actual Emissions; Allowable Emissions; Begin Actual Construction; Building, Structure, Facility or Installation; Clean Coal Technology; Clean Coal Technology Demonstration Project; Coastal Waters; Navigable Rivers and Lakes; Commence; Construction; Corresponding Onshore Area; Electric Utility Steam Generating Unit; Generating unit; Emissions Unit; Energy Input; Fossil Fuel Fired Boiler; Fossil Fuel Fired Electric Plant; Fugitive Emissions; Indian Governing Body; Indian Tribe; Lowest Achievable Emission Rate (LAER); Major Modification; Major Stationary Source; Necessary Preconstruction Approvals or Permits; Net Emissions Increase; Outer Continental Shelf; Outer Continental Shelf Source; Pollution Control Project; Reasonable Further Progress; Repowering; Representative Actual Annual Emissions; Secondary Emissions; Significant; Stationary Source; Temporary Clean Coal Technology Demonstration Project; Nonroad Engine; Nonroad Vehicle; Procedures for Shutdown Credits; Procedures for Source Obligation. For further details concerning the revisions to Massachusetts' 310 CMR 7.00 Appendix A and EPA's evaluation, please refer to the memorandum from Brendan McCahill, Environmental

Engineer, to Steven Rapp, Manager, Air Permits Program entitled, "Technical Support Document—Massachusetts New Source Review Revisions," dated October 18, 2000.

#### Final Action

EPA is approving the revisions to Massachusetts 310 CMR 7.00 Appendix A, "Emission Offsets and Nonattainment Review." The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. These revisions meet the nonattainment area NSR provisions of Part D of the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This action will be effective December 26, 2000 without further notice unless the Agency receives relevant adverse comments by November 27, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 26, 2000 and no further action will be taken on the proposed rule.

#### Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required

by state law, it 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). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency

promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 2000. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: October 19, 2000.

**Mindy S. Lubber,**

*Regional Administrator, EPA-New England.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart W—Massachusetts**

2. Section 52.1120 is amended by adding paragraph (c)(127) to read as follows:

**§ 52.1120 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(127) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on July 15, 1994 and April 14, 1995.

(i) Incorporation by reference.

(A) Massachusetts Amendments to 310 CMR 7.00 Appendix A entitled, "Emission Offsets and Nonattainment Review," effective July 1, 1994.

(B) Massachusetts Amendments to 310 CMR 7.00 Appendix A entitled, "Emission Offsets and Nonattainment Review" paragraph (3)(g) effective July 1, 1994.

(ii) Additional materials.

(A) Letters from the Massachusetts Department of Environmental Protection dated July 15, 1994 and March 29, 1995 submitting revisions to the Massachusetts State Implementation Plan.

For the State of Massachusetts:

3. In § 52.1167 the Table 52.1167 is amended by adding in numerical order a new state citation for "310 CMR 7.00 Appendix A" to read as follows:

**§ 52.1167 EPA-approved Massachusetts State regulations.**

\* \* \* \* \*

TABLE 52.1167.—EPA-APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/subject	Date submitted by state	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
* 310 CMR 7.00: ..... Appendix A .....	* Emission Offsets and Nonattainment Review.	* 7/15/94 and 4/14/95	* 10/27/00	* [Insert <i>FR</i> citation from published date].	* (c)(127) .....	* Approving 1990 CAAA revisions and general NSR permit require- ments
* .....	* .....	* .....	* .....	* .....	* .....	* .....

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-301073; FRL-6751-1]

RIN 2070-AB78

**(N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; Extension of Tolerance for Emergency Exemptions**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for combined residues of the herbicide (N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-N-methylethyl benzenamine moiety in or on wheat grain at 1 part per million (ppm), wheat forage at 10 ppm, wheat hay at 2 ppm, wheat straw at 0.5 ppm, meat, kidney and fat of cattle, goats, horses, hogs, and sheep at 0.05 ppm and meat by-products (other than kidney) of cattle, goats, horses, hogs, and sheep at 0.1 ppm for an additional two-year period.

These tolerances will expire and are revoked on July 31, 2003. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on wheat. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.