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 7.18(17)	Reasonable Available Control Technology.	2/17/93	10/4/02	[Insert *FR* citation from published date].	129	Approves VOC RACT requirements for the eastern Massachusetts ozone nonattainment area. (These requirements were previously approved for the western Massachusetts ozone nonattainment area.)
310 CMR 7.18(17)	Reasonable Available Control Technology.	10/7/99	10/4/02	[Insert *FR* citation from published date].	129	VOC RACT plan approval for Gilette.
310 CMR 7.18(17)	Reasonable Available Control Technology.	10/7/99	10/4/02	[Insert *FR* citation from published date].	129	VOC RACT plan approval for Norton.
310 CMR 7.18(17)	Reasonable Available Control Technology.	4/16/99	10/4/02	[Insert *FR* citation from published date].	129	VOC RACT plan approval for Rex.
310 CMR 7.18(17)	Reasonable Available Control Technology.	4/16/99	10/4/02	[Insert *FR* citation from published date].	129	VOC RACT plan Available for Barnet.
*	*	*	*	*	*	*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MA–075–7209a; A–1–FRL–7374–7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Approval of PM10 State Implementation Plan (SIP) Revisions and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan revision submitted by the Commonwealth of Massachusetts. This revision replaces the standard for total suspended particulates (TSP) with a standard for particulate matter with a mean aerodynamic diameter of 10 microns or less (PM10) as the National Ambient Air Quality Standard for particulates. EPA also proposes to redesignate several areas of the state from ''nonattainment'' for TSP to ''cannot be classified.'' This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule is effective on December 3, 2002, without further notice, unless EPA receives relevant adverse comment by November 4, 2002. If EPA receives any relevant adverse comments, 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, Manager, Air Permits Program Unit (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, EPA-New England, One Congress Street, 11th floor, Boston, MA; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, (617) 918–1655.

SUPPLEMENTARY INFORMATION: On July 25, 1990, the Commonwealth of Massachusetts submitted a formal revision to its State Implementation Plan (SIP). On October 1, 1990, Massachusetts submitted additional information and requested that all areas designated as nonattainment for Total Suspended Particulates (TSP) be redesignated to ''Cannot be Classified.'' The SIP revision consists of changes to Massachusetts Rules 310 CMR 6.04, 7.00, 8.02 and 8.03.

I. Summary of SIP Revision

Why is This Action Necessary?

On July 1, 1987, EPA promulgated revised National Ambient Air Quality Standards (NAAQS) for particulate matter, based upon measurement of particles having a mean aerodynamic diameter of 10 microns or less (PM10) (52 FR 24634). The revised standards replace TSP as the national particulate

standard. In 1990, Massachusetts submitted a SIP revision which adopted the PM10 standard and made other changes in their program to reflect the new PM10 NAAQS. Massachusetts submitted this change as part of a larger package which also contained changes to their New Source Review program. At that time, although some areas in Massachusetts were not in attainment for TSP, no exceedences of the PM10 standard were monitored. Massachusetts has also requested that EPA redesignate these areas to ''cannot be classified.''

What Did Massachusetts Submit?

On July 25, 1990, Massachusetts submitted a formal request for a SIP Revision. This package revised four sections of 310 CMR, specifically 310 CMR 6.04, 7.00, 8.02 and 8.03. Some of these changes made PM10 the particulate standard. Other changes affected the New Source Review program, and EPA will consider them in a separate action. On October 1, 1990, Massachusetts also submitted a formal request to redesignate all TSP nonattainment areas to ''cannot be classified.''

What Specific Changes Is EPA Approving?

EPA is approving changes to these sections of the Code of Massachusetts Rules: 310 CMR 6.04 7.00, 8.02 and 8.03. Specifically, Massachusetts is changing Section 6.04(2) to make PM10 the standard for particulate matter. In Section 7.00, Massachusetts adds definitions of PM10 and PM10 emissions. In Section 8.02, Massachusetts adds a definition of PM10. In Section 8.03, Massachusetts makes PM10 the particulate criteria used to determine air pollution episode alerts and warnings.

What Will These Changes Do?

These changes will make Massachusetts law consistent with the Federal NAAQS. They will eliminate the possibility of using TSP as an outdated ambient air quality standard for particulate matter.

What Is the Redesignation Request?

40 CFR 81.322 lists some areas in Massachusetts as being ''nonattainment'' for TSP. Massachusetts requested to redesignate these areas from ''nonattainment'' to ''cannot be classified.'' Since TSP is no longer a criteria pollutant, this nonattainment designation is no longer meaningful. The areas cannot be redesignated to attainment, since TSP is no longer being measured. All of the areas are in attainment for PM10, but we cannot assume they are also in attainment for TSP. We encourage the states to designate these areas as ''cannot be classified'' to reflect this situation.

Why Does Massachusetts Need the Redesignation Request?

The redesignation will allow Massachusetts to issue permits to new and modified sources under the rules of an attainment area. This will give Massachusetts more flexibility in its New Source Review (NSR) permitting program.

What Is EPA's Rationale for Redesignating a ''Non-attainment'' Area to ''Cannot Be Classified'?

There are multiple reasons for redesignating a ''non-attainment'' area to ''cannot be classified'' in this specific situation. First, Massachusetts no longer monitors for TSP. It has not monitored for TSP since 1989. The Commonwealth currently monitors for PM10 and there is evidence that all areas in the Commonwealth are in attainment for the PM10 NAAQS. Second, although Massachussetts no longer monitors for TSP, the last available TSP monitoring data indicated that Massachusetts was in attainment for TSP. However, in order to be able to redesignate an area to ''attainment,'' an attainment demonstration, which includes at least three years of data indicating that a state is in attainment, is required as part of the plan revision. Since the Commonwealth stopped monitoring for TSP it was never able to gather all the data required to substantiate the change. Therefore, Massachussetts is not able to meet the necessary requirements to redesignate the TSP nonattainment areas to attainment. Since the attainment designation is not an option, the Commonwealth is requesting that all the non-attainment areas be redesignated as ''cannot be classified.''

Clean Air Act section 107(d)(3) sets out the requirements for redesignation of an area. 42 U.S.C. 7407(d)(3). For example, section 107(d)(3)(A) indicates the basis upon which EPA may initiate a redesignation and sections 107(d)(3)(A)–(D), among other things, specify the affected state's role in the designation process, including authority for the state to initiate process. Sections 107(d)(3)(E) and (F) set out restrictions which apply to redesignation of a nonattainment area. Section 107(d)(3)(E) prohibits redesignation of an area from nonattainment to attainment unless five specific conditions are met. As mentioned above, Massachusetts cannot meet these conditions. Section 107(d)(3)(F) of the Act prohibits redesignation of an area from nonattainment to unclassifiable.

Section 107(d)(4)(B) of the Act expressly provides that any designation for particulate matter (measured in terms of TSP) that the Administrator promulgated pursuant to section 107(d) prior to the date of enactment of the 1990 Amendments shall remain in effect for purposes of implementing the maximum allowable concentrations of particulate matter, until the Administrator determines that such designation is no longer necessary.

It is EPA's view that the purpose for the TSP designations found in section 107(d)(4) are based on a congressional intent which is largely different from the purpose for the redesignation requirements found in section 107(d)(3). Section 107(d)(4) indicates that Congress envisioned that EPA would keep the TSP designations for the narrow purpose of implementing the particulate matter increments measured in terms of TSP. Section 107(d)(3) is, in part, directed to limiting redesignations consistent with the the statute's air quality goals by ensuring, for example, that before a nonattainment area is redesignated attainment, the applicable SIP requirements have been implemented and the area attains the applicable NAAQS. These requirements make sense and have force where there are relevant NAAQS in place. However, there are no TSP NAAQS and there is no TSP-directed SIP program. While at this time EPA believes that a TSP designation may be necessary to implement the particulate matter increments, this narrow purpose can be fostered with any designation for TSP. Therefore, EPA believes that it is reasonable to conclude that TSP redesignations are not subject to the section 107(d)(3) requirements. Thus, among other things, an area could be redesignated from nonattainment to cannot be classified for TSP. Under these very limited circumstances, EPA has stated that on or after the date it approves a state's PM–10 SIP, it encourages and will approve state requests to redesignate TSP nonattainment areas to cannot be classified (52 FR 24670).

Since TSP was replaced by PM10 as a criteria pollutant, the redesignation of the specified areas will benefit Massachusetts as it continues to monitor criteria pollutants and issue permits to new and modified sources under the current federal standards. Ultimately, the redesignations will have a beneficial effect on the air quality of Massachusetts.

Is This Action Affected by the Decision in American Trucking Assoc. v. U.S. EPA?

This action is not affected by the court's decision in *American Trucking Assoc.* v. *U.S. EPA,* 175 F.3d 1027 (D.C. Cir.1999) (''American Trucking''), *recv'd on other grounds,* 531 U.S. 457 (2001). This action is based on the original PM10 NAAQS promulgated in 1987. The American Trucking decision questions EPA's revised NAAQS introducing the PM2.5 (PM fine) standard. With regards to the relevant PM10 standard, the court stated that the record contains sufficient evidence to justify the Agency's decision to regulate coarse particle pollution: The relationship between PM 10 pollution and adverse health effects justifying the 1987 NAAQS is well established.

Did Massachusetts Request Other Changes to 310 CMR 7.00?

Massachusetts requested several changes to their New Source Review program at the same time they made this request. The EPA will address the other changes in another **Federal Register** package.

II. Final Action

EPA is approving revisions to 310 CMR 6.04, 7.00, 8.02, and 8.03 and is redesignating all areas in Massachusetts currently designated as nonattainment for TSP to ''Cannot be Classified.'' 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. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

The EPA is publishing this action 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 rule will be effective December 3, 2002, without further notice unless the Agency receives relevant adverse comments by November 4, 2002.

If the EPA receives such comments, then EPA will publish a notice 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 on the proposed rule. Parties interested in commenting on the proposed rule should do so at this time. If EPA receives no such comments, the public is advised that this rule will be effective on December 3, 2002, and the Agency will take no further action on the proposed rule. Furthermore, please note that if EPA receives relevant 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 a relevant adverse comment.

III. 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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). 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 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 ''Protection of Children from Environmental Health Risks and Safety Risks'' (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. 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. 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. 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 3, 2002. 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks.

Dated: August 29, 2002.

Robert W. Varney,

Regional Administrator.

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)(120) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(120) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on July 25, 1990.

(i) Incorporation by reference.

(A) 310 CMR 6.04, 7.00, and 8.02 and 8.03 (August 17, 1990).

* * * * *

3. In § 52.1167 Table 52.1167 is amended by adding new entries to existing state citations for 310 CMR 6.04, 7.00, 8.02, and 8.03; 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 6.04	Standards	7/25/90	10/04/02	[Insert *FR* citation from published date].	120	Adopt PM10 as the criteria pollutant for particulates.
310 CMR 7.00	Definitions	7/25/90	10/04/02	[Insert *FR* citation from published date].	120	Add a definition of PM10.
*	*	*	*	*	*	*
310 CMR 8.02	Definitions	7/25/90	10/04/02	[Insert *FR* citation from published date].	120	Add a definition of PM10.
310 CMR 8.03	Criteria	7/25/90	10/04/02	[Insert *FR* citation from published date].	120	Make PM10 the particulate criteria for determining emergeny episodes.
*	*	*	*	*	*	*

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

2. Section 81.322 is amended by revising the table for Massachusetts TSP to read as follows:

§ 81.322 Massachusetts.

MASSACHUSETTS—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Berkshire AQCR:				
Adams			x	
North Adams			x	
Pittsfield			x	
All other cities and towns				x
Central Massachusetts AQCR:				

MASSACHUSETTS—TSP—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Worcester			x	
Athol			x	
Gardner			x	
Gratton			x	
Leominster			x	
Millbury			x	
Shrewsbury			x	
All other cities and towns				x
Merrimack Valley AQCR:				
Haverhill			x	
Lawrence			x	
All other cities and towns				x
Pioneer Valley AQCR:				
Springfiled			x	
Chicopee			x	
Holyoke			x	
Northampton			x	
South Hadley			x	
West Springfiled			x	
All other cities and towns				x
Southeastern Massachusetts AQCR:				
Fall River			x	
Attleboro			x	
New Bedford			x	
Taunton			x	
All other cities and towns				x
Metropolitan Boston AQCR:				
Topsfield			x	
Wakefield			x	
Walpole			x	
Watertown			x	
Wayland			x	
Wellesley			x	
Wenham			x	
Weston			x	
Westwood			x	
Weymouth			x	
Winchester			x	
Winthrop			x	
Boston			x	
Danvers			x	
Cambridge			x	
Framingham			x	
Lynn			x	
Marblehead			x	
Norwood			x	
Medford			x	
Peabody			x	
Quincy			x	
Revere			x	
Swampscott			x	
Waltham			x	
Arlington			x	
Belmont			x	
Beverly			x	
Braintree			x	
Brockton			x	
Brookline			x	
Canton			x	
Chelsa			x	
Dedham			x	
Everett			x	
Malden			x	
Marlborough			x	
Melrose			x	
Middletown			x	
Milton			x	
Natick			x	
Needham			x	

MASSACHUSETTS—TSP—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Newton			x	
Salem			x	
Saugus			x	
Somerville			x	
Southborough			x	
Stonehamd			x	
All other cities and towns				x

* * * * *

[FR Doc. 02–25154 Filed 10–3–02; 8:45 am]

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COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Part 1518

RIN 0331–ZA00

Office of Environmental Quality Management Fund

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Final rule.

SUMMARY: In 1984, the Environmental Quality Improvement Act was amended to establish an Office of Environmental Quality Management Fund (OEQ Management Fund) for the purpose of financing interagency policy development studies and projects. In accordance with that statute, the Director of the Office of Environmental Quality promulgates the following policies and procedures for operation of the OEQ Management Fund.

DATES: Effective September 25, 2002.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. Telephone: (202) 395–7421.

SUPPLEMENTARY INFORMATION: The Environmental Quality Improvement Act, as amended (Pub. L. 91–224, Title II, April 3, 1970; Pub. L. 97–258, September 13, 1982; and Pub. L. 98–581, October 30, 1984) establishes an Office of Environmental Quality Management Fund (OEQ Management Fund) to receive advance payments from other agencies or accounts that may be used solely to finance (1) study contracts that are jointly sponsored by the Office of Environmental Quality and one or more federal agencies and (2) federal interagency environmental projects (including task forces) in which the Office participates. 42 U.S.C. 4375. The Director of the Office of Environmental Quality (OEQ) is required to promulgate regulations setting forth policies and procedures for operation of the OEQ Management Fund. 42 U.S.C. 4375(c). The OEQ Director adopted policies and procedures for operation of the OEQ Management Fund in January of 1985. These policies and procedures have been revised to provide for the development and implementation of interagency agreements to assist the OEQ's oversight and administration of the Management Fund. In accordance with the Environmental Quality Improvement Act, these policies and procedures are hereby promulgated as regulations. Because these regulations are related solely to agency management, their promulgation is not subject to notice and comment in accordance with 5 U.S.C. 553(a)(2).

The OEQ considers this rule to be a procedural rule which is exempt from notice-and-comment under 5 U.S.C. 533(b)(3)(A).

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

List of Subjects in 40 CFR Part 1518

Accounting, Administrative practice and procedure, Environmental impact statements and Environmental Quality Office.

For the reasons stated in the preamble, add part 1518 of title 40 of the Code of Federal Regulations to read as follows:

PART 1518—OFFICE OF ENVIRONMENTAL QUALITY MANAGEMENT FUND

Sec.

Authority: 42 U.S.C. 4375(c).

§ 1518.1 Purpose.

The purpose of the OEQ Management Fund is to finance:

(a) Study contracts that are jointly sponsored by OEQ and one or more other Federal agency; and

(b) Federal interagency environmental projects (including task forces) in which OEQ participates. *See* 42 U.S.C. 4375(a).

§ 1518.2 Definitions.

(a) *Advance Payment:* Amount of money prepaid pursuant to statutory authorization in contemplation of the later receipt of goods, services, or other assets.

(b) *Director:* The Director of the Office of Environmental Quality. The Environmental Quality Improvement Act specifies that the Chairman of the Council on Environmental quality shall serve as the Director of OEQ. 42 U.S.C. 4372(a).

(c) *OEQ Management Fund (''Fund''):* The Management Fund for the Office of Environmental Quality.

(d) *Interagency Agreement:* A document jointly executed by OEQ and another agency or agencies, which sets forth the details of a joint study or project and the funding arrangements for such a study or project.

(e) *Project Officer:* The Council on Environmental Quality staff member charged with day-to-day supervision of an OEQ Management Fund study or project.