Office did not believe it would be prudent to change the requirements for section 304 notices of termination on such short notice, that proposed amendment was not included in the interim rule. It is included in this final rule.

The comment period for the notice of proposed rulemaking has closed and the Office has received no comments. For that reason, and for the reasons outlined in the Notice of Proposed Rulemaking, the Office has decided to adopt, as a final rule, the December 23 Interim Rule, with the change proposed on December 20.

The entire text of § 201.10, as amended, may be found on the Copyright Office Web site at *http://www.copyright.gov/docs/203.html.*

List of Subjects in 37 CFR Part 201

Copyright.

Final Regulation

■ In consideration of the foregoing, the Copyright Office adopts the interim rule published on December 23, 2002 (67 FR 78176) as final, with the following change:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Section 201.10 is amended in paragraph (b)(1)(i), by removing ''If the termination is made under section 304(d), a statement to that effect;'' and adding, in its place, ''Whether the termination is made under section 304(c) or under section 304(d);''.

Dated: March 25, 2003.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 03–8540 Filed 4–7–03; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–088–7216a; A–1–FRL–74662]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendment to 310 CMR 7.06, Visible Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. On August 9, 2001, the Massachusetts Department of Environmental Protection (MA DEP) formally submitted a SIP revision containing multiple revisions to the State Regulations for the Control of Air Pollution. In today's action EPA is conditionally approving one portion of these rule revisions, 310 CMR 7.06 (1)(c), into the Massachusetts SIP. This conditional approval is based on a commitment by MA DEP to submit a revised regulation by one year from today. If Massachusetts fails to submit the required revisions within one year, then this final conditional approval will be converted to a disapproval. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective June 9, 2003, unless EPA receives adverse comments by May 8, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, 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 Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Butensky, Environmental Planner, (617) 918–1665; *butensky.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 9, 2001, the MA DEP submitted a formal revision to the State Implementation Plan (SIP). This SIP revision consists of amendments to several sections of the Massachusetts Regulations for the Control of Air Pollution. Today's action conditional approves one section of this submittal, 310 CMR 7.06(1)(c) of the Massachusetts ''Visible Emissions'' regulation.

A. What Are Visible Emissions?

Visible emissions, also known as ''opacity,'' is a measure of the density of smoke being emitted from a particular source. The more dense and dark the emissions from a source appear, the higher the opacity. in general, higher opacity is equivalent to higher emissions of particulate matter. States have developed and implemented rules for certain sources of particulate matter designed to measure and control the level of opacity emitted from smokestack or vents, thereby controlling the amount of particular matter released into the ambient air.

B. What Does the Current Visible Emissions Rule in Massachusetts Require?

Massachusetts rule section 310 CMR 7.06 provides specific requirements for visible emissions. Section 310 CMR 7.06(1) of the existing visible emissions rule applies to stationary sources other than incinerators. Section 310 CMR 7.06(1)(a) states that ''no person shall cause, suffer, allow, or permit the emissions of smoke which has a shade, density, or appearance equal to or greater than No. 1 of the [Ringleman] chart for a period, or aggregate period of time in excess of six minutes during any one hour period, provided that at no time during the said six minutes the shade, density, or appearance be equal to or greater than No. 2 of the [Ringleman] chart.'' Furthermore, section 310 CMR 7.06(1)(b) goes on to state that ''No person shall cause, suffer, allow, or permit the operation of a facility so as to emit contaminant(s), exclusive of uncombined water or smoke subject to 310 CMR 7.06(1)(a) of such opacity which, in the opinion of the Department, could be reasonably controlled through the application of modern technology of control and a good Standard Operating Procedure, and in no case, shall exceed 20% opacity for a period or aggregate period of time in excess of two minutes during any one hour provided that, at no time during the said two minutes shall the opacity exceed 40%.''

C. What Amendments Did Massachusetts Submit to Their Visible Emissions Rule?

On August 9, 2001, the MA DEP submitted to EPA amendments to the Massachusetts Regulations for the Control of Air Pollution. This submittal included revisions to several regulatory sections. However, today's action only applies to the revisions made to section 310 CMR 7.06, entitled ''Visible Emissions.'' The revisions of this section will allow a facility subject to a Title V operating permit to operate under alternative opacity emission standards for certain boilers, provided the facility develops a plan outlining the practices it will utilize during certain operating conditions (*e.g.,* start up, shut down, *etc.*).

Specifically, a new section 310 CMR 7.06(1)(c) allows facilities subject to Title V operating permits to comply with a visible emissions limitation not to exceed 15 percent opacity for boilers rated less than 500 BTU input capacity. To operate in accordance with the exception, a facility must notify the MA DEP and submit a plan describing practices for operating and maintaining the equipment to minimize emissions during soot blowing, startup, shut down, burner change, and malfunction. In addition, the plan must also include corrective action procedures. An exceedance of the visible emission limitation would not be deemed a violation provided the facility could demonstrate that it was operating in accordance with the plan at the time of the exceedance. In addition, MA DEP can disallow a facility from operating pursuant to this exception if the plan is inadequate or a condition of air pollution exists. Finally, any facility operating pursuant to this exception must notify the MA DEP within 24 hours or the next business day of any malfunction which causes an exceedance of the allowed visible emissions requirements for greater than a 12 minute period.

D. What Concerns Does EPA Have With the Existing Amendments?

EPA has concluded that 310 CMR 7.06 (1)(c) contains several deficiencies that must be addressed by the MA DEP. First, there is no apparent cap on opacity during start up and shut down operations. In addition, the revised rule does not explicitly provide an averaging period by over which opacity should be measured. Furthermore, there is no explicit criteria in the regulation stating how the MA DEP will judge the plan of good operating practices required to be submitted by facilities taking advantage of the exception in 310 CMR 7.06(c). Lastly, there are no provisions to make the good operating practices outlined in a facility's plan enforceable. If the operating practices are not made enforceable, then neither EPA nor citizens will be able to enforce against a facility violating its opacity limitation.

E. What Changes Has Massachusetts Committed To Make to the Rule?

In a letter from the MA DEP dated September 12, 2002, MA DEP has committed to submit, within one year from today, revisions to section 7.06 (1)(c). In its September 12, 2002 letter, MA DEP included to specific regulatory language that it intends to adopt to address EPA concerns. The amendments the MA DEP has committed to make to the rule include adding a 27% opacity limitation to apply during startup, shut down, soot blowing and other limited periods as specified in the plan of good operating practices approved by the MA DEP. MA DEP has also committed to explicitly include a six minute averaging period in the rule.

Massachusetts has also committed to add explicit criteria in the regulation stating how the MA DEP will judge the plan of good operating practices required to be submitted by facilities taking advantage of the alternative opacity limitation. Lastly, Massachusetts has also committed to add provisions to the rule specifying how the good operating practices and visible emission limitations outlined in a facility's plan will be made enforceable. These will address all of the concerns raised by EPA.

II. Final Action

EPA is conditionally approving 310 CMR 7.06(1)(c) of the SIP revision submitted by the Massachusetts Department of Environmental Protection on August 9, 2001 as a revision to the SIP. The State must submit to EPA by one year from today a revised regulation addressing the concerns outlined in this action. If the State fails to do so, this approval will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this regulation will no longer be a part of the approved Massachusetts SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment within the applicable time frame, the conditionally approved regulation will remain a part of the SIP until EPA takes final action approving or disapproving the new regulation. If EPA disapproves the new submittal, the conditional approval will also be disapproved at that time. If EPA approves the submittal, the regulation will be fully approved in its entirety and replace the conditionally approved regulation in the SIP.

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 June 9, 2003 without further notice unless the Agency receives relevant adverse comments by May 8, 2003.

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. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 9, 2003 and no further action will be taken on the proposed rule.

III. Regulatory Assessment 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 (Public Law 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 June 9, 2003. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 21, 2003.

Robert W. Varney,

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 52.1119 is amended by adding paragraph (a)(3) to read as follows:

§ 52.1119 Identification of plan.

* * * * *

(a) * * *

(3) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection dated August 9, 2001.

(i) Incorporation by reference.

(A) Revisions to the Massachusetts Regulations for the Control of Air Pollution, section 310 CMR 7.06 (1)(c), dated August 3, 2001.

(ii) Additional materials:

(A) Letter from the Massachusetts Department of Environmental Protection dated September 12, 2002 submitting a commitment to revise section 310 CMR 7.06 (1)(c) of Massachusetts State Implementation Plan by one year from today.

■ 3. In § 52.1167 Table 52.1167 is amended by adding new entries to existing state citations and by adding new state citations 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 7.06(1)(c)	Visible Emissions	8/9/01	[Insert date of publication].	[Insert *FR* citation from published date].	None	Conditional approval at 52.1119(a)(3).
*	*	*	*	*	*	*

[FR Doc. 03–8359 Filed 4–7–03; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 25, 74, 78, and 101

[IB Docket No. 98–172, FCC 02–317]

Redesignation of the 17.7–19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7–20.2 GHz and 27.5–30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3–17.8 GHz and 24.75–25.25 GHz Frequency Bands for Broadcast Satellite-Service Use

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document alters the 18 GHz band plan, blanket licensing rules, and relocation rules adopted in a previous First Order on Reconsideration in this proceeding released in 2001. This document changes certain rules in light of the increased number of frequency spectrum options the Commission has recently made available to certain licensees. The rule changes will remove unnecessary burdens on the public and the agency.

DATES: Effective May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration, FCC 02–317, released on November 26, 2002. The full texts of the documents are available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The documents are also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-317.* The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, Telephone: 202–863–2893, Fax: 202–863–2898, e-mail *qualexint@aol.com.*

Summary of Report and Order

1. On June 8, 2000, the Commission adopted a Report and Order in this proceeding (18 GHz Order) 65 FR 54155, September 7, 2000 which, among other things, concluded that terrestrial fixed service (FS) and ubiquitously deployed fixed-satellite service (FSS) earth stations generally could not share the same 18 GHz spectrum. Thus, in the 18 GHz Order, the Commission separated most terrestrial FS operations from most FSS operations by allocating separate sub-bands to each service; however, the Commission retained co-primary allocations for geostationary orbiting (GSO) FSS and FS operations in the 18.3–18.58 GHz band.

2. In response to the original 18 GHz Order, we received petitions for reconsideration from several parties, including Hughes Electronics Corporation (Hughes), a proponent of GSO FSS operations. On November 1, 2001, we released a First Order on Reconsideration 66 FR 63512, December 7, 2000 in this proceeding that resolved many of the petitioners' concerns. We deferred action, however, on two elements of Hughes' petition: (1) That we reconsider the co-primary allocation for FS in the 18.3–18.58 GHz band; and (2) that we permit blanket licensing of earth stations receiving in certain portions of the 18 GHz band.

3. Shortly after the Commission adopted the First Order on Reconsideration, the United States Circuit Court of Appeals for the D.C. Circuit issued an order rejecting a separate challenge to the 18 GHz Order from another FSS licensee in the 18 GHz band. In December 2001, the D.C. Circuit rejected those elements of the appeal not rendered moot by our First Order on Reconsideration. Concluding that the Commission's 18 GHz Order was entitled to the heightened degree of deference traditionally accorded decisions regarding spectrum management, the D.C. Circuit upheld the relocation policies and procedures adopted in the 18 GHz Order that had been challenged.

4. Since that time, the Commission has expanded the eligibility requirements to enable the vast majority of FS operators in the 18.3–18.58 GHz band to access other spectrum. On May 16, 2002, the Commission adopted the CARS Eligibility Order 67 FR 43257, June 27, 2002, which permitted all multichannel video programming distributors (MVPDs) to become eligible for Cable Television Relay Service (CARS) licenses in the 12.7–13.2 GHz and 17.7–18.3 GHz bands. Lifting eligibility restrictions on licenses in the 12.7–13.2 GHz and 17.7–18.3 GHz bands reversed a longstanding Commission policy that had allowed franchised cable systems and wireless cable systems to become CARS licensees, but denied the same opportunity to non-eligible competitors to traditional cable systems, such as private cable operators (PCOs), which are dependent on the 18 GHz band. MVPD licensees who operate in the 18.3–18.58 GHz band are, following adoption of the CARS Eligibility Order, generally eligible for licenses in these alternative CARS bands.

5. In this Order, the Commission alters the 18 GHz band plan to make the FSS the sole primary spectrum allocation in the 18.3–18.58 GHz band. This action recognizes the Commission's recent decision to make additional spectrum available to current, co-primary users of the 18.3–18.58 GHz band. This Order also permits the blanket licensing of GSO FSS facilities in the 18.3–18.58 GHz and 29.25–29.5 GHz bands, and—consistent with the band clearing procedures that have been adopted in other proceedings—this Order adopts provisions designed to ensure the orderly migration and timely reimbursement of terrestrial FS incumbents in the 18.3–18.58 GHz band. These changes to our rules will help promote the efficient use of spectrum for existing and future users.

6. Finally, this Order denies a Petition for Reconsideration of the First Order on Reconsideration filed by the Satellite Industry Association (SIA). SIA questions the Commission's relocation procedures and one-year testing period upon relocation set forth in the First Order on Reconsideration. In the Order, the Commission declined to depart from precedent and stated that the relocation procedures and one-year testing period have been adequately justified and alternatives adequately explored in light of the Commission's overall spectrum management goals.

7. On January 27, 2003, the Commission released an erratum to this Order. The erratum corrects omissions in the rule changes proposed in the Order. The final rules contain the omissions.

Procedural Matters

8. *Paperwork Reduction Act.* The rules adopted in this Second Order on Reconsideration involve no reporting requirements, and it is likely no additional outside professional skills will be necessary to comply with the rules and requirements here listed.

9. *Final Regulatory Flexibility Certification.* As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the 18 GHz NPRM (63 FR 54100, October 8, 1998). The Commission sought written public