III. USEPA Action

The USEPA is approving the transportation conformity SIP revision for the State of Michigan. The USEPA has evaluated this SIP revision and has determined that the State has fully adopted the provisions of the Federal transportation conformity rules in accordance with 40 CFR part 51 subpart T. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this SIP revision. Because USEPA considers this action to be noncontroversial and routine, USEPA is approving it without prior proposal. This action will become effective on April 15, 1996. However, if we receive adverse comments by March 15, 1996, USEPA will publish a notice that withdraws this action.

IV. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 1996. 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, Intergovernmental relations, Ozone, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: January 23, 1996.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

Subpart X—Michigan

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

Authority: 42 U.S.C 7401–7671q.

2. Section 52.1174 is amended by adding paragraph (m) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(m) Approval—On November 24, 1994, the Michigan Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a plan for the implementation and enforcement of the Federal transportation conformity requirements at the State or local level in accordance with 40 CFR part 51 subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

3. Section 52.1185 is added to read as follows:

§ 52.1185 Control strategy: Carbon Monoxide.

(a) Approval—On November 24, 1994, the Michigan Department of Natural Resources submitted a revision to the carbon monoxide State Implementation Plan. The submittal pertained to a plan for the implementation and enforcement of the Federal transportation conformity requirements at the State or local level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

(b) (reserved).

[FR Doc. 96–3328 Filed 2–13–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MA42–1–7174a; A–1–FRL–5329–5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Automotive Refinishing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes VOC emission standards for automotive refinishing. The intended effect of this action is to approve a revision to Massachusetts SIP which reduces VOC emissions from automotive refinishing. This action is being taken in accordance with Section 183(e) of the Clean Air Act.

DATES: This action is effective April 15, 1996, unless notice is received by March 15, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy, Office of Ecosystems Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystems Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW. (LE–131), Washington, D.C. 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 565–3246.

SUPPLEMENTARY INFORMATION: Under section 183(a) of the Clean Air Act, EPA was required to issue a control techniques guideline (CTG) for the category of autobody refinishing. However, EPA has instead issued guidance for this category in the form of an Alternative Control Technology (ACT) guideline. While the ACT does not define reasonably available control technology (RACT) standards for autobody refinishing, it does include three control options with estimates of costs and emission reductions for each option. In addition to the section 183(a) requirements, Section 183(e) of the CAA, requires EPA to issue national VOC emissions standards for consumer and commercial products, which include automotive refinishing coatings. EPA expects to propose the national rule for automotive refinishing coatings in the fall of 1995. Massachusetts decided to adopt rules for autobody refinishing in advance of a federal rule, to get credit for reductions from this category in its 15% plan.

Massachusetts was required to submit, by November 15, 1993, a SIP revision for Reasonable Further Progress (RFP) for 15% reduction of VOCs as necessary for moderate areas and above. The entire state of Massachusetts is classified as serious nonattainment area, therefore the 15% plan must cover the entire state.

On August 18, 1994, the Massachusetts DEP submitted to EPA for comment, proposed amendments to the SIP to address the RFP requirements including new air pollution control regulations 7.18(28) ''autobody refinishing.'' Massachusetts held public hearings during May 6–13, 1994 and on September 22 and 23, 1994 throughout the State for its proposed automotive refinishing rule. EPA submitted written comments regarding the proposed regulations on September 22, 1994. The rule was effective on December 16, 1994, upon publication in the Massachusetts Register.

On January 9, 1995, the Commonwealth of Massachusetts submitted a formal revision to its State Implementation Plan (SIP). The SIP revision amends 310 CMR 7.00 by adding Section 310 CMR 7.18(28) autobody refinishing.

The adopted regulation 310 CMR 7.18(28), ''autobody refinishing,'' regulates the VOC content of automotive refinishing products. The regulation applies to any person who sells, offers for sale, or manufactures autobody refinishing coatings for sale within Massachusetts or who owns, leases, operates or controls an automotive refinishing facility.

Summary of SIP Revision

The adopted air pollution control regulation , 310 CMR 7.18(28) ''autobody refinishing'', establishes Reasonably Available Control Technology for all automobile refinishing facilities. Automotive Refinishing facility'' is defined by Massachusetts as ''any facility at which the interior or exterior bodies of automobiles, motorcycles, light/medium-duty trucks, or vans are painted. Refinishing of aftermarket vehicles and new vehicles damaged in transit before their initial sale are included under this definition.'' The rule established the following RACT emission limits, expressed as pounds of VOC per gallon of coating and grams of VOC per liter of coating, excluding water and exempt solvents:

TABLE 7.18(28)(c).—RACT EMISSION LIMITATIONS FOR AUTOMOTIVE REFINISHING PRODUCTS

Coating type	VOC Emission limitation	
	grams/liter	lbs/gal
Pretreatment Wash Primer	780	6.5
Primer/primer Surfacer	575	4.8
Primer Sealer	550	4.6
Topcoat	600	5.0
Three or Four-Stage Topcoat	620	5.2
Specialty Coating	840	7.0

The rule gives facilities the option of complying through the use of compliant coatings, or by installing emission control systems that result in VOC emissions less than or equal to the limits specified in Table 7.18(28)(c). The rule also contains the following provisions:

1. *Good housekeeping Requirements* to minimize solvent evaporation);

2. *Equipment Requirements* that specify the use of High volume Low Pressure spray equipment and require spray gun cleaning and solvent storage in a manner that limit solvent evaporation; and

3. *Training, recordkeeping, reporting, biennial compliance certification requirements.*

Facilities are required to comply with the regulation by August 1, 1995.

EPA's evaluation is detailed in a memorandum, entitled ''Technical Support Document for Massachusetts Air Pollution Control Regulation, 310 CMR 7.18(28), Automotive Refinishing.''

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 15, 1996 unless adverse or critical comments are received by March 15, 1996.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are

received, the public is advised that this action will be effective on April 15, 1996.

Final Action

EPA is approving Section 310 CMR 7.18(28) Automotive refinishing.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 183(e) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables.

The OMB has exempted this action from review under Executive Order 12866.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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 April 15, 1996. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 6, 1995.

John P. DeVillars,

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. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(109) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(109) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on January 9, 1995.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection, dated January 9, 1995, submitting a revision to the Massachusetts State Implementation Plan.

(B) The following portions of the Rules Governing the Control of Air Pollution for the Commonwealth of Massachusetts effective on December 16, 1994: 310 Code of Massachusetts Regulations Section 7.18(28) Automotive Refinishing.

3. In § 52.1167 Table 52.1167 is amended by adding and new entry (28) to the end of entry 310 CMR 718 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 7.18(28) .	Automotive Refinishing.	01/09/95	February 14, 1996	Supply Page	109	Reasonably Available Control Technology Requirement (RACT) for automotive refinishing.
*	*	*	*	*	*	*

[FR Doc. 96–3237 Filed 2–13–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[NE–9–1–7220a; FRL–5409–6]

Approval and Promulgation of Implementation Plans and Approval of 112(l) Authority; Lincoln-Lancaster County Health Department (LLCHD) and City of Omaha (Nebraska)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final action approves the State Implementation Plan (SIP) submitted by the state of Nebraska on behalf of the two local air pollution control agencies. The state has an approved program (published in the Federal Register on January 4, 1995), and the local agencies have adopted the same regulatory framework in order to issue Federally enforceable Class II permits. This request is sound, since the local agencies will administer independent Title V programs and should also offer relevant sources the alternative Class II permits. Furthermore, all applicable sources in the state (and in the local agencies' jurisdiction) are already subject to the requirements of the Class II operating permit program. Therefore, the only practical change created by this SIP revision for sources in Omaha or Lincoln-Lancaster County is that these Class II permits will be issued by the local agencies instead of the state.

This revision includes the creation of a Class II operating permit program and adopts the state's Part D (nonattainment) new source review rule changes, SO_2 rule corrections, and provisions for compliance and enforcement information. These revisions are identical to those adopted by the state and have been approved by EPA in the January 4, 1995 Federal Register. The EPA's rationale for that approval is contained in the cited Federal Register document and in the ''Technical Support Document (TSD) for a Revision to the Nebraska SIP and Request for Approval under Section 112(l)'' dated August 12, 1994, which is also part of the rationale for this approval.

The creation of a Class II operating permit program enables the local agencies, like the state, to have a Federally enforceable program for sources not covered by the requirements for Title V sources under the Clean Air Act Amendments of 1990 and part 70 of the Code of Federal Regulations (CFR), and for sources not subject to Title V because they are able to obtain a Class II permit.

DATES: This action is effective April 15, 1996 unless by March 15, 1996 adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: In February 1994, the state of Nebraska submitted an SIP revision to create a Class II operating permit program for sources not otherwise subject to Title V which became effective on March 6, 1995. Thereafter, the two local agencies adopted the state's regulations in order to create Class II operating permit programs in their respective jurisdictions as well.

Specifically, the LLCHD has used Title 129 (Nebraska's Air Quality Regulations) to create the ''Lincoln-Lancaster County Air Pollution Control Program'' (adopted May 16, 1995), but uses a different reference system (article and section) instead of Title 129's system of chapter and section. Nevertheless, the content of the local program rules as it applies to operating permits is identical to Title 129. The city of Omaha has incorporated the state's regulation by reference (adopted March 23, 1995).

Following the adoption of these rules, the state submitted a request on May 31, 1995, on behalf of LLCHD to completely replace the LLCHD portion of the SIP with the regulations cited above to create a Federally enforceable Class II program. On June 2, 1995, the state submitted a similar request on behalf of the city of Omaha for the same purpose. The state has also requested approval of these programs pursuant to section 112(l) of the Act, which governs state programs for regulation of hazardous air pollutants (HAP).

Since the local agencies use the same regulatory basis as the state's, and this revision merely enables the local agencies to administer the requirements that sources in their jurisdictions are already subject to, this notice does not duplicate the topics addressed at 60 FR 372–375 published in the Federal Register on January 4, 1995. The reader may consult that notice for a review of the provisions for which the EPA has already provided analysis and determined approvability. In summary, EPA reviewed the state, and subsequently the local, Class II programs to determine if they are consistent with the guidance for approval of Federally enforceable state operating permit programs (54 FR 27281, June 28, 1989). EPA determined that the state program is consistent with that guidance, and has now determined that the local programs meet the guidance as well.

Furthermore, the reader may request the TSD for a revision to the Nebraska SIP and request for approval under section 112(l) dated August 12, 1994, for a complete and thorough discussion of the revision as it relates to the state Class II program. The reader may also request the TSD for a revision to the Nebraska SIP creating a Class II Operating Permit Program for the city of Omaha and LLCHD dated September 1, 1995. These documents are available at