

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.
*	*	*	*	*	*	*

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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, SO₂ 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

the locations stated in the **ADDRESSES** section of this document.

Approval of 112(l) Authority

The state has also requested that the local agencies' operating permits program be approved pursuant to section 112(l) of the Act. By approving the program under this provision, the local agencies may impose requirements for HAPs which are subject to EPA enforcement under the Clean Air Act (CAA). One effect of this rule is that limitations on potential-to-emit hazardous pollutants, issued in accordance with the approved program will be recognized as Federally enforceable by EPA. Thus, sources may voluntarily restrict their potential emissions of HAPs and be issued a Class II permit to avoid the more extensive requirements of Title V.

In order to receive approval, the programs must meet specific criteria for approval under 112(l) which include:

1. Adequate authority within the program to ensure compliance by all sources with each applicable standard, regulation, or requirement established by the Administrator. As part of the state's submittal to create the Class II program, an Attorney General's statement was provided which ensures necessary legal authority and compliance by all sources within the state. The local agencies have also provided statements of adequate authority from their legal counsels.

2. Adequate authority to implement the program. As part of the state's SIP revision, appropriate copies of state statutes, regulations, and other requirements which contain the relevant provisions demonstrating authority to implement and enforce the state rule upon approval have been submitted to the EPA and deemed approvable. The local agencies have also submitted provisions which demonstrate adequate authority to implement the program.

3. Adequate resources to implement the program. Both local agencies have committed to provide adequate resources in resource demonstrations that comprehensively address requirements of the Title V and SIP-based operating permit programs which is inclusive of 112(l) requirements.

4. An expeditious schedule for implementing the program and ensuring compliance by the affected sources. Class II permit applications are due within 12 months of the effective date of the regulations (May 1995).

Based on the review described above, the EPA is approving the Class II operating permit program for the control of air toxics that allow sources to limit

their potential to emit of HAPs under section 112(l) of the Act.

Prevention of Significant Deterioration (PSD)

Although the local agencies' adoption of the state's rules include PSD regulations, the EPA herein notes that only the state program includes an approved part 51 program to issue PSD permits. As part of the Class II program, the local agencies will act as agents of the state to administer and enforce requirements applicable under PSD, although only the state will actually issue these permits.

Variations

Both local agencies have the authority to issue a variance from requirements imposed by state or local law based on Nebraska Revised Statute § 81-1513.

However, the EPA has no authority to approve provisions of state and local authority, such as the variance provisions, which are inconsistent with the Act. Thus, any proposed variance must be submitted as a request for a revision to the SIP.

Furthermore, the EPA reserves the right to enforce provisions of the Act where the permitting authority purports to grant relief in a manner inconsistent with the requirements of the Act.

EPA Action

EPA is taking final action to approve revisions submitted May 31 and June 2, 1995, for the LLCHD and city of Omaha, respectively. All revisions discussed in this notice are considered approvable by the EPA. This action also approves the revisions under section 112(l) of the Act for these local programs.

This action does not include several requirements unique to the local programs, such as the regulation of odors, which do not address CAA requirements. These excluded portions are specified in the TSD for this action, dated September 1, 1995.

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 a separate document in the Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document 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.

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

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.

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, EPA certifies 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)).

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.

Unfunded Mandates

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 SIP revision, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions, and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law.

Accordingly, no additional costs to state or local governments, or to the private sector, result from this final 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 or local governments in the aggregate or to the private sector.

Under section 307(b)(1) of the CAA, 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 7, 1995.
William Rice,
Acting Regional Administrator.

Part 52, 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 CC—Nebraska

2. Section 52.1420 is amended by adding paragraph (c)(44) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

(44) On May 31 and June 2, 1995, the Director of the Nebraska Department of Environmental Quality (NDEQ) submitted revisions to the SIP to update the local ordinances of the Lincoln-Lancaster County Health Department and city of Omaha, respectively, and to create Federally enforceable Class II operating permit programs for these agencies.

(i) Incorporation by reference.

(A) 1993 Lincoln-Lancaster County Air Pollution Control Program, Version March 1995, effective May 16, 1995. This includes the following citations: Article I (except Section 6); Article II, Sections 1–12, 14–17, 19–20, 22, 24–25, 32–38; and Appendix I.

(B) Ordinance No. 33102 dated November 2, 1993, which adopts Chapter 41, Article I, Sections 41–4 through 41–6; 41–9; 41–10; Article II, Sections 41–23; 41–27; 41–38; and 41–40 and Article IV of the Omaha Municipal Code. Ordinance No. 33506 dated March 21, 1995, amends Chapter 41, Article I, Sections 41–2 and 41–9 of the Omaha Municipal Code and adopts Title 129, Nebraska Air Quality Regulations, approved December 2, 1994.

(ii) Additional material.

(A) Letter from the city of Omaha dated September 13, 1995, regarding adequate authority to implement section 112(l).

(B) Letter from the NDEQ dated November 9, 1995, regarding rule omissions and PSD.

3. Section 52.1427 is added to read as follows:

§ 52.1427 Operating permits.

Emission limitations and related provisions which are established in the city of Omaha and Lincoln-Lancaster operating permits as Federally enforceable conditions shall be enforceable by EPA. The EPA reserves the right to deem permit conditions not Federally enforceable. Such a determination will be made according to appropriate procedures and be based upon the permit, permit approval procedures, or permit requirement which do not conform with the operating permit program requirements or the requirements of EPA underlying regulations.

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40 CFR Part 52

[CA 95–9–7273a; FRL–5411–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action granting limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP). The revisions concern a rule from the San Diego County Air Pollution Control District (SDCAPCD). The revised rule controls VOC emissions from kelp processing and bio-polymer manufacturing operations. This final action will incorporate this rule into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing a simultaneous limited approval and limited disapproval of the revised rule under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because the rule, while strengthening the SIP, also does not fully meet the CAA provisions regarding plan submissions and plan requirements for nonattainment areas. As a result of the limited disapproval portion of this action, EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal Implementation Plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on April 15, 1996, unless adverse or critical comments are received by March 15, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rule and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations: