

US EPA ARCHIVE DOCUMENT

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 July 29, 2002. 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, Particulate matter, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 7, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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

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

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(165) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(165) On April 8, 1999, the Illinois Environmental Protection Agency submitted revisions to particulate matter control requirements for rural grain elevators in Illinois. The revised requirements exempt rural grain elevators from certain particulate matter control requirements.

(i) *Incorporation by reference*. Revised grain elevator provisions in Section 9(f) of the Illinois Environmental Protection Act. Adopted by both Houses of the Illinois General Assembly as Public Act 89–491 (previously Senate Bill 1633) on April 25, 1996, approved by the Governor of Illinois on May 23, 1996, effective June 21, 1996.

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[FR Doc. 02–13246 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[NE 156–1156a; FRL–7218–2]

Approval and Promulgation of Implementation Plans and Operating Permit Program; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving revisions to the Nebraska State Implementation Plan (SIP), Operating Permit Program, and Air Toxics Program. These revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program.

DATES: This direct final rule will be effective July 29, 2002, unless EPA receives adverse comments by June 28, 2002. 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 Lynn M. Slugantz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lynn M. Slugantz at (913) 551–7883.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal Approval Process for a SIP?

What does Federal Approval of a State Regulation Mean to Me?

What is the Part 70 Operating Permit Program?

What is Being Addressed in This Action?

Have the Requirements for Approval of a SIP Revision and Part 70 Program Revision Been Met?

What Action is EPA Taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52,

entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is the Part 70 Operating Permit Program?

The CAA Amendments of 1990 require all states to develop an operating permit program that meets certain Federal criteria listed in 40 CFR part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permit program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or particulate matter less than 10 micrometers in size (PM₁₀); those that emit 10 tons per year of any single hazardous air pollutant (HAP) (Specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies' operating permit program are subject to public notice, comment, and our approval. Because the state's

operating permit rules are approved pursuant to both part 70 and section 112(l), some of the revised rules are also approved pursuant to section 112(l).

What Is Being Addressed in This Action?

The Nebraska Department of Environmental Quality (NDEQ) has adopted changes to its Title 129—*Nebraska Air Quality Regulations* and has requested that EPA approve these changes as a revision to the Nebraska SIP.

Nebraska has also asked that changes also be approved as revisions to the Title V Operating Permit Program, and § 112(l) Air Toxics Program. The changes to Title 129 were approved by the Nebraska Environmental Quality Council at its September 4, 1998, and March 23, 2000, hearings, with effective dates of December 15, 1998, and August 22, 2000, respectively. Also, on January 23, 2002, NDEQ sent EPA a letter which provided further explanation regarding a modification made to section 014 of Chapter 17, "Construction Permits—When Required."

The following is a description of the changes to Nebraska's Title 129:

1. *Applicable Requirement Definition.* The definition of applicable requirement in Chapter 1, 014.04 was revised to reference Chapter 23 emission standards for Hazardous Air Pollutants (HAPs) in addition to the already existing reference to Chapters 27 and 28.

2. *Updates to Reference-type Materials.* The version of the SIC Code Manual cited in Chapter 1, 018 was updated to 1987.

3. *Volatile Organic Compound (VOC) Exemption Update.* Chapter 1, 109 was revised to add 16 additional compounds to the list of organic compounds which have been determined to have negligible reactivity.

4. *Transferral of Stack Height Rules.* Four definitions from Chapter 1 related to Stack Height Good Engineering Practice (032, 040, 049, and 061) were transferred to new regulations added to Chapter 16 (new 004, 005, 006, 007, 008). These rules have previously been approved by EPA.

5. *Significance Levels for Landfills.* In Chapter 1, 094, a trigger level for "Municipal solid waste landfill emissions" was added to the definition of "significant" in Chapter 1.

6. *Requirements for Permit Compliance Certification.* Chapter 7, 006.0214 was revised to replace "enhanced monitoring" with "compliance assurance or periodic monitoring" consistent with terminology used in corresponding regulations.

7. *Annual Certification of Risk Management Plans.* Chapter 8, 011.02 was revised to correct a typographical error in a citation, from Chapter 7, 002 to Chapter 7, 006.0213.

8. *Compliance with Terms of Construction Permit.* Chapter 17, 002.01 was added to reinforce that permit non-compliance is not allowed.

9. *Modification of a Construction Permit.* Chapter 17, 014 was added to allow for modification of construction permits without public notice procedures under tightly limited circumstances. The revision allows the Director the means to address construction permit provisions which in hindsight could or should have been written differently, without undergoing a full permit revision process where there is no environmental impact. On January 23, 2002, NDEQ sent EPA a letter which responded to EPA's concerns that this change not allow sources to modify an existing construction permit which would allow significant emissions of a pollutant not previously emitted or which should require a new Best Available Control Technology (BACT) analysis. The NDEQ's letter explains its process for review of requests for changes under this section and for assuring that only modifications meeting the criteria of the rule are approved under this process.

10. *Update to CFR Citation.* The CFR citation in Chapter 19, 001 was updated to July 1, 1997, which, among other things, updates the definition of "significant" to include a trigger level for municipal solid waste landfill emissions.

11. *Opacity of Particulate Emissions.* Chapter 20, 005 was revised to allow for evaluation of opacity using an EPA-approved method other than Method 9 in Appendix A of 40 CFR part 60, as long as the alternate method is agreed upon by NDEQ and EPA.

12. *Compliance Assurance Monitoring.* Chapter 31, 001 was revised to adopt by reference the Federal compliance assurance monitoring (CAM) rule as found at 40 CFR part 64, effective July 1, 1999. Previously, EPA had not approved Chapter 31 as part of NDEQ's Title V program. Today, EPA is adding the chapter to the list of those chapters of Title 129 which are approved as part of Nebraska's Title V Operating Permit Program.

13. *Emission Sources, Testing, Monitoring.* Chapter 34, 007 was revised to require performance tests "if required" rather than every time a new or modified source becomes operational.

14. *Updates to Reference-type Materials.* The reference to the Test Methods for Evaluating Solid Waste in

Chapter 34, 002.06, was updated to 1997.

15. *Location of Federal Documents.* Chapter 41, 007 was added to clarify that copies of the substantial Federal documents (Code of Federal Regulations and **Federal Register**) adopted by reference are located and available at NDEQ's office.

Have the Requirements for Approval of a SIP Revision and Part 70 Program Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfies the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the submittal meets the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70.

What Action is EPA Taking?

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision is severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Final Action: EPA is approving as an amendment to the Nebraska SIP regulatory changes to Title 129, Chapters 1, 7, 8, 16, 17, 19, 20, 34 and 41. EPA is also approving as an amendment to the Nebraska Title V operating permit program changes to Title 129 Chapters 1, 7, 8, 31, and 41. Finally, EPA is approving pursuant to section 112(l) revisions to Chapters 7 and 8.

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 preexisting 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). This action 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 CAA. 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 CAA. 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 CAA. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 2002. 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, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compound.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 16, 2002.

Karen A. Flournoy,

Acting Regional Administrator, Region 7.

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 CC—Nebraska

2. In § 52.1420 the table in paragraph (c) is amended by:

- a. Revising the entry for "129-1".
- b. Revising the entry for "129-7".

c. Revising the entry for “129–8”.
 d. Revising the entry for “129–16”.
 e. Revising the entry for “129–17”.
 f. Revising the entry for “129–19”.

g. Revising the entry for “129–20”.
 h. Revising the entry for “129–34”.
 i. Revising the entry for “129–41”.
 The revisions read as follows:

§ 52.1420 Identification of Plan.

* * * * *
 (c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Comments
STATE OF NEBRASKA—DEPARTMENT OF ENVIRONMENTAL QUALITY				
129–1	Definitions	8/22/2000	[May 29, 2002, and FR cite]	
*	*	*	*	*
129–7	Operating Permits—Application	8/22/2000	[May 29, 2002, and FR cite]	
129–8	Operating Permit Content	8/22/2000	[May 29, 2002, and FR cite]	
*	*	*	*	*
129–16	Stack Heights; Good Engineering Practice (GEP).	12/15/1998	[May 29, 2002, and FR cite]	
129–17	Construction Permits—When Required	8/22/2000	[May 29, 2002, and FR cite]	Also refer to January 23, 2002, NDEQ letter to EPA regarding change to 129–17–014.
129–19	Prevention of Significant Deterioration of air Quality.	12/15/1998	[May 29, 2002, and FR cite]	
129–20	Particulate Emissions; Limitations and Standards (Exceptions due to Breakdowns of Scheduled Maintenance: See Chapter 34).	8/22/2000	[May 29, 2002, and FR cite]	
*	*	*	*	*
129–34	Emission Sources; Testing; Monitoring	8/22/2000	[May 29, 2002, and FR cite]	
*	*	*	*	*
129–41	General Provision	12/15/1998	[May 29, 2002, and FR cite]	
*	*	*	*	*

PART 70—[AMENDED]

1. The authority citation for Part 70 continues to read as follows:

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

2. Appendix A to Part 70 is amended by adding under “Nebraska; City of Omaha; Lincoln-Lancaster County Health Department” paragraph (e) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

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(e) The Nebraska Department of Environmental Quality submitted the following program revisions on June 29, 2001; NDEQ Title 129, Chapters 1 and 41, effective December 15, 1998; and NDEQ Title 129, Chapters 1, 7, 8, and 31, effective on August 22, 2000.

* * * * *

[FR Doc. 02–13248 Filed 5–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 81**

[W101–7332a; FRL–7206–5]

Approval and Promulgation of Implementation Plans; Wisconsin Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 17, 2000, the Wisconsin Department of Natural Resources (WDNR) submitted a request to the Environmental Protection Agency (EPA) to redesignate the villages of Rothschild and Weston and the Township of Rib Mountain, all located in central Marathon County, Wisconsin, from primary and secondary sulfur dioxide (SO₂) nonattainment areas to attainment of the SO₂ National Ambient Air Quality Standards (NAAQS). EPA identified modeling and enforceability issues during the technical review of this submittal. On October 17, 2001, WDNR sent to EPA a submittal addressing the technical deficiencies. In this action EPA is approving the state’s

request, because it meets all of the Clean Air Act (Act) requirements for redesignation.

IF EPA receives adverse comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

DATES: This “direct final” rule is effective July 29, 2002, unless EPA receives adverse or critical comments by June 28, 2002. If EPA receives adverse comments, it 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: Send written comments to Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Christos Panos, at (312) 353–8328, before visiting the Region 5 Office.)

A copy of this redesignation is available for inspection at this Office of Air and Radiation (OAR) Docket and