

US EPA ARCHIVE DOCUMENT

change as a SIP revision within one year from August 7, 2003.

[FR Doc. 03-17100 Filed 7-7-03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[NE 178-1178a; FRL-7523-1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing approval of revisions to the Nebraska State Implementation Plan (SIP) and Operating Permits Program. On September 7, 2001, and May 10, 2002, the state updated its air program rules to be consistent with Federal requirements, to revise definitions, and to clarify applicability, reporting, and monitoring requirements. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's revised air program rules.

DATES: This direct final rule will be effective September 8, 2003, unless EPA receives adverse comments by August 7, 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 Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or E-mail him at kaiser.wayne@epa.gov.

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: Wayne Kaiser at (913) 551-7603.

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 Permits Program?

What is being addressed in this document?

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 us. 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 us 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 Promulgations 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 the CAA.

What Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. 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 permits 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 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 permits program are also subject to public notice, comment, and our approval.

What Is Being Addressed in This Document?

The state of Nebraska has requested that we approve as a revision to the Nebraska SIP, part 70 Operating Permits Program and section 112(l) air toxics

program two recently adopted sets of revisions to Title 129. The first revision set was submitted to us on May 10, 2002, and included revisions to Chapters 1, 4, 5, 6, 20, 29, and 34. The second set of revisions was submitted on November 5, 2002, and included revisions to Chapters 1, 2, 4, 5, 6, 17, 20, 21, and 31. An overview of the revisions are discussed below.

Revisions Submitted on May 10, 2002

Chapter 1—Definitions. A definition of “deviation” was added since this term is used in other rules; an exception clause was added to the definition of “incineration,” which exempts “a furnace used by law enforcement personnel to dispose of ammunition, fireworks or similar flammable or explosive materials”; and the definition of “Volatile organic compound (VOC)” was revised to add “methyl acetate” to the list of exempt VOCs. This revision is consistent with EPA’s list of exempt VOCs at 40 CFR 51.100(s).

Chapter 4—Ambient Air Quality Standards. In 1997 EPA promulgated new standards for fine particulate matter (PM_{2.5}) and ozone. The state has adopted these ambient standards and also the data interpretation procedures of Appendix I and Appendix N of 40 CFR part 50 for ozone and particulate matter.

Chapter 5—Operating Permits. Revisions to this rule include clarifying the applicability of non-major sources to the Class II operating permits program; clarifying the deferral of sources from the Class I operating permits program; and clarifying the reporting requirements for certain emergency generators. The revision to Section 001.02 will not be acted on because this section relates only to the Class II permit program and was not previously Federally approved.

Chapter 6—Emissions Reporting, When Required. The annual deadline for submitting the emissions inventory reporting form was changed from July 1 to April 1.

Chapter 20—Particulate Emissions; Limitations and Standards (Exceptions Due to Breakdowns or Scheduled Maintenance: See Chapter 35). An exception was added, in conjunction with the revision to the “incinerator” definition in Chapter 1, which exempts from the opacity requirements of Chapter 20 incinerators used by law enforcement personnel to dispose of ammunition or explosive materials. Also, paragraph 007 was revised to clarify the applicability of the rule.

Chapter 29—Operating Permit Emissions Fees. A provision of this rule was revised to remove a sunset

provision subjecting certain electric generation units to a lower emission fee. These units will now pay emissions fees beginning with calendar year 2001 emissions.

Chapter 34—Emission Sources; Testing; Monitoring. Paragraph 005 was revised to decrease from forever, to five years, the time period for which certain large steam generators, requesting exemption from operating a continuous opacity monitoring system, must have a clean opacity compliance record.

Upon review by EPA, it was determined that this revision is inconsistent with the provisions of 40 CFR part 51, Appendix P—Minimum Emission Monitoring Requirements, paragraph 2.1.1.2. That paragraph provides a limited exemption from opacity monitoring for sources which have “never” been found in violation of a visible emission standard. The state revision allows the exemption for sources which have not been found in violation for the past five years, which is less stringent than the Federal requirement. Consequently, we are taking no action on this provision of the state submittal. The state has agreed to revise its rule to make it consistent with the Federal provision in the near future.

Revisions Submitted on November 5, 2002

Chapter 1—Definitions. The following definitions were clarified: “applicable requirement,” “fuel burning equipment,” and the exemption for “incinerators” from opacity limits is only for incinerators owned and operated by law enforcement agencies being solely used to dispose of ammunition, fireworks, or similar flammable or explosive materials. A definition for “Maximum Achievable Control Technology (MACT)” was added to define the MACT emission limitations for new and existing sources.

Chapter 2—Definition of Major Source. Fugitive emissions must be considered when determining if a source is major for hazardous air pollutants with this revision and the major source definition was revised to be consistent in both Title V and the NSR/PSD programs.

Chapter 6—Emissions Reporting; When Required. Sources are now allowed to submit their own form if acceptable to the Department and it was clarified that appropriate methods need to be used in calculating actual emissions.

Chapter 17—Construction Permits; When Required. The change consistently clarified that fugitive emissions must be included in calculating levels of hazardous air

pollutants and defines the source categories that must include fugitive emissions when determining the net change in potential emissions.

Chapter 20—Particulate Emissions; Limitations and Standards (Exceptions Due to Breakdowns or Scheduled Maintenance: See Chapter 35). This revision clarifies that furnaces exempted from the opacity standard for disposal of ammunition and other flammable or explosive materials applies only when being solely used for this purpose.

Chapter 31—Compliance Assurance Monitoring. The reference to Title 40 of the Code of Federal Regulations was updated to July 1, 2001.

The revisions to Chapters 4, 5, and 21 are administrative in nature, including correcting typographical errors and deleting obsolete references.

Further discussion and background information is contained in the technical support document prepared for this action, which is available from the EPA contact listed above.

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 satisfied 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 notice, the revisions meet 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?

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial, and make regulatory revisions required by state statute. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Final action: EPA is approving as an amendment to the Nebraska SIP revisions to Title 129, Chapters 1, 4, 5, 6, 20, and 34 (except Chapter 5, 001.02), submitted on May 10, 2002, and revisions to Title 129, Chapters 1, 2, 4, 5, 6, 17, 20, and 21, submitted on November 5, 2002, pursuant to section 110.

EPA is also approving as a program revision to the state's part 70 Operating Permits Program revisions to Title 129, Chapters 1, 5, 6, and 29, submitted on May 10, 2002, and revisions to Title 129, Chapters 1, 2, 5, 6, and 31 submitted on November 5, 2002, pursuant to Part 70. Finally, EPA is approving pursuant to 112(l) revisions to Chapter 5.

Statutory and Executive Order Reviews

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). 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 September 8, 2003. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating Permits, Reporting and Recordkeeping requirements.

Dated: June 26, 2003.

William Rice,

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. Section 52.1420 is amended by:

- a. Revising paragraph (b)(3); and
- b. In the table to paragraph (c) by revising the entries for: 129-1, 129-2, 129-4, 129-5, 129-6, 129-17, 129-20, and 129-21.

The revisions read as follows:

§ 52.1420 Identification of plan.

* * * * *

(b) * * *

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; the Office of **Federal Register**, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA Air and Radiation Docket and Information Center, Room B-108, 1301 Constitution Avenue, NW. (Mail Code 6102T), Washington, DC 20460.

(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	4/1/02 7/10/02	[7/8/03 and FR citation].	
129-2	Definition of Major Source	7/10/02	[7/8/03 and FR citation].	
*	*	*	*	*
129-4	Ambient Air Quality Standards	4/1/02 7/10/02	[July 8, 2003 and FR citation].	
129-5	Operating Permit	4/1/02 7/10/02	[7/8/03 and FR citation].	Section 001.02 is not SIP approved.
129-6	Emissions Reporting	4/1/02 7/10/02	[7/8/03 and FR citation].	
*	*	*	*	*
129-17	Construction Permits—When Required.	7/10/02	[7/8/03 and FR citation].	Refer to January 23, 2002, NDEQ letter to EPA regarding change to 129-17-014. Approved by EPA on May 29, 2002.
*	*	*	*	*
129-20	Particulate Emissions; Limitations and Standards (Exceptions Due to Breakdowns of Scheduled Maintenance: See Chapter 35).	4/1/02 7/10/02	[7/8/03 and FR citation].	
129-21	Controls for Transferring, Conveying, Railcar and Truck Loading at Rock Processing Operations in Cass County.	7/10/02	[7/08/03 and FR citation].	
*	*	*	*	*

PART 70—[AMENDED]

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

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

Appendix A—[Amended]

■ 2. Appendix A to Part 70 is amended by adding paragraph (f) under Nebraska; City of Omaha; Lincoln-Lancaster County Health Department 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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(f) The Nebraska Department of Environmental Quality submitted the following program revisions on May 10, 2002, NDEQ Title 129, Chapters 1, 5, 6, and 29; and on November 5, 2002, NDEQ Title 129, Chapters 1, 2, 5, 6, and 31, approval effective September 8, 2003.

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[FR Doc. 03-17098 Filed 7-7-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 62**

[IA 186-1186a; FRL-7523-4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to Iowa's rule for controlling emissions from existing sources subject to the section 111(d) emission guidelines. This revision updates the adoption by reference of Federal requirements applicable to these sources. Approval of this revision will ensure that the state requirements are consistent with and equivalent to the Federal regulations.

DATES: This direct final rule will be effective September 8, 2003, unless EPA receives adverse comments by August 7, 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 Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or e-mail him at kaiser.wayne@epa.gov.

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: Wayne Kaiser at (913) 551-7603, or by e-mail at kaiser.wayne@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Information regarding this action is presented in the following order:

What is a 111(d) plan?

What changes did the state make to its emission guidelines rule?

What action are we taking?

What Is a 111(d) Plan?

Section 111(d) of the Clean Air Act (CAA or Act) requires states to submit plans to control certain pollutants (designated pollutants) at existing