



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2014-0468; FRL-9914-52-Region 7]

Approval and Promulgation of Implementation Plans; State of Nebraska; Fine Particulate Matter New Source Review Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State Implementation Plan (SIP) for the State of Nebraska. This action will amend the SIP to include revisions to Nebraska's Air Quality Regulations "Definitions", "Construction Permits - When Required", and "Prevention of Significant Deterioration of Air Quality" to make the state regulations consistent with the Federal regulations for the fine Particulate Matter (PM_{2.5}) Prevention of Significant Deterioration (PSD) program. This revision will amend the state minor source construction permitting program including the addition of a minor source permitting threshold for PM_{2.5}. These revisions are necessary to properly manage the increment requirements (maximum allowable deterioration to the air quality) of the PSD program and assure continued attainment with the PM_{2.5} National Ambient Air Quality Standards (NAAQS). This action also recognizes the state's

request to not include, into the SIP, provisions relating to Significant Impact Levels (SILs) and Significant Monitoring Concentrations (SMCs). These provisions were vacated and remanded by the U.S. Court of Appeals for the District of Columbia on January 22, 2013.

DATES: This direct final rule will be effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], without further notice, unless EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

If EPA receives adverse comment, 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.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2014-0468, by one of the following methods:

1. www.regulations.gov. Follow the on-line instructions for submitting comments.
2. Email: crable.gregory@epa.gov
3. Mail or Hand Delivery: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2014-0468. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or email information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain

other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. 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: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7391, or by email at crable.gregory@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. What Action is EPA taking?

I. What is Being Addressed in this Document?

EPA is approving revisions into the SIP to include amendments to Title 129 of the Nebraska Air Quality Regulations as they apply to Prevention of Significant Deterioration (PSD)

of air quality. We are approving rule revisions to Chapter 1, "Definitions"; Chapter 17, "Construction Permits - When Required"; and Chapter 19, "Prevention of Significant Deterioration of Air Quality". The revisions make the state regulations consistent with Federal regulations for the PM_{2.5} PSD program. This revision will amend the state minor source construction permitting program including the addition of a minor source permitting threshold for PM_{2.5}. A level consistent with the significance thresholds for PSD was added to be consistent with Federal regulations. These revisions are necessary to properly manage the increment requirements (maximum allowable deterioration to the air quality) of the PSD program and assure continued attainment with the PM_{2.5} NAAQS. The rules are amended to correspond with the Federal regulation for implementation of the PM_{2.5} PSD program as identified in 40 CFR 52.21.

The following definitions are revised to match the Federal regulation: Baseline area; major source baseline date; minor source baseline date; regulated NSR pollutant; regulated pollutant for fee purposes; significant; and significant emissions unit.

Revisions provide clarification that only pollutants specifically listed in state statute require a construction permit application fee and adds emission levels for PM_{2.5} to the table of significant levels that, if exceeded, would preclude the issuance of a construction permit. Also, revisions included the incorporation of Federal regulations by reference, the requirements for sources that impact Federal Class I areas; added PM_{2.5} to the definition of "significant" for PSD purposes; added PM_{2.5} to the list of allowable ambient air increments for PSD purposes and PM_{2.5} parameters to the list of exceptions from an air quality analysis for PSD purposes; and finally, added a definition of significant impact levels for PM_{2.5}.

This action is also consistent with the state's request to not include the SIP provisions relating the Significant Impact Levels (SILs) and Significant Monitoring Concentrations (SMCs). On January 22, 2013, the U.S. Court of Appeals for the District of Columbia vacated and remanded the provisions at 40 CFR 51.166(k)(2) and 52.21(k)(2) concerning implementation of the PM_{2.5} SILs and vacated the provisions at 40 CFR 51.166(i)(5)(i)(c) and 52.21 (i)(5)(i)(c) (adding the PM_{2.5} SMCs) that were promulgated as part of the October 20, 2010, PSD rule for PM_{2.5} PSD-Increments, SILs and SMCs, 75 FR 64864.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What Action is EPA Taking?

EPA is approving the state's request to revise the SIP to include amendments to the Nebraska air quality rules as they apply to the PSD of air quality. The rule is amended to correspond with the final Federal regulation necessary for the PM_{2.5} implementation of the PSD program. Per the state's June 27, 2013, request, EPA is not including provisions of the 2010 PM_{2.5} PSD-Increments, SILs and SMCs rule (75 FR 64865, October 20, 2010) relating to SILs and SMCs that were affected by the January 22, 2013, U.S. Court of Appeals decision into SIP.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. EPA does not anticipate adverse comment because the revisions to the existing rules are routine and consistent with the Federal regulations, thereby, strengthening the SIP. However, in the "Proposed Rules" section

of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule. If adverse comments are received on this direct final rule we will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. Should EPA receive 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.

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 under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). 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 (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). Thus Executive Order 13132 does not apply to this action. 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 approves

a state rule implementing a Federal standard.

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 state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA when it reviews a state submission, to use VCS in place of a state 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 action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b).

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 [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **Federal Register**]. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the final rulemaking. 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, Air Quality, Prevention of significant deterioration, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: July 21, 2014.

Mike Brincks,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency is amending 40 CFR parts 52 and 70 as set forth below:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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 revising the entries for 129-1, 129-17, and 129-19 to read as follows:

§52.1420 Identification of plan.

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(c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Explanation
STATE OF NEBRASKA				
Department of Environmental Quality				
Title 129-Nebraska Air Quality Regulations				
129-1	Definitions	4/1/2012	[insert date of <u>Federal Register</u> publication and insert <u>Federal Register</u> citation]	
* * * * *				
129-17	Construction Permits - When Required	4/1/2012	[insert date of <u>Federal Register</u> publication and insert <u>Federal Register</u> citation]	Approval does not include Nebraska's revisions to sections 001.02T and 013.04T pertaining to ethanol production

Nebraska citation	Title	State effective date	EPA approval date	Explanation
				facilities, which were not submitted by the State.
129-19	Prevention of Significant Deterioration of Air Quality	4/1/2012	[insert date of <u>Federal Register</u> publication and insert <u>Federal Register</u> citation]	Provisions of the 2010 PM _{2.5} PSD-Increments, SILs and SMCs rule (75 FR 64865, October 20, 2010) relating to SILs and SMCs that were affected by the January 22, 2013 U.S. Court of Appeals decision are not SIP approved.
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PART 70 - STATE OPERATING PERMITS PROGRAMS

3. The authority citation for part 70 continues to read as follows:

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

4. Appendix A to Part 70 is amended by adding, in alphabetical order, new paragraph (1) under the heading "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

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

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(1) The Nebraska Department of Environmental Quality approved a revision to NDEQ Title 129, Chapter 1 on December 1, 2011, which became effective April 1, 2012. This revision was submitted on February 13, 2013. We are approving this program revision effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **Federal Register**].

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[FR Doc. 2014-18257 Filed 08/01/2014 at 8:45 am; Publication Date: 08/04/2014]