



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2018-0307; FRL-9979-13-Region 7]

Air Plan Approval; Nebraska; Revisions to Title 115 of the Nebraska Administrative Code; Rules of Practice and Procedure.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the State of Nebraska on August 28, 2014. This proposed action will amend the SIP to revise title 115 of the Nebraska Administrative Code "Nebraska Rules of Practice and Procedure." The proposed revisions to title 115 update the Nebraska Department of Environmental Quality's (NDEQ) rules of practice and procedure to incorporate legislative changes that have been made to the State's Administrative Procedure Act and the public record laws.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2018-0307 to <https://www.regulations.gov>. Follow the

online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

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," and "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?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. What is Being Addressed in this Document?

EPA is proposing to amend Nebraska's SIP to include revisions to title 115 of the Nebraska Administrative Code. The last revision to title 115 - Rules of Practice and Procedure was approved into the Nebraska SIP in 1994 (60 FR 372). Since that time, the legislature has amended the Administrative Procedure Act and the public record laws which impose additional requirements on NDEQ. NDEQ has adopted the revisions to title 115 and has requested EPA amend the SIP.

This action proposes to revise chapter 1, Definitions of Terms; chapter 2, Filings and Correspondence; chapter 3, Public Records Availability; chapter 4, Public Records Confidentiality; chapter 5, Public Hearings; chapter 7, Contested Cases; chapter 8, Emergency Proceeding Hearings; chapter 9, Declaratory Rulings; and chapter 10, Rulemaking. This action proposes to revise the chapter titles for chapters 2, 4, 8, 9 and 10. No revisions are being made to chapter 6, Voluntary Compliance. Chapter 11, Variances, is being deleted. The proposed revisions to title 115 are numerous and can be found in the August 28,

2014 State submission which is part of the docket.

Specifically, the changes to chapters 1, 2, 7, 8, 9 and 10 conform regulatory language to the Attorney General's model rules. Revisions to chapters 3 and 5 better describe the procedures already in place by practice for obtaining public records and public hearings on permit decisions or fact-finding hearings that are required by law. Revisions to chapter 4 clarify the procedures for asserting a claim of confidentiality trade secrets. Finally, chapter 11 is being deleted from title 115 because it is duplicative and found in chapter 33 of title 129.

EPA is proposing approval of these revisions as they are not fundamentally different from a procedural standpoint from existing rules. These revisions do not impact air quality. The revisions do not revise emission limits or procedures, nor do they impact the state's ability to attain or maintain the National Ambient Air Quality Standards.

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 revised title 115 chapters were placed on public notice on January 30, 2004, and a public hearing was held by the NDEQ on

March 5, 2004. During the public hearing NDEQ received three comments. NDEQ addressed each of the comments and made no change to the rule based on comments received. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above, and as demonstrated in the documents in the docket, the revisions meet the substantive SIP requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.

III. What Action is EPA Taking?

EPA is proposing to approve the title 115 SIP revision submitted by the State of Nebraska on August 28, 2014. We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

IV. Incorporation by Reference

In this action, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Nebraska Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA

Region 7 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or

environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 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.

Dated: May 25, 2018.

James B. Gulliford,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 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. Amend §52.1420 (c) by:

a. Revising the entries for 115-1; 115-2; 115-3; 115-4; 115-5; 115-7; 115-8; 115-9; and 115-10;

and

b. Removing the entry for 115-11.

The revisions 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 115-Rules of Practice and Procedure				
115-1	Definitions of Terms	6/8/2004	[date of final publication in the Federal Register] [final Federal Register citation]	

Nebraska citation	Title	State effective date	EPA Approval date	Explanation
115-2	Petition for Declaratory Order	6/8/2004	[date of final publication in the Federal Register] [final Federal Register citation]	
115-3	Public Records Availability	6/8/2004	[date of final publication in the Federal Register] [final Federal Register citation]	
115-4	Confidentiality for Trade Secrets	6/8/2004	[date of final publication in the Federal Register] [final Federal Register citation]	
115-5	Public Hearings	6/8/2004	[date of final publication in the Federal Register] [final Federal Register citation]	
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115-7	Contested Cases	6/8/2004	[date of final publication in the Federal Register] [final Federal Register citation]	
115-8	Intervention in a Contested Case	6/8/2004	[date of final publication in the Federal Register] [final Federal Register citation]	
115-9	Ex Parte Communications Prohibited	6/8/2004	[date of final publication in the Federal Register] [final Federal Register citation]	
115-10	Petition for Rulemaking	6/8/2004	[date of final publication in the Federal Register] [final Federal Register citation]	

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