

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R07-OAR-2017-0386; FRL-9968-76-Region 7]

**Approval of Nebraska Air Quality Implementation Plans; Adoption of a New Chapter Under the Nebraska Administrative Code****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) submitted by the state of Nebraska on November 14, 2011. Nebraska is adding a new chapter titled “Visibility Protection” which provides Nebraska authority to implement Federal regulations relating to Regional Haze and Best Available Retrofit Technology (BART). The new chapter incorporates by reference EPA’s Guidelines for BART Determinations Under the Regional Haze Rule. The revision to the SIP meets the visibility component of the Clean Air Act (CAA).

**DATES:** This direct final rule will be effective December 4, 2017, without further notice, unless EPA receives adverse comment by November 6, 2017. 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-2017-0386, to <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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. 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](mailto: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 taking direct final action to approve revisions to Nebraska’s SIP that will amend title 129 of the Nebraska Administrative Code to include rules regulating regional haze. This revision adds a new chapter, chapter 43, entitled “Visibility Protection”, to title 129 which incorporates by reference EPA Code of Federal Regulations under title 40 part 51 of EPA’s Guidelines for BART determinations under the Regional Haze Rule. This new chapter provides the Nebraska Department of Environmental Quality (NDEQ) the authority to require sources to conduct BART determinations for the purpose of issuing BART permits. This revision to title 129 is consistent with Federal regulations related to Regional Haze and BART, adopting by reference the definitions for the Federal Regional Haze rule at 40 CFR 51.301 and adopts by reference, appendix Y, to 40 CFR part 51, “Guidelines for BART Determinations under the Regional Haze Rule.” The revision to the SIP also meets the visibility component of the CAA section 110(a)(2)(f). Approval of these revisions will not impact air quality and will ensure consistency between the State and Federally approved rules.

**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. The revised chapter was placed on public notice and a public hearing was held by the State on July 13, 2007, where no comments were received. 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 it relates to the Regional Haze and Best Available Retrofit Technology.

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 this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to revise title 129 of the Nebraska Administrative Code, chapter 43, “Visibility Protection”. 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.

**IV. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Nebraska regulations described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the

Director of the Federal Register in the next update to the SIP compilation.<sup>1</sup>

**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);
- 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 (Pub. L. 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).

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 action 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 December 4, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Best available retrofit technology, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Regional haze, Sulfur dioxide, Visibility, Volatile organic compounds.

Dated: September 25, 2017.

**Cathy Stepp,**

*Acting Regional Administrator, Region 7.*

For the reasons stated in the preamble, EPA amends 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 revising the entry "129-43" 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
<b>STATE OF NEBRASKA</b>				
<b>Department of Environmental Quality</b>				
<b>Title 129—Nebraska Air Quality Regulations</b>				
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129-43	Visibility Protection	2/6/08	10/5/17 [Insert <b>Federal Register</b> citation].	
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<sup>1</sup> 62 FR 27968 (May 22, 1997).

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[FR Doc. 2017-21379 Filed 10-4-17; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA-R08-OAR-2016-0620; FRL-9968-74-Region 8]****Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to Ozone Offset Requirements in Davis and Salt Lake Counties****AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of Utah on August 20, 2013, and on June 29, 2017. The submittals revise the portions of the Utah Administrative Code (UAC) that pertain to ozone offset requirements in Davis and Salt Lake Counties for major sources. This action is being taken under section 110 of the Clean Air Act (CAA) (Act).

**DATES:** This final rule is effective on November 6, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification Number EPA-R08-OAR-2016-0620. All documents in the docket are listed on the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-

1129, (303) 312-6227, [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov).**SUPPLEMENTARY INFORMATION:****I. Background**

On August 20, 2013, with supporting administrative documentation submitted on September 12, 2013, Utah sent the EPA revisions to their nonattainment permitting regulations, specifically to address EPA identified deficiencies in those regulations that may also affect the EPA's ability to approve Utah's fine particulate matter (PM<sub>2.5</sub>) SIP. These revisions addressed R307-403-1 (Purpose and Definitions), R307-403-2 (Applicability), R307-403-11 (Actual Plant-wide Applicability Limits (PALs)), and R307-420 (Ozone Offset Requirements in Davis and Salt Lake Counties). On June 2, 2016, the EPA entered into a consent decree with the Center for Biological Diversity, Center for Environmental Health, and Neighbors for Clean Air regarding a failure to act, pursuant to CAA sections 110(k)(2)-(4), on certain complete SIP submissions from states intended to address specific requirements related to the 2006 p.m.<sub>2.5</sub> NAAQS for certain nonattainment areas, including the submittal from the Governor of Utah dated August 20, 2013.

On February 3, 2017, the EPA published a final rulemaking (82 FR 9138) to conditionally approve the revisions in Utah's August 20, 2013 submittal, except for the revisions to R307-420. The submittal did not contain the appropriate supporting documentation required for the EPA to take action on R307-420. As a result, the EPA requested an extension for taking action on R307-420, and on December 20, 2016, the EPA was granted an extension which moved the deadline for taking final action on R307-420 from January 3, 2017, to September 29, 2017 (See docket). Utah submitted on June 29, 2017, an additional SIP revision that addresses the lack of appropriate supporting documentation for R307-420.

**II. Response to Comments**

No comments were received on our July 14, 2017 notice of proposed rulemaking (82 FR 32517).

**III. Final Action**

The EPA is taking final action to approve Utah's revisions to R307-420 and R307-403-6, as submitted on August 20, 2013, and June 29, 2017. R307-420 maintains the offset provisions of the nonattainment area new source review (NNSR) permitting program in Salt Lake and Davis Counties after the area is re-designated

to attainment for ozone. R307-420 also establishes more stringent offset requirements for nitrogen oxides that may be triggered as a contingency measure under Utah's ozone maintenance plan. R307-420 was also modified to include the definitions and applicability provisions of R307-403 (Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas) to ensure that the definitions and applicability provisions in R307-420 are consistent with related permitting rules in R307-403. The EPA is taking final action to approve these revisions.

On August 20, 2013, Utah submitted revisions to the definitions in the NNSR program that addressed certain deficiencies in the program. Utah also submitted revisions to the corresponding definitions in R307-420. As explained in our proposed rulemaking published on July 14, 2017 (82 FR 32517), since the EPA had not received the 1999 rulemaking that created R307-420 as a SIP submittal, we were unable to take action on the revisions to R307-420 in our February 3, 2017 (82 FR 9138) final rulemaking for Utah's revisions to Nonattainment Permitting Regulations.

Utah's June 29, 2017 submittal addressed this issue by submitting the 1999 rule revisions that created R307-420 and modified R307-403-6. As these rule revisions preserve the ozone maintenance plan requirements for offsets and contingency measures in Salt Lake and Davis Counties while improving the clarity of those requirements, we proposed to approve the 1999 rule revisions on July 14, 2017 (82 FR 32517). We also proposed to approve the remaining portion of the August 20, 2013 submittal.

The EPA is taking final action to approve the subsequent revisions to R307-420, submitted on August 20, 2013, that Utah promulgated to ensure that the definitions and applicability provisions in R307-420 are consistent with related permitting rules in R307-403. For the reasons explained in our July 14, 2017 notice of proposed rulemaking, the definitions and applicability provisions in R307-403 are consistent with requirements for NNSR programs found in 40 CFR 51.165. While R307-420 is part of the ozone maintenance plan for Salt Lake and Davis Counties and not part of the NNSR program, and therefore, not directly subject to the requirements in 40 CFR 51.165, we view the corresponding revisions to the definitions and applicability provisions as strengthening the maintenance plan. Specifically, the EPA is approving the