



Proposed Changes to Title 129 – Nebraska Air Quality Regulations

April 8, 2021

Housekeeping

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- All participants are muted
- This event will be recorded and available on <http://dee.ne.gov/>
 - Type in “Video Events” (without quotes) in the search bar
- If you are having audio issues when connecting via computer, please call in via phone at:
1-415-655-0003 access code: 145 958 6187

Webinar Overview

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Today's Goal

Executive Order

Regulatory Development and Approval Process

Proposed Changes

- Key Changes
- Title Structure
- Deleted Chapters

Today's Goal

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Is this...



Not this...



Stay tuned; more outreach to come...

Today's Goal (cont'd)

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- If you have questions about what we discuss today, please email your detailed question to dee.airquality@nebraska.gov
- We will compile a list into a question-and-answer (Q&A) document
- The Q&A document will be uploaded to the video events page
- Additional Q&A documents will be prepared after each outreach event

Governor's Directive

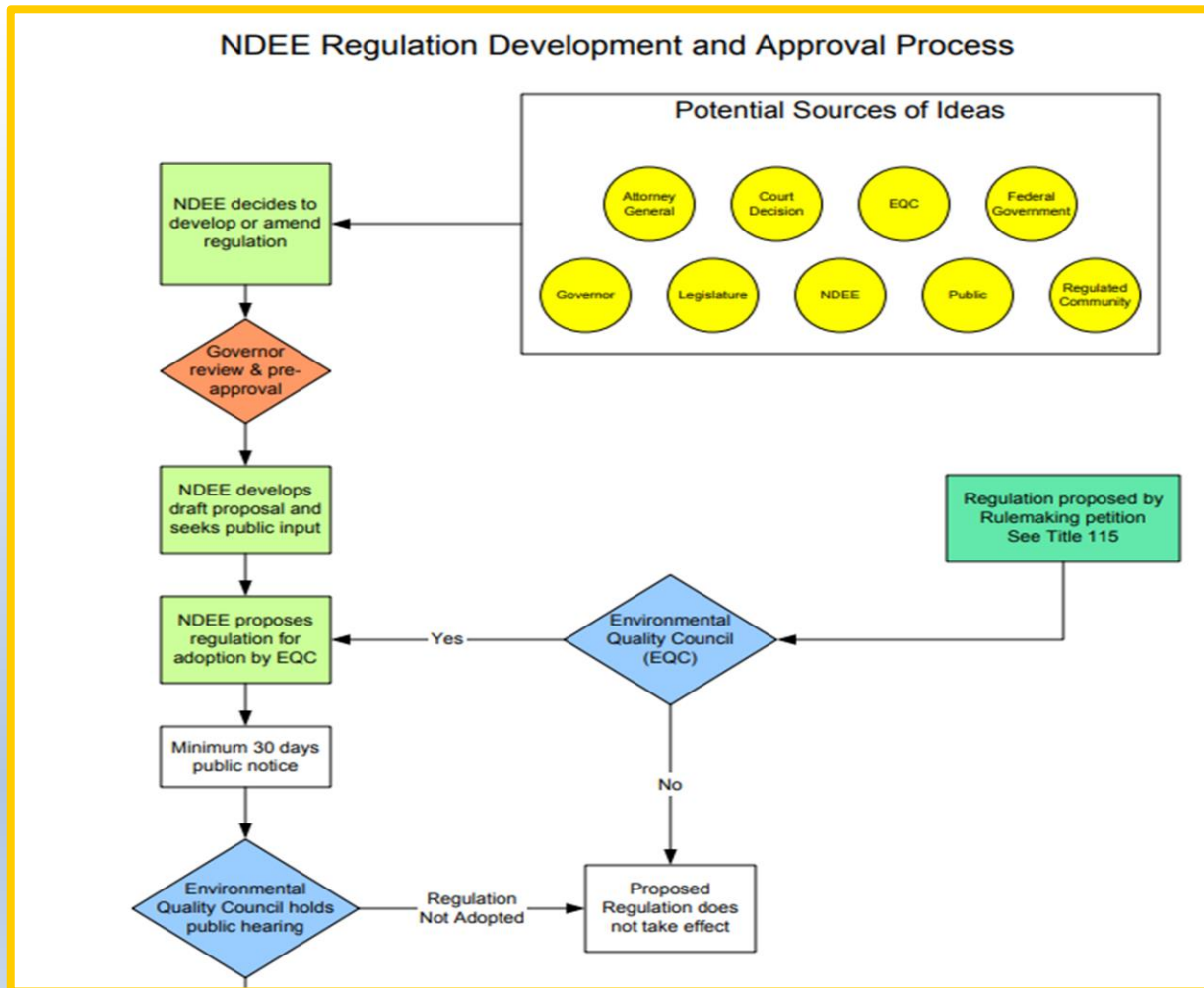
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Executive Order No. 17-04

- Signed July 6, 2017
- Directed agencies to review existing and pending regulations
 - Is the regulation essential to health/safety/welfare?
 - Do costs outweigh benefits?
 - Is there a process to measure effectiveness?
 - Is there a less restrictive alternative?
 - Is the regulation driven solely by state statute?
 - Is the regulation a result of federal mandate?

State Regulatory Process

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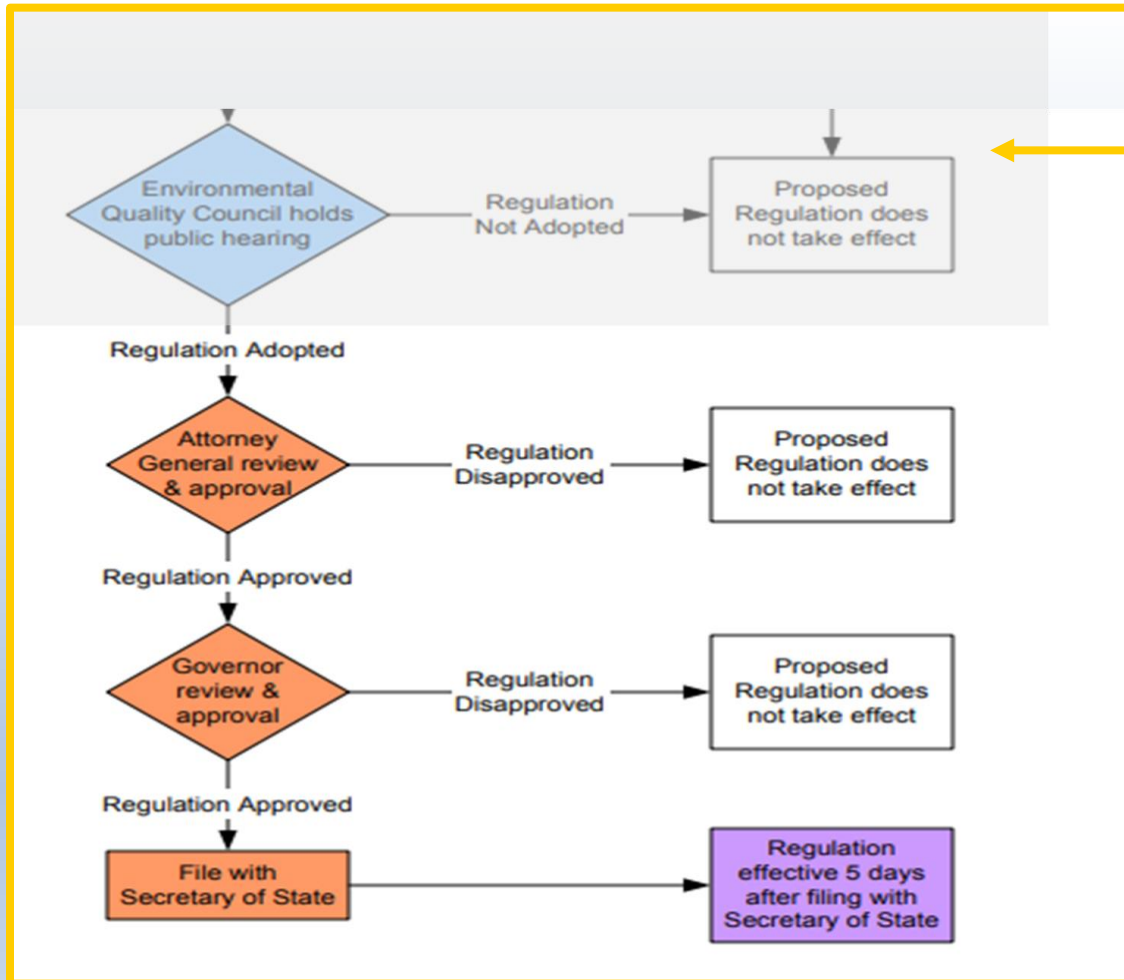


the process continues



State Regulatory Process (cont'd)

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continued
from
previous slide

State Regulatory Process (cont'd)

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So where are we at in the process? Outreach

- Red-line version and summary of revisions (abstract) are posted on the NDEE website

The screenshot shows the website interface for the Nebraska Department of Environment and Energy. At the top, there are navigation tabs: Assistance, Cleanups, Compliance & Enforcement, Financial - Grants, Laws/Regs & EQC, and Licenses & Certification. The 'Laws/Regs & EQC' tab is active, and its dropdown menu is open, showing options: Rules and Regulations Information, Rules & Regulations, Proposed Rules and Regulations (highlighted with a red arrow), Environmental Quality Council, Public Notice/Participation Process and Regulation Dev, and Outside Links ->. Below the navigation, the main content area features the department's name and a mission statement. A sidebar on the right contains several news items: 'NDEE presents proposed changes to Title 124 Onsite Wastewater Regulations', '\$6.7 million awarded to waste and litter reduction, recycling, and scrap tire grants', and 'Lead testing available for drinking water in schools, child care facilities'. A red arrow points from the right side of the slide to the 'Proposed Rules and Regulations' menu item.

Proposed Changes

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Chapter Reorganization

- Current version: 43 chapters + 3 appendices
- Proposed version: 16 chapters + 1 appendix

Key Changes

- Code of Federal Regulations (CFR) Incorporation By Reference
- Pre-permit activities not requiring a variance
- Contents of a complete construction permit application
- Class II minor permit revisions
- Class II permit renewal timeframe flexibility
- Updating NSPS and NESHAP references to 2021

Proposed Changes – CFR Incorporation by Reference

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Title 129, Chapter 6 – Emissions Reporting; When Required

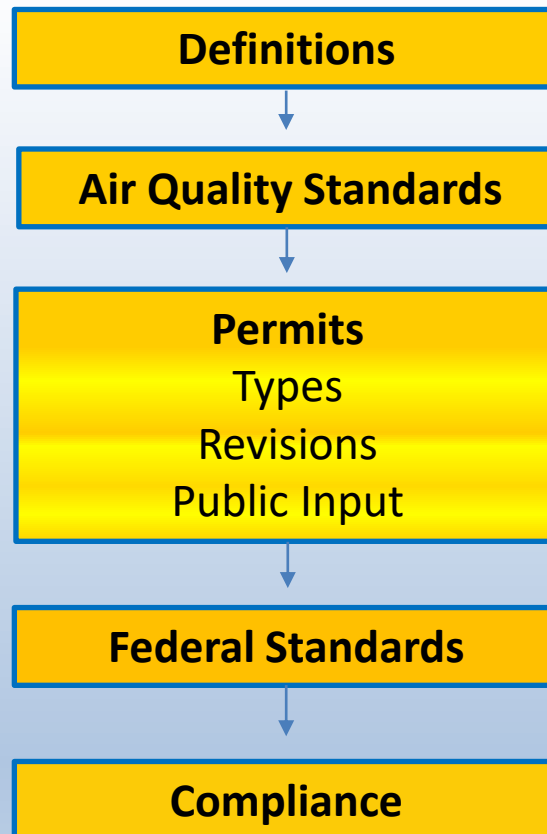
*001 Every source subject to a permit requirement under Chapters 5 or 17 shall complete and...applies whether or not a permit application has been filed or a permit issued. **The inventory form shall be certified in accordance with Chapter 7, section 008.***

REVISED Title 129, Chapter 11 – Emissions Inventory Reporting

*001 Annual emissions inventory. Every source subject to a permit requirement under Chapters 3 or 6 will complete and...applies whether or not a permit application has been filed or a permit issued. **The inventory form will be certified in accordance with the requirements found at 40 CFR § 70.5(d).***

New Title 129 Structure

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New Title Structure (cont'd)

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- Chapter 1 – Definitions
- Chapter 2 – Nebraska Air Quality Standards
- Chapter 3 – Construction Permits
- Chapter 4 – PSD Permitting
- Chapter 5 – Acid Rain
- Chapter 6 – Operating Permits
- Chapter 7 – General Permits
- Chapter 8 – Permits by Rule
- Chapter 9 – Permit Revisions; Reopening

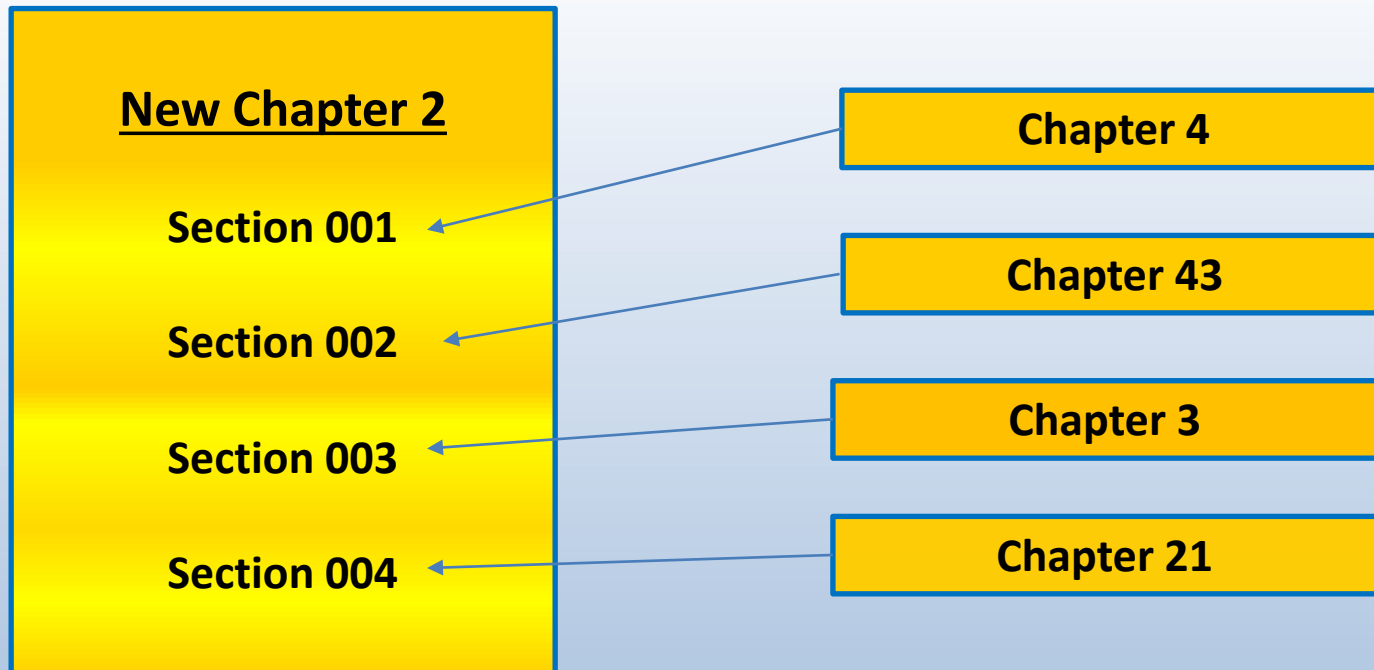
New Title Structure (cont'd)

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- Chapter 10 – Public Participation
- Chapter 11 – Emission Inventory Reporting
- Chapter 12 – New Source Performance Standards
- Chapter 13 – Hazardous Air Pollutants
- Chapter 14 – Incinerators
- Chapter 15 – Compliance
- Chapter 16 – Sulfur Compound and Nitrogen Oxides Emissions Standards
- Appendix I – Hazardous Air Pollutants

Example of New Chapter Structure

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Chapter 1 – Definitions

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- Consolidates current Chapters 1 and 2
 - Chapter 1 – Definitions
 - Chapter 2 – Definition of Major Sources
 - PSD definitions removed; addressed in new Chapter 4
- CFR and state statute incorporated by reference where applicable
- Removed orphaned definitions
- Added definitions for “**common control**” and “**support facility**”

Chapter 1 – Definitions (cont'd)

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Common Control – Definition

002.26 *“Common control” means one person or a number of persons acting together through ownership, management, contract, or otherwise to control pollutant emitting activities.*

Chapter 1 – Definitions (cont'd)

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Support Facility – Definition

002.97 *“Support Facility” means a facility which conveys, stores, or otherwise assists in the production of a stationary source’s primary product. The Department will make a determination on the status of a support facility relationship.*

002.97A *Where more than 50% of the output or services provided by one facility is dedicated to another facility...*

002.97B *Other factors...the degree to which a facility receives materials or services...a stationary source exerts control over a facility's operations...any contractual arrangements...reasons for the presence of the facility on property contiguous or neighboring to the stationary source...*

002.97C *...multiple sources, the unit is to be included within the source which relies most heavily on its support*

Chapter 2 – NE Air Quality Standards

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- Consolidates current Chapters 3, 4, 21, 38, and 43
 - Chapter 4 – Ambient Air Quality Standards
 - Chapter 43 – Visibility Protection
 - Chapter 3 – Regions and Subregions; How Classified
 - Chapter 21 – Controls for Transferring, Conveying, Railcar and Truck Loading at Rock Processing Operations in Cass County
 - Chapter 38 – Emergency Episodes; Occurrence and Control, Contingency Plans

Chapter 2 – Air Quality Standards (cont'd)

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- CFR and state statute incorporated by reference where applicable
 - Incorporates NAAQS - **40 CFR Part 50**
- New Section 006 addresses Air Pollution Emergency Episodes
 - Work through the Nebraska Emergency Management Agency (NEMA), coordinating response to disasters and emergencies
 - **Appendix L to 40 CFR Part 51**

Chapter 3 – Construction Permits

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- Consolidates current Chapters 16 and 17
 - Chapter 17 – Construction Permits - When Required
 - Chapter 16 – Stack Heights; Good Engineering Practices
- CFR and state statute incorporated by reference where applicable
- Clarifies permissible pre-permit activities
 - Reducing the need for variances
 - Clarifies requirements to be met
 - Sections 001, 001.01A, 001.01B

Chapter 3 – Construction Permits (cont'd)

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- Pre-permit activity requirements to be met
 - Applicant accepts liability with possible permit denial
 - Complete list of construction-related activities to be undertaken
 - Additional Pre-Construction Requirements
 - Cease construction if air attainment affected
 - Modification may be necessary
 - Notice of construction within 30 days

Chapter 3 – Construction Permits (cont'd)

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- What constitutes a complete application?
 - Sections 002.02, 002.02A, 002.02B, 002.02C
 - Why the need for the language?
 - Construction permits and operating permits are now in distinct, separate chapters
 - Language modeled off current OP sections and what we currently require in our CP applications

Chapter 4 – Prevention of Significant Deterioration of Air Quality

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- Current Chapter 19
- CFR and state statute is incorporated by reference and replaces much of the chapter text
 - Chapter reduced from 27 pages to three pages
 - ***001 - ... For purposes of this chapter the provisions of 40 CFR § 52.21 are hereby adopted and incorporated...***
- Clarifies definition of “Administrator” as referenced in CFR
 - 001.01 – means both the NDEE Director and EPA Administrator
 - 001.02 – means only the EPA Administrator

2-Minute Break

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Chapter 5 – Acid Rain

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- Current Chapter 26
- CFR and Clean Air Act (CAA) are already incorporated by reference in the chapter text
 - “Regulations” and “Administrator” defined pursuant to 40 CFR Part 72
 - Continuous emission monitoring pursuant to 40 CFR Part 75
 - General program regulations in 40 CFR Part 76

Chapter 6 – Operating Permits

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- Consolidates current Chapters 5, 7, 8, 10-13, 29, and 31
 - Chapter 5 – Operating Permits - When Required
 - Chapter 7 – Operating Permits - Application
 - Chapter 8 – Permit Content
 - Chapter 10 – Temporary Sources
 - Chapter 11 – Emergency; Defense
 - Chapter 13 – Class I Permit; EPA Review; Affected States Review; Class II Permit
 - Chapter 12 – Operating Permit Renewal and Expiration
 - Chapter 29 – Operating Permit Emission Fees
 - Chapter 31 – Compliance Assurance Monitoring

Chapter 6 – Operating Permits (cont'd)

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- CFR and state statute are incorporated by reference where applicable
 - 40 CFR Part 70
 - Confidentiality via Title 115 (updated June 2019)
 - Neb. Rev. Stat. § 81-1505.04
- Clarifies duty to apply and timely application, permit content, requirements for temporary sources, and permit expiration and denial
- Proposes changes to Class II permit renewal timeframes
 - ***003.02A Notwithstanding 003.02, the Director may issue a Class II permit for a term that exceeds five years***

Chapter 7 – General Permits

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- Current Chapter 9
- Minimal changes
- Incorporating general permits into individual permits
 - ***012 The Department will incorporate general permit coverage requirements into any subsequent construction permit, operating permit, or operating permit renewal that the source applies for as determined appropriate by the Department. If the general permit coverage requirements are incorporated into a construction permit, operating permit, or operating permit renewal, then the general permit coverage will expire with issuance of the permit or permit renewal without any further action needed by the Department.***

Chapter 8 – Permits by Rule (PbR)

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- Current Chapter 42
- Minimal changes to existing PbRs
- No new Notice-of-Intentions (NOIs)
 - ***001 This chapter applies to any source approved by the Department for coverage under a permit by rule before January 1, 2021. A permit by rule as described in this chapter will not be available to any source that has not been approved for coverage by the Department prior to January 1, 2021.***
 - Sources to instead apply for a General Permit

Chapter 9 – Permit Revisions; Reopening for Cause

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- Current Chapter 15
- CFR is incorporated by reference where applicable
- Clarifies requirements for no change in permit determination when ownership changes
 - ***001.01D2 A written certification is provided to the Department from the new owner or operator which states acceptance of all active permits as issued in cases where the previous owner(s) cannot be located or are not in existence.***

Chapter 9 –

Permit Revisions; Reopening for Cause (cont'd)

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- Adds flexibility for minor permit revisions where some sources may be able to immediately make the proposed change upon the Department's receipt of the complete minor permit revision request.
- PTE less than major thresholds and increases less than:
 - A single hazardous air pollutant (HAP) less than or equal to 1 tpy
 - Total HAPs less than or equal to 2.5 tpy
 - VOCs less than or equal to 10 tpy
 - All other regulated pollutants less than or equal to 10 tpy

Chapter 9 – Permit Revisions; Reopening for Cause (cont'd)

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003.05 A source may immediately make the proposed change upon the Department's receipt of the source's complete minor permit revision request. After the source makes the change, and until the Department takes action on the request, the source will comply with both the applicable requirements and applicable requirements under the Act governing the change and the proposed permit terms and conditions.

Chapter 10 – Permits - Public Participation

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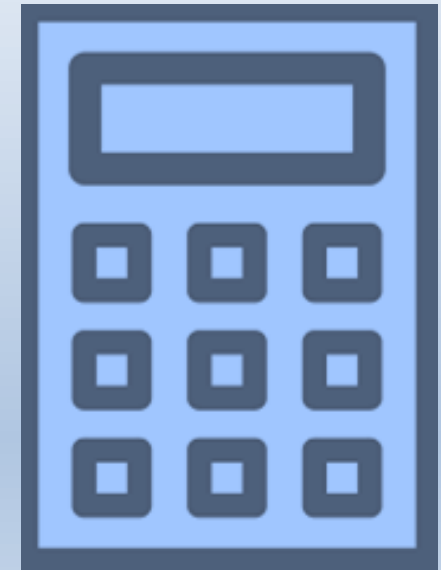
- Current Chapter 14
- Title 115 (Rules of Practice and Procedures) is incorporated by reference and replaces much of the chapter text
 - Title 115 updated June 2019
 - Title 115, Chapter 3 - Public Hearings



Chapter 11 – Emissions Inventory Reporting; When Required

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- Current Chapter 6
- CFR is incorporated by reference where applicable
- Minimal changes



2-Minute Break

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Chapter 12 – NSPS and Emissions Limits for Existing Sources

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- Current Chapter 18
- Alphabetized by Subpart
 - 001.01 Subpart A – General Provisions
 - 001.02 Subpart D – Fossil-Fuel-Fired Steam Generators...
 - 001.03 Subpart Da – Electric Utility Steam Generating Units
 - 001.04 Subpart Db – Industrial-Commercial-Institutional Steam Generating Units...

Chapter 12 – NSPS and Emissions Limits for Existing Sources (cont'd)

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- Updated effective date to 2021

Currently

*001 Standards of Performance for New Stationary Sources. Notwithstanding any other provisions of these regulations, the following "Standards of Performance for New Stationary Sources" published at 40 CFR Part 60, **effective July 1, 2013**, unless otherwise indicated are hereby adopted by reference and incorporated herein:*

REVISED

*001 Standards of Performance... for New Stationary Sources" published at 40 CFR Part 60, **effective July 1, 2021**, unless otherwise indicated are hereby adopted by reference and incorporated herein:*

Chapter 13 – Hazardous Air Pollutants

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- Consolidates current Chapters 23, 27, and 28
 - Chapter 23 – Hazardous Air Pollutants: Emissions Standards
 - Chapter 28 – Hazardous Air Pollutants: Emissions Standards
 - Chapter 27 – Hazardous Air Pollutants: Maximum Achievable Control Technology (MACT)
- Updated effective date to 2021

Chapter 14 – Incinerators; Emission Standards

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- Current Chapter 22
- Clarified materials authorized for incineration by law enforcement
 - ***001.04 Incinerators owned and operated by law enforcement agency used solely for the disposal of contraband materials obtained during a law enforcement operation.***

Chapter 15 – Compliance

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- Consolidates current Chapters 20, 30, and 32-36
 - Chapter 20 – Particulate Emissions; Limitations and Standards
 - Chapter 30 – Open Fires, Prohibited; Exceptions
 - Chapter 32 – Dust; Duty to Prevent Escape
 - Chapter 33 – Compliance; Time Schedule
 - Chapter 34 – Emissions Sources; Testing; Monitoring
 - Chapter 35 – Compliance; Exceptions Due to Startup, Shutdown, or Malfunction
 - Chapter 36 – Control Regulations; Circumvention, When Expected

Chapter 15 – Compliance (cont'd)

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- CFR is incorporated by reference where applicable
- Clarifies definition of “Administrator” as referenced in CFR
- Additional Burn Site Requirement
 - 002.02G5 *For the purpose of destroying untreated wood and trees at community burn sites. **Items permitted for burning will be kept in a separate location from other materials not allowed to be burned.***

Chapter 16 – Sulfur and NOx Emissions

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- Consolidates current Chapters 24 and 25
 - Chapter 24 – Sulfur Compound Emissions: Existing Sources Emissions Standards
 - Chapter 25 – Nitrogen Oxides (Calculated as Nitrogen Dioxide); Emission Standards for Stationary Sources
- CFR is incorporated by reference where applicable
- Clarifies definition of “Administrator” as referenced in CFR

Appendix I – Reporting Levels of HAPs for Emissions Inventory

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- Current Appendix I – Emergency Episodes
 - 1.0 Emergency Emissions Reduction Regulations is incorporated by reference in Chapter 2, Sections 006.01, 006.02, 006.03
 - 2.0 Emergency Action Center Communications and Control Procedures removed – will be addressed as a state plan per Chapter 2, Section 006.03C
- New Appendix I incorporates current Appendix II

Repealed/Deleted Chapters

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- Chapters 39 and 40 (repealed in April 2020)
 - Chapter 39 – Visibility Emissions from Diesel-Powered Motor Vehicles
 - Chapter 40 – General Conformity
- Chapter 41 – General Provisions
 - Restates requirements in statutes, other regulations
- Appendix I – Emergency Episodes
- Appendix III
 - Same content as Appendix II

Additional Tasks Associated with Revision

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Guidance Updates

- Permit application forms
- Online application process
- Guidance materials
- NDEE permit matrix



Upcoming Outreach Meetings

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NDEE Main Office - 245 Fallbrook Blvd, Lincoln NE Meeting Room 031

- Tuesday, April 27, 9:30 - 11:30
- Thursday, May 13, 1:00 - 3:00
- Tuesday, May 25, 9:30 - 11:30
- Thursday, June 10, 1:00 - 3:00



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Conclusion