

**CODE AGENICES: SUBMIT TO GOVERNOR BEFORE SUBMITTING TO
EXECUTIVE BOARD AND BEFORE PUBLIC HEARING DATE IS SET**

**PROPOSED REGULATION
GPRO COVERPAGE
(ATTACH TO REVIEW CHECKLIST)**

**Agency: Nebraska Department of Environment and Energy
Title, Chapter of Rules submitted: Title 129
Subject: Air Regulations
Prepared by: Andrew Dunkley
Telephone: 402-471-2923
Date submitted to Governor: May 7, 2025**

Projected dates for public hearings November, 2025.

Projected deadline for final approval March 25, 2026.

 X A copy of the section of laws or federal regulations that triggered these changes is attached.

FOR GOVERNOR OFFICE RECORDS

Advisor Assigned: Cirely Wardyn

Date approved to proceed: 7/25/25

Options for proceeding: _____

- a) No further contact with GPRO is necessary until final rules have been approved by the Attorney General.
- b) Contact Governor through GPRO concerning issues raised in Negotiated Rulemaking procedures.
- c) Submit Rules and Regulations Policy Review Checklist to Governor if rules are changed hereafter and a new public hearing is scheduled.
- X d) Keep the Governor informed through GPRO as issues arise in negotiations, drafting sessions, advisory board meetings, and public hearings.
- e) Specific policy comments per Governor's instructions is attached.

PROPOSED REGULATION POLICY REVIEW CHECKLIST

Agency: NDEE
Title, Chapter of Regulation: Title 129, Nebraska Air Quality Regulations
Subject: Nebraska Air Quality Regulations
Prepared by: _____
Contact Info: _____

A. Policy Changes and Impacts

1. What does the regulation do and whom does it impact? Provide a brief description of the proposed rule or regulation and its impacts on state agencies, political subdivisions, and regulated persons or entities.

NDEE proposes a number of revisions to Title 129, Chapters 1 through 9, 11 through 16, and Appendices I and II. Title 129 contains air quality regulations and impacts regulated sources of air pollutants. The proposed revisions will serve to correct typographical errors, clarify and simplify regulatory language, update reference dates for some federal regulations cited in the title, incorporate recent federal rulemaking, and add definitions of terms used in the regulations.

2. Describe changes being proposed to current policy and briefly provide rationale.

All revisions are described in the attached Revision Log. Key revisions include:

Chapter 1 – General Provisions; Definitions

- *change agency name to reflect merger of DEE and DNR, effective July 1, 2025*

Chapter 6 – Operation Permits

- *remove section 005, which references now-obsolete federal regulations*

Chapter 11 – Emissions Reporting, When Required

- *revise text to reflect the use of electronic emission inventory reporting*

Chapter 12 – New Source Performance Standards and Emission Limits for Existing Sources

- *incorporate New Source Performance Standards (NSPS) applicable to Nebraska sources*

Chapter 13 – Hazardous Air Pollutants

- *incorporate National Emission Standards for Hazardous Air Pollutants (NESHAP) applicable to Nebraska sources*

Chapter 14 – Incinerators, Emission Standards

- *revise text to clarify types of waste and materials permitted for burning*

Chapter 15 – Compliance

- *revise text to simplify language and clarify exceptions to open fires*
- *add “public power and irrigation districts” to the list of groups allowed to conduct burning for plant, wildlife, and parks management*

- add a second table with hazardous air pollutants sorted by chemical name

Appendix II – Hazardous Air Pollutants

- change agency name to reflect merger of DEE and DNR, effective July 1, 2025

B. Why is the rule necessary? Explain and provide an identification of specific authorizing statute(s) or legislative bill(s).

The Department proposes these revisions to correct typographical errors, clarify and simplify regulatory language, update reference dates for federal regulations cited in the title, incorporate federal rulemaking, remove obsolete references, reflect agency name change due to merger (LB317), and add definitions of terms used in the regulations.

If revisions are adopted and approved by the Governor, the Department intends to request a revision to Nebraska's state implementation plan (SIP), which is its EPA-approved programs and regulations that outline how the state implements the Clean Air Act (CAA) requirements, and the State's 40 CFR part 70 operating permit program.

C. What happens if these rules are not adopted?

If these proposed revisions are not adopted, the following will apply:

The method cited for reporting annual emission inventory data will not align with the current process in place;

Reference to obsolete federal regulations in Chapter 6 will permit emission sources to claim an affirmative defense at the state level for a permit subject to federal regulations that no longer allow affirmative defense;

State authority to enforce federal regulations (such as those in Chapters 12 and 13) will remain limited to those regulations in effect as of the CFR date cited in Title 129; Nebraska facilities will remain subject to more current federal regulations not adopted in Title 129, however, enforcement authority will lie with the Environmental Protection Agency (EPA) until incorporated into state regulations;

A lack of clarity in language in Chapters 14 and 15 may allow for unauthorized materials to be incinerated, unauthorized open fires, and create confusion among the public if prescribed burning is utilized by public power and irrigation districts; and

References to the agency as it is currently named ("Nebraska Department of Environment and Energy" and "NDEE") will be obsolete as of July 1, 2025, prior to public hearing and anticipated adoption of the regulations.

D. Policy Checklist

1. Is this an update or editorial change reflecting essentially no change in policy? *Yes*
2. Does the policy in **the proposed regulation reflect legislative intent**? *No*
3. Is the policy proposed in the regulation **a state mandate on local government**? *No*
Is it funded? *n/a*
4. Is the policy proposed in the regulation **a federal mandate on local government**? *No*
Is it funded? *n/a*

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E. Fiscal Impact. In addition to completing the required Fiscal Impact Statement (a copy must be attached to this document), the agency must address the following:

1. Will the proposed regulation reduce, increase, or have no change in resources –

funds, personnel or FTE? *No*

2. Have initial contacts been made with citizens or organizations that may be impacted by the proposed regulation? *No – awaiting approval for outreach.*
3. Does the proposed regulation impact another agency? Explain the impact. *No*
4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses? *No*
5. What is the agency's best estimate of the additional or reduced spending? *None*
If there is none, please note. If receipt of federal funds is contingent upon approval of the proposed regulation, then indicate the amount and nature of the federal funds affected, and enclose laws or correspondence from federal officials substantiating the information.

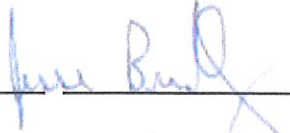
F. Unique problems or issues and recommendations. *None anticipated.*

G. Who is expected to be affected, or to oppose or support the proposed regulation? Explain what initial informal contacts have been made with organizations or citizens who may be affected by the regulation prior to the public hearing.
Those affected would include sources (facilities) subject to Title 129 regulations and those that have been issued a Class I or II air operating permit. No outreach has been conducted yet, as we are awaiting approval to do so.

H. Are these proposed rules a likely candidate for negotiated rulemaking? Explain. Has the process been completed? If so, explain how the issues were addressed.
No. This initial change is intended to correct typographical errors, clarify language, update agency references, and harmonize state regulations with federal regulations. Proposed revisions are not controversial in nature.
No outreach has been completed as we are awaiting approval for public outreach.

Director's Verification of Review

I have reviewed these proposals and verify that, at this stage of the regulation's development, these questions have been accurately addressed.

Director's Signature  Date May 7, 2025