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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R01-OAR-2025-0282; FRL-13016-02-R1]

Air Plan Approval; Maine; Chapter 140: Part 70 Air Emission License Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Clean Air Act (CAA) operating permit program revision submitted by the State of Maine. This revision makes minor changes to Maine's operating permit program that are considered clarifications, that correct grammar, that codify longstanding practices, or that are necessary for the state to utilize an expected future electronic application system. The revisions also include provisions allowing the public comment period on a draft permit to run concurrently with the EPA's review of a proposed permit. The intended effect of this action is to approve Maine's revisions. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2025-0282. All documents in the docket are listed on the *https://www.regulations.gov* web site. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA.

EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Andre Turner, U.S. Environmental Protection Agency, Region 1 Office of Air and Radiation Division, 5 Post Office Square, Suite 100, Boston, MA 02109, telephone number: (617) 918-1216, email address: *turner.andre@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ‘‘we,’’ ‘‘us,’’ or ‘‘our’’ is used, we mean EPA.

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I. Background and Purpose

On November 20, 2025 (90 FR 52316), the EPA published a Notice of Proposed Rulemaking (NPRM) that proposed approval of minor changes to Maine’s operating permit program at 06-096 CMR Chapter 140, “Part 70 Air Emission License Regulation,” to make minor changes that are considered clarifications, correct grammar, codify longstanding practices, and make other necessary changes for the state to utilize an expected future electronic application system. The revisions include regulatory provisions allowing the public comment period on a draft permit to run concurrently with the EPA's review of a proposed permit. The EPA is not taking action on the removal of the emergency affirmative defense provisions in Section 2(AA) of Chapter 140 at this time. The EPA intends to address Maine Department of Environmental Protection’s (DEP) request to approve the revisions removing the emergency affirmative defense provisions in a subsequent action. The formal operating permit program revisions were submitted by Maine on

July 29, 2024. The EPA is approving the following revisions to Maine's existing EPA-approved CAA Title V operating permit program:

- Removing inappropriate references to New Source Review permitting. New Source Review is addressed by Maine DEP's Chapter 115;
- Allowing applications to be signed electronically provided the signature complies with the requirements of Cross-Media Electronic Reporting, 40 CFR part 3;
- Allowing public notices of intent to file and draft availability to be published on the Maine DEP website in lieu of publication in a print newspaper;
- Allowing Maine DEP to keep records for public inspection electronically rather than requiring a paper copy at the Augusta, Maine, office;
- Adding further information regarding the applicability of Section 502(b)(10); and
- Requiring transfer applications to be completed within 60 days as is required by the underlying federal regulation.

Maine DEP also codified the following revisions to align the rule with longstanding practices. The EPA is approving these changes into their EPA-approved CAA Title V operating permit program:

- Clarifying that Maine DEP, and not the applicant, will provide draft licenses to affected states when appropriate;
- Removing the requirement for applicants to submit redlined versions of previous applications when applying for a license renewal;
- Specifying that EPA's review period on a draft license may run concurrently with the public comment period provided the State does not receive comments that cause it to make substantive changes to the draft license; and
- Clarifying that portable engines not used to power process equipment are considered insignificant activities.

Other specific requirements and the rationale for the EPA's proposed action are explained in the NPRM and will not be restated here.

II. Response to Comments

The NPRM provided a 30-day public comment period which concluded on December 22, 2025. EPA received one comment in response to the NPRM, which was adverse in nature to EPA's proposed approval of the action. The EPA provides a summary of the comment and the EPA's response to the comment below.

Comment 1a: The commenter stated, "Title V operating permit programs are not part of SIPs and are approved under CAA section 502(d) and 40 CFR 70.4–70.12, not under CAA section 110. The EPA's longstanding practice is to approve a state's Title V program in 40 CFR part 70, appendix A, and to approve SIP rules in 40 CFR part 52. Title V permits do not establish new emission limitations required under section 110(a)(2)(A); rather, they collect and make enforceable preexisting applicable requirements." The commenter further states that, "Incorporating Chapter 140 into the SIP would conflate two distinct statutory programs and could create confusion about the applicable approval, revision, and enforcement processes (e.g., 40 CFR 70.8 the EPA review of individual permits, Title V petition process under section 505(b)(2), and program deficiency correction under section 502(i)). The commenter concludes by stating, "If EPA's intent is to approve revisions to Maine's Title V program, the action should be recast and noticed under Title V authority with corresponding codification in 40 CFR part 70, appendix A. If, instead, EPA intends to approve only discrete SIP-relevant elements, the notice must specify, line-by-line, which subsections of Chapter 140 are being approved for SIP purposes and which are excluded as Title V-only provisions. The notice, as published, does not provide that clarity."

Response 1a: The EPA disagrees with the commenter because the premise of the comment, i.e., that the EPA proposed this action as a CAA section 110 State Implementation Plan (SIP) revision, is incorrect. This action is not a SIP revision. As described in the summary, background and purpose, and proposed action sections of the NPRM, the EPA proposed the approval of a CAA Title V operating permit program revision submitted by the State of Maine in accordance with the Act and applicable federal regulations. See 42 U.S.C. 7661a(d) and 40 CFR 70.4. Maine's program approvals are listed in 40 CFR part 70, Appendix A and will be amended via this final rule to codify the revisions to the state's operating permit program. The commenter's claims are not applicable to the NRPM, as this action is not a SIP revision. Therefore, no changes are warranted in response to this comment.

Comment 1b: The commenter stated that, "The notice lacks an adequate section 110(l) noninterference analysis and fails to provide sufficient notice for meaningful comment. CAA section 110(l), 42 U.S.C. § 7410(l), prohibits EPA from approving any SIP revision that would interfere with attainment, reasonable further progress, or any other applicable requirement. If EPA is approving Chapter 140 into the SIP—or replacing previously approved licensing provisions—EPA must demonstrate non-interference. The notice does not contain a section 110(l) analysis or any data showing that the change does not relax monitoring, reporting, or enforceability of existing SIP emission limits. For example, Chapter 140 includes permit shield provisions, streamlining of overlapping requirements, and procedures for administrative and minor permit changes. When mistakenly approved into the SIP, such provisions could affect enforceability of underlying SIP limits. Without a targeted 110(l) analysis keyed to the exact text being federalized, the public lacks the information necessary to assess non-interference. The Administrative Procedure Act requires sufficient detail in the notice to permit meaningful comment. See 5 U.S.C. § 553(b). By failing to: (a) identify the precise subsections being

incorporated; (b) explain the statutory basis (110 vs. 502); and (c) provide a section 110(l) analysis, the notice does not provide adequate notice and rationale." The commenter requests that the EPA provide a CAA section 110(l) analysis or withdraw the SIP action and process Maine's Chapter 140 under Title V.

Response 1b: The EPA disagrees with the commenter. The NRPM proposed to approve revisions to Maine's operating permit program under Title V of the CAA and 40 CFR part 70. The commenter's claims are not applicable, as this action is not a SIP revision and not subject to CAA section 110. Therefore, no changes are warranted in response to this comment.

Comment 1c: The commenter stated that, "Paperwork Reduction Act implications are unaddressed if Chapter 140 is federalized. Chapter 140 contains monitoring, recordkeeping, reporting, and compliance certification requirements applicable to sources. If EPA incorporates these provisions into the SIP, those information collection requirements become federally enforceable obligations 'sponsored' by EPA within the meaning of the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 et seq., and 5 CFR 1320.3(d). EPA's SIP preambles often assert that PRA does not apply because SIP approvals impose no additional requirements beyond state law. That general statement does not resolve the PRA issue where the agency is incorporating by reference and federalizing detailed third-party disclosure and recordkeeping obligations for hundreds of facilities. In analogous contexts, EPA obtains OMB control numbers for monitoring, recordkeeping, reporting, and certification requirements incorporated by reference in federal rules. The notice does not identify any OMB control number covering Chapter 140's information collection elements, nor does it provide an estimate of burden or demonstrate that any existing ICR encompasses these state-imposed, but now federally enforceable, requirements." The commenter requests that the EPA "either (a) avoid incorporating into the SIP the monitoring, recordkeeping, reporting, certification sections of Chapter 140; or (b) identify the applicable

OMB control number and provide the required PRA analysis and burden estimate before final action."

Response 1c: The EPA disagrees with the commenter. The NRPM proposed to approve revisions to Maine's operating permit program under Title V of the CAA and 40 CFR part 70. The commenter's claims are not applicable, as this action is not a SIP revision. Additionally, the EPA has complied with the PRA by certifying that the PRA does not apply to this rule because the action does not involve an information collection burden as defined by the Act. Therefore, no changes are warranted in response to this comment.

Comment 1d: The commenter stated that the "Incorporation-by-reference (IBR) and material availability are deficient. Under 1 CFR part 51 and OFR rules, when EPA incorporates state rules by reference, the agency must identify with specificity the exact version/date, ensure the material is reasonably available, and avoid ambiguous 'dynamic' incorporations (e.g., 'as amended' references to federal rules). SIP IBR sections must provide locations where the public can inspect the incorporated material. Chapter 140 typically cross-references federal regulations (40 CFR parts 70, 60, 61, 63) and state forms, instructions, and guidance documents governing application content and public notice. The notice does not describe how these cross-referenced materials are made reasonably available as part of the IBR package, nor does it carve out dynamically incorporated or non-regulatory materials (e.g., application forms) that cannot be IBR'd without violating OFR requirements. Without a complete IBR description and public availability statement for each incorporated provision and without excluding dynamic cross-references the incorporation is defective." The commenter request that the EPA "revise the IBR section to: (a) enumerate the specific subsections of Chapter 140 being incorporated with effective dates; (b) exclude dynamic cross-references and non-regulatory materials, or provide

static versions and access details; and (c) identify where the public may inspect the materials at EPA and the State consistent with 1 CFR 51.5."

Response 1d: The EPA disagrees that revisions to Incorporation by Reference (IBR) are warranted. The commenter's concerns relate to SIP IBR requirements, but this is not a SIP action. The NRPM proposed to approve revisions to Maine's operating permit program under Title V of the CAA and 40 CFR part 70. Therefore, the EPA is not making any changes in response to this comment.

Comment 1e: The commenter states that "EPA routinely certifies that SIP approvals do not directly regulate small entities. If, however, EPA federalizes Chapter 140's Title V program, the action would directly impose federal obligations on small public entities that operate covered sources (e.g., municipal utilities, landfills, wastewater treatment plants). EPA should revisit its certification or clarify that Chapter 140 is not being federalized into the SIP."

Response 1e: The NRPM proposed to approve revisions to Maine's operating permit program under Title V of the CAA and 40 CFR part 70. This action is not a SIP revision. Therefore, no changes are warranted in response to this comment.

Comment 1f: The commenter states, "Incorporating Chapter 140 into the SIP could be construed as imposing enforceable duties on local governments that own affected sources. EPA should either confirm that Unfunded Mandates Reform Act (UMRA) does not apply because the action is processed under Title V (program approval) or provide a brief UMRA assessment if proceeding as a SIP action."

Response 1f: The NRPM proposed to approve revisions to Maine's operating permit program under Title V of the CAA and 40 CFR part 70. This action is not a SIP revision. Therefore, no changes are warranted in response to this comment.

III. Final Action

The EPA is approving the above revisions to Maine's operating permit program at Chapter 140, "Part 70 Air Emission License Regulation," except those in section 2(AA) related to affirmative defense, which the EPA intends to address at a later date.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve Title V operating permit program revisions that comply with the provisions of the CAA and applicable Federal regulations. Thus, in reviewing revisions, 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);
- Is not subject to an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

In addition, this action 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 Clean Air Act, 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 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 70

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 16, 2026.

Mark Sanborn,
Regional Administrator,
EPA Region 1.

For the reasons stated in the preamble the Environmental Protection Agency amends part 70 of chapter I, title 40 of the Code of Federal Regulations to read as follows:

PART 70 – STATE OPERATING PERMIT PROGRAMS

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

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

2. Appendix A to part 70 is amended under "Maine" by adding paragraph (d) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Maine

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(d) The Maine Department of Environmental Protection submitted program revisions on July 29, 2024. The revision makes minor changes to Maine's operating permit program that are considered clarifications, correct grammar, that codify longstanding practices, or that are necessary for the state to utilize an expected future electronic application system. The revisions also include provisions allowing the public comment period on a draft permit to run concurrently with EPA's review of a proposed permit. EPA hereby grants full approval effective on **[Insert date 30 days after date of publication in the Federal Register]**.

[FR Doc. 2026-14885 Filed: 7/22/2026 8:45 am; Publication Date: 7/23/2026]