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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 70**

**[EPA-R01-OAR-2025-1608; FRL-13018-02-R1]**

# Operating Permit Program Approval; New Hampshire; Revised Definitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) approves revisions to the State of New Hampshire's Clean Air Act (CAA) title V operating permit program. These revisions amend the definitions of "hazardous air pollutant" and "regulated air pollutant" in New Hampshire regulations to remain consistent with Federal permitting and air toxics requirements in accordance with the CAA.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2025-1608. 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. The 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:** Jessica Kilpatrick, Air Permits, Toxics, and Indoor Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: 5-MI, Boston, MA 02109-0287. telephone number: 617-918-1652. email address: *kilpatrick.jessica@epa.gov*.

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## I. Background and Purpose

On June 12, 2025, and July 31, 2025, the New Hampshire Department of Environmental Services (NHDES) submitted to the EPA revisions to the State's title V operating permit program. Specifically, the revisions incorporate the amended definitions of "hazardous air pollutant (HAP)" and "regulated air pollutant (RAP)" in the New Hampshire Code of Administrative Rules, Chapter Env-A – Air Related Programs to remain consistent with Federal definitions at CAA section 112(b) and 40 CFR 70.2. On November 20, 2025 (90 FR 52318), the EPA published a Notice of Proposed Rulemaking (NPRM), proposing to approve the revisions. The rationale for the EPA's proposed action is 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. The EPA received two comments in response to the NPRM, one of which was supportive in nature and one of which was adverse in nature to the EPA's proposed approval of the action. A summary of the adverse comment and the EPA's response to the comment is provided below.

***Comment 1a:*** The EPA gave inadequate notice and record under the Administrative Procedure Act (APA) and the NPRM was missing required program revision materials under 40 CFR part 70. The commentor suggested that the EPA withdraw the direct final approach and reissue the action as a proposed rule with a minimum 30-day comment period after the docket is complete. The commentor suggested that the EPA supplement the docket with: (a) the specific revised

definitions; (b) a redline/crosswalk against previously approved text and part 70; (c) a technical support document explaining the EPA's evaluation of each change; and (d) any legal authority statements relied upon.

***Response 1a:*** The EPA disagrees with the commentor. On November 20, 2025, the EPA published an NPRM for this action with a 30-day comment period. The notice was not a direct final rulemaking. The NPRM contained the NHDES's revised definition of "HAP" at Env-A 103.41 and revised definition of "RAP" at Env-A 104.47. The revised definitions comply with the CAA, requiring the NHDES to incorporate all current and future HAPs into its title V operating permit program. The EPA's basis for proposing to approve these revisions is clearly and completely delineated in the NPRM. There is no need for supplemental materials in the rulemaking docket such as revised definitions, a redline/crosswalk, a technical support document, or legal authority statements, because this information would be duplicative of the NPRM. The EPA has provided a proper record and notice period in this action and is not missing any required materials related to 40 CFR part 70.

***Comment 1b:*** The NPRM had a deficient or unsupported analysis under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) and failed to provide a factual basis for a certification under 5 U.S.C. 605(b). The commentor suggested that the EPA provide a reasoned, record-based factual statement addressing the number and types of small entities affected and the expected cost effects of the definitional change or should prepare an Initial Regulatory Flexibility Analysis and allow comment.

***Response 1b:*** The RFA/SBREFA is inapplicable to this rulemaking. The regulatory analysis provisions of the RFA/SBREFA are only triggered by a threshold determination by the Agency that this rule would have a significant economic impact on a substantial number of small entities. Because the Agency has certified that this rule will not have a significant

economic impact on a substantial number of small entities, section 603 and 604 of the RFA/SBREFA do not apply to this rulemaking. 5 U.S.C. 605(b).

***Comment 1c:*** The NPRM did not address implications of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, for Part 70 information collection requests (ICR). The commentor suggested that the EPA address PRA implications by explaining whether the action changes the respondent universe or burden under the Operating Permits Program ICR (OMB Control No. 2060-0243; EPA ICR No. 1587) and, if so, submit the appropriate ICR change request to OMB and place burden calculations in the docket.

***Response 1c: 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.

***Comment 1d:*** The NPRM lacked a supporting basis for an Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1501 *et seq.*, statement that was tailored to the definitional changes. The commentor suggested that the EPA provide a tailored UMRA statement that briefly quantifies or explains the expected change (if any) in private-sector expenditures due to the definitional changes.

***Response 1d:*** The EPA has complied with UMRA by making its own determination that this rule will not result in expenditures of $100M+, and therefore the Agency does not need to complete a statement under 2 U.S.C. 1532.

***Comment 1e:*** The EPA may have invoked good cause to waive the 30-day delayed effective date for this action. The commentor suggested that the EPA rescind the waiver or provide a particularized justification.

***Response 1e:*** This is factually inaccurate. The EPA did not include a good cause waiver in this action. The effective date of this action is 30 days after its date of publication in the Federal Register.

**III. Final Action**

The EPA approves the NHDES's title V operating permit program revisions to incorporate the definitions for "hazardous air pollutant" and "regulated air pollutant" at the New Hampshire Code of Administrative Rules, Chapter Env-A – Air Related Programs.

- N.H. Admin. Code § Env-A 103.41: "Hazardous air pollutant" means any air pollutant listed pursuant to section 112(b) of the Act.
- N.H. Admin. Code § Env-A 104.47: "Regulated air pollutant" means "regulated air pollutant" as defined in 40 CFR 70.2, reprinted in Appendix D.

**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, the 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 proposed 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 PRA (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 RFA(5 U.S.C. 601 *et seq*.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the UMRA 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 CAA.

In addition, this action is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the action 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).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 **[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, Acid rain, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Licensing and registration, Reporting and recordkeeping requirements.

**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 "New Hampshire" by adding paragraph (d) to read as follows:

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

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**New Hampshire**

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(d) The New Hampshire Department of Environmental Services submitted program revisions on June 12, 2025, and July 31, 2025. The revisions incorporate the definitions of hazardous air pollutant and regulated air pollutant. The EPA hereby grants full approval effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

[FR Doc. 2026-15363 Filed: 7/29/2026 8:45 am; Publication Date: 7/30/2026]