

RULEMAKING NOTICE FORM

Notice Number _____

Rule Number Env-A 1400

<p>1. Agency Name & Address:</p> <p>Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</p>	<p>2. RSA Authority: <u>RSA 125-I:3, II; RSA 125-I:4, II & III</u></p> <p>3. Federal Authority: <u>N/A</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: **Regulated Toxic Air Pollutants**

6. (a) Summary of what the rule says and of any proposed amendments:

Env-A 1400, Regulated Toxic Air Pollutants, implements RSA 125-I, the Air Toxic Control Act (Act), by listing regulated toxic air pollutants (RTAPs), classifying them, and establishing ambient air limits (AALs). The purpose of this chapter is to prevent, control, abate, and limit the emissions of toxic air pollutants into the ambient air. The ambient air limits established under this rule are intended to promote public health by reducing human exposure to toxic air pollutants.

The Department proposes changes to the list of RTAPs and their AALs every few years to reflect updates made to the list of chemical substances by the American Conference of Governmental Industrial Hygienists (ACGIH) and the US EPA’s Integrated Risk Information System (IRIS), as contemplated by RSA 125-I. In this rulemaking, the ACGIH and IRIS updates for 2017, 2018, and 2019 are proposed to be incorporated. In that time frame, a total of 121 new chemical substances were added and 21 were removed. The Occupational Exposure Limit (OEL) or reference concentration (RfC) have been changed for 40 substances, which results in a change to their AALs. Name corrections/changes have been made for 90 RTAPs mainly due to the addition of “inhalable fraction”, “respirable fraction”, or “inhalable fraction and vapor” by ACGIH.

The Department has adopted a convention of rounding AALs to two significant figures based on the following US EPA guidance document: *Issuance of the Clean Air Act National Stack Testing Guidance from Lisa Lund, Director of the Office of Compliance*, issued April 27, 2009 to the EPA Regional Compliance/Enforcement Division Directors.

The Department also proposes to add the following definitions to Env-A 1401.03, Definitions:

- “Inhalable fraction”
- “Inhalable fraction and vapor”
- “Respirable fraction”
- “Thoracic particulate matter”
- “Uncontrolled emission” (as defined in RSA 125-I:2, XVII)

The particulate fraction notations are used and defined by ACGIH to delineate which portion of a chemical is subject to the occupational exposure value used by the Department to calculate the corresponding AALs. Inclusion of these definitions will give clarity to the regulated community that is necessary when determining compliance with the rule.

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In addition to the required updates, the Department is proposing to reorganize the rules to give the regulated community a clearer path to compliance. Specifically, parts Env A 1403 through Env-A 1405 have been rearranged and renumbered as discussed below.

Env-A 1403, Compliance Standards – formerly Permit Requirements. This part will now describe the compliance obligations under the rule.

Env-A 1404, Methods of Demonstrating Compliance – currently Env-A 1405. This part will continue to outline the calculation methods a source may use to determine the emissions of RTAPs. Two sections within Env-A 1404 are proposed to be revised as follows:

- Env-A 1404.06, Alternative Methods – clarifies what information will be required for sources requesting the use of the alternative compliance method, and that with any alternative method used, the source must still demonstrate compliance with the AALs.
- Env-A 1404.07, Compliance with Compliance Boundaries; Alternate Compliance Boundaries contains added language to:
 - Require sources to comply with AALs on any part of their property that is leased to another entity; and
 - Establish the procedures and criteria for establishing an “alternate compliance boundary” pursuant to RSA 125-I:6 III (c).

Env-A 1405, Permit Required – currently Env-A 1403. This part describes the conditions under which a facility would be required to have a permit, and combines existing Env-A 1403.01 and Env-A 1403.03 with two new sections that provide more detail about obtaining a permit and the process for revising the RTAP list or a compliance boundary.

In addition to the above, existing Env-A 1404, Application Procedures, is proposed to be renumbered as Env-A 1406, existing Env-A 1406 is proposed to be renumbered as Env-A 1407, and existing Env-A 1407 is proposed to be merged into existing Env-A 1408.

6. (b) Brief description of the groups affected:

Sources emitting toxic air pollutants into the ambient air will be affected.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	State Statutes Implemented
Env-A 1401	RSA 125-I:1; RSA 125-I:2; RSA 125-I:3, I & II
Env-A 1402.01(a) & (b)	RSA 125-I:3, III(a)
Env-A 1402.01(c) & (d)	RSA 125-I:3, III(b)
Env-A 1402.02	RSA 125-I:3, III(c)
Env-A 1402.03	RSA 125-I:3, III(c)
Env-A 1403.01 & 1403.02	RSA 125-I:3, I; RSA 125-I:5, I & V
Env-A 1404	RSA 125-I:5, V
Env-A 1404.07	RSA 125-I:5,V & RSA 125-I:2, VI
Env-A 1405.01	RSA 125-I:3, I; RSA 125-I:5, I & V
Env-A 1405.02-1405.04	RSA 125-I:1; RSA 125-I:2; RSA 125-I:3, I & II
Env-A 1406	RSA 125-I:5, I & IV
Env-A 1407	RSA 125-I:2, XIV; RSA 125-I:4
Env-A 1408 - 1411	RSA 125-I:4
Env-A 1412	RSA 125-I:4, V
Env-A 1413	RSA 125-I:1; RSA 125-I:5
Env-A 1450	RSA 125-I:4

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7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Karla McManus** Title: **DES-ARD Planning and Rules Manager**
Address: **Department of Environmental Services** Phone #: **(603) 271-6854**
29 Hazen Drive Fax#: **(603) 271-1381**
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The rules also can be viewed in PDF in the Public Comment Opportunities section of the NHDES website at <https://www.des.nh.gov/public-comment-opportunities> and selecting "Rulemaking"

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, October 8, 2021**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Wednesday, September 29, 2021 at 10:00 AM**

Place:

**DES Offices
Room 208C
29 Hazen Drive, Concord NH**

NOTE: NHDES security procedures require all visitors to sign in and present photo identification (such as a driver's license). If you plan to attend the public hearing in person, please bring photo identification with you.

You also may attend the hearing via WebEx, which can be accessed through the following link:

<https://nhgov.webex.com/nhgov/j.php?MTID=m4e955fc585a299f20bb19c220310360d>

Meeting number (access code): 1806 08 5766

Meeting password: nRxiQUe9V85

You also may join the meeting by phone:

Call in Number: +1-415-655-0001 US Toll

Access Code: 180 608 5766

Contact Karla McManus at Karla.S.McManus@des.nh.gov or (603) 271-6854 if you have any questions or technical issues connecting to the hearing.

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # 21:061, dated 06/02/2021:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules. Any costs associated with the proposed rules are attributable to RSA 125-I and not the rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The costs of the air toxic control program are attributable to the statute. The proposed rules and amendments thus do not create, expand, or modify any program or responsibility in such a way as to necessitate additional expenditures by political subdivisions, and thus do not violate Part I, Article 28-a of the N.H. Constitution.