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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA-HQ-OAR-2008-0708; FRL-5300.3-01-OAR]

RIN 2060-AV76

National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines; Court Vacatur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the Code of Federal Regulations (CFR) to reflect a 2015 court decision regarding the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Stationary Reciprocating Internal Combustion Engines (RICE) and the New Source Performance Standards (NSPS) for Stationary Internal Combustion Engines (ICE). The court vacated provisions in the regulations specifying that emergency engines could operate for emergency demand response or during periods where there is a deviation of voltage or frequency. This ministerial rule revises the RICE NESHAP and ICE NSPS to conform to the court's decision.

DATES: This final rule is effective on August 10, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2008-0708. All documents in the docket are listed in <https://www.regulations.gov/>. Although listed, some information is not publicly available, e.g., Confidential Business Information 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. With the exception of such material, publicly available docket materials are available electronically in <https://www.regulations.gov/> or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742. For further information and updates on EPA Docket Center services and current status, please visit us online at <https://www.epa.gov/dockets/>.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Melanie King, Sector Policies and Programs Division (D243-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2469; and email address: king.melanie@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Why is the EPA issuing this final rule?

This action amends the CFR to reflect the 2015 court decision in *Delaware Department of Natural Resources and Environmental Control v. EPA*, 785 F.3d 1 (D.C. Cir. 2015) as amended (July 21, 2015), vacating 40 CFR 60.4211(f)(2)(ii) and (iii), 60.4243(d)(2)(ii) and (iii), and 63.6640(f)(2)(ii) and (iii). Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B) provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for amending these provisions without prior proposal and opportunity for public procedures because the correction of the CFR is a ministerial act to effectuate the court order and public notice and comment is unnecessary and would serve no useful purpose. Removal of the vacated paragraphs in the RICE NESHAP (40 CFR part 63 subpart ZZZZ) at 63.6640(f)(2)(ii) and (iii), the Compression Ignition (CI) ICE NSPS (40 CFR part 60 subpart IIII) at 40 CFR 60.4211(f)(2)(ii) and (iii), and the Spark Ignition (SI) ICE NSPS (40 CFR part 60 subpart JJJJ) at 60.4243(d)(2)(ii) and (iii) has no legal effect beyond fulfilling the court's vacatur in *Delaware v. EPA* and is ministerial in nature. The court issued the mandate for its decision on May 4, 2016, at which point the vacatur became effective.

II. Background

The RICE NESHAP and ICE NSPS include a subcategory for emergency engines and specify that to be classified as an emergency engine, an engine must meet certain limitations on its hours of operation in non-emergency situations. The existing regulations provide that hours of operation in non-emergency situations are limited to 100 hours per year and only allowed for specific purposes. On January 30, 2013, the EPA finalized amendments to the RICE NESHAP and ICE NSPS specifying that the non-emergency situations in which emergency engines could be operated included (1) for emergency demand response during periods in which the Reliability Coordinator under the North American Electric Reliability

Corporation (NERC) Reliability Standard EOP-002-3, Capacity and Energy Emergencies, or other authorized entity as determined by the Reliability Coordinator, has declared an Energy Emergency Alert Level 2 as defined in the NERC Reliability Standard EOP-002-3 and (2) periods where there is a deviation of voltage or frequency of 5 percent or greater below standard voltage or frequency. 78 FR 6674, January 30, 2013. The state of Delaware and other industry and environmental groups filed petitions seeking judicial review of the provisions specifying that emergency engines could operate for emergency demand response and during voltage or frequency deviations. In response to these petitions, the U.S. Court of Appeals for the District of Columbia Circuit vacated those provisions in the RICE NESHAP and ICE NSPS in 2015. The court held that the EPA acted arbitrarily and capriciously when it modified the RICE NESHAP and ICE NSPS to specify that emergency engines could operate for up to 100 hours per year for emergency demand response. The court granted the EPA's motion to stay issuance of its mandate until May 2016 to allow engine owners to take the necessary measures to bring their engines into compliance with the regulations. Upon issuance of the court's mandate, the vacated provisions ceased to have any legal effect, and engines that were operating for any number of hours per year for the circumstances described in the vacated provisions were required to cease operation under such circumstances or comply with the emission standards and other applicable requirements for non-emergency engines. The EPA issued a guidance memorandum explaining the effect of the vacatur¹ and is now amending the RICE NESHAP and ICE NSPS to reflect the court decision.

III. Which provisions are being amended?

This final rule amends the RICE NESHAP by removing paragraphs 40 CFR 63.6640(f)(2)(ii) and (iii), the CI ICE NSPS by removing paragraphs 40 CFR 60.4211(f)(2)(ii) and (iii), and the SI ICE NSPS by removing paragraphs 40 CFR 60.4243(d)(2)(ii) and (iii), all of which were vacated by the *Delaware v. EPA* decision. The removal of the vacated paragraphs also necessitates revisions to other paragraphs in the ICE NSPS and

RICE NESHAP that contained references to the vacated paragraphs or referenced operation of engines categorized as emergency engines for the purpose of emergency demand response, which can no longer occur due to the vacatur. A list of these revisions is provided below.

- **40 CFR 60.4211(f)**: Remove “emergency demand response” from the paragraph (f) introductory text and the paragraph (f)(3) introductory text since operation for emergency demand response is no longer allowed for emergency engines; remove reference to the vacated paragraphs (f)(2)(ii) and (iii) from the paragraph (f)(2) introductory text.

- **40 CFR 60.4214(d)**: Remove the reference in the paragraph (d) introductory text to operating for the purposes specified in the vacated paragraphs 40 CFR 60.4211(f)(2)(ii) and (iii); remove paragraphs (v) and (vi) which required reporting of operation and contractual obligation for the purposes specified in the vacated paragraphs.

- **40 CFR 60.4219**: Revise definition for “emergency stationary internal combustion engine” to remove reference to the vacated paragraphs 40 CFR 60.4211(f)(2)(ii) and (iii) in paragraph (3) of the definition.

- **40 CFR 60.4243(d)**: Remove “emergency demand response” from the paragraph (d) introductory text and the paragraph (d)(3) introductory text since operation for emergency demand response is no longer allowed for emergency engines; remove reference to the vacated paragraphs (d)(2)(ii) and (iii) from the paragraph (d)(2) introductory text.

- **40 CFR 60.4245(e)**: Remove the reference in the paragraph (e) introductory text to operating for the purposes specified in the vacated paragraphs 40 CFR 60.4243(d)(2)(ii) and (iii); remove paragraphs (v) and (vi) which required reporting of operation and contractual obligation for the purposes specified in the vacated paragraphs.

- **40 CFR 60.4248**: Revise definition for “emergency stationary internal combustion engine” to remove reference to the vacated paragraphs 40 CFR 60.4243(d)(2)(ii) and (iii) in paragraph (3) of the definition.

- **40 CFR 63.6585**: Remove reference to operation and contractual obligation for the purposes specified in the vacated paragraphs 40 CFR 63.6640(f)(2)(ii) and (iii).

- **40 CFR 63.6590**: Remove references in paragraphs (b)(1)(i) and (b)(3)(iii) to operation and contractual obligation for the purposes specified in the vacated

paragraphs 40 CFR 63.6640(f)(2)(ii) and (iii).

- **40 CFR 63.6604**: Remove reference in paragraph (b) to operation and contractual obligation for the purposes specified in the vacated paragraphs 40 CFR 63.6640(f)(2)(ii) and (iii); remove paragraph (c) since it only applied to an emergency engine that operates or is contractually obligated to be available for the purposes specified in the vacated paragraphs 40 CFR 63.6640(f)(2)(ii) and (iii) and there would no longer be any emergency engines meeting that criteria since operation for those purposes is no longer allowed for emergency engines.

- **40 CFR 63.6640**: Remove “emergency demand response” from the paragraph (f) introductory text, the paragraph (f)(3) introductory text, and the paragraph (f)(4) introductory text since operation for emergency demand response is no longer allowed for emergency engines; remove reference to the vacated paragraphs (f)(2)(ii) and (iii) from the paragraph (f)(2) introductory text.

- **40 CFR 63.6650**: Remove the reference in the paragraph (h) introductory text to operating for the purposes specified in the vacated paragraphs 40 CFR 63.6640(f)(2)(ii) and (iii); remove paragraphs (v) and (vi) which required reporting of operation and contractual obligation for the purposes specified in the vacated paragraphs.

- **40 CFR 63.6655**: Remove reference in paragraph (f) to the vacated paragraphs 40 CFR 63.6640(f)(2)(ii) and (iii).

- **40 CFR 63.6675**: Revise definition for “emergency stationary RICE” to remove reference to the vacated paragraphs 40 CFR 63.6640(f)(2)(ii) and (iii) in paragraph (3) of the definition.

- **Table 7 to subpart ZZZZ**: Remove reference in item 4 to operating for the purposes specified in the vacated paragraphs 40 CFR 63.6640(f)(2)(ii) and (iii).

As explained above, removal of these provisions corrects the CFR to conform to the court's decision in *Delaware v. EPA* and is ministerial in nature and neither imposes or removes any new requirements.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

¹ *Guidance on Vacatur of RICE NESHAP and NSPS Provisions for Emergency Engines*. Peter Tsigotis, OAQPS to EPA Regional Air Enforcement Managers and Regional Air Directors. April 15, 2016. <https://www.epa.gov/sites/default/files/2016-06/documents/ricevacaturguidance041516.pdf>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on the small entities subject to the rule. This action is ministerial in nature as it codifies a court-issued mandate vacating regulatory provisions. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. This action presents no additional burden on implementing authorities beyond existing requirements. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action is ministerial in nature as it codifies a court issued mandate vacating regulatory provisions and does not have any impact on human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule in section I of this preamble, including the basis for that finding.

List of Subjects

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

For the reasons set forth in the preamble, 40 CFR parts 60 and 63 are amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.* 42 U.S.C. 7401–7601.

Subpart III—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines

■ 2. In § 60.4211:

- a. Revise paragraphs (f) introductory text and (f)(2) introductory text;
- b. Remove and reserve paragraphs (f)(2)(ii) and (iii); and
- c. Revise paragraph (f)(3) introductory text.

The revisions read as follows:

§ 60.4211 What are my compliance requirements if I am an owner or operator of a stationary CI internal combustion engine?

* * * * *

(f) If you own or operate an emergency stationary ICE, you must operate the emergency stationary ICE according to the requirements in paragraphs (f)(1) through (3) of this section. In order for the engine to be considered an emergency stationary ICE under this subpart, any operation other than emergency operation, maintenance and testing, and operation in non-emergency situations for 50 hours per year, as described in paragraphs (f)(1) through (3), is prohibited. If you do not operate the engine according to the requirements in paragraphs (f)(1) through (3), the engine will not be considered an emergency engine under this subpart and must meet all requirements for non-emergency engines.

* * * * *

(2) You may operate your emergency stationary ICE for the purpose specified in paragraph (f)(2)(i) of this section for a maximum of 100 hours per calendar year. Any operation for non-emergency situations as allowed by paragraph (f)(3) of this section counts as part of the 100

hours per calendar year allowed by this paragraph (f)(2).

* * * * *

(3) Emergency stationary ICE may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing provided in paragraph (f)(2) of this section. Except as provided in paragraph (f)(3)(i) of this section, the 50 hours per calendar year for non-emergency situations cannot be used for peak shaving or non-emergency demand response, or to generate income for a facility to an electric grid or otherwise supply power as part of a financial arrangement with another entity.

* * * * *

■ 3. Section 60.4214 is amended by revising paragraph (d) introductory text and removing and reserving paragraphs (d)(1)(v) and (vi).

The revision reads as follows:

§ 60.4214 What are my notification, reporting, and recordkeeping requirements if I am an owner or operator of a stationary CI internal combustion engine?

* * * * *

(d) If you own or operate an emergency stationary CI ICE with a maximum engine power more than 100 HP that operates for the purpose specified in § 60.4211(f)(3)(i), you must submit an annual report according to the requirements in paragraphs (d)(1) through (3) of this section.

* * * * *

■ 4. Section 60.4219 is amended by revising the definition “Emergency stationary internal combustion engine” to read as follows:

§ 60.4219 What definitions apply to this subpart?

* * * * *

Emergency stationary internal combustion engine means any stationary reciprocating internal combustion engine that meets all of the criteria in paragraphs (1) through (3) of this definition. All emergency stationary ICE must comply with the requirements specified in § 60.4211(f) in order to be considered emergency stationary ICE. If the engine does not comply with the requirements specified in § 60.4211(f), then it is not considered to be an emergency stationary ICE under this subpart.

(1) The stationary ICE is operated to provide electrical power or mechanical work during an emergency situation. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to

portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc.

(2) The stationary ICE is operated under limited circumstances for situations not included in paragraph (1) of this definition, as specified in § 60.4211(f).

(3) The stationary ICE operates as part of a financial arrangement with another entity in situations not included in paragraph (1) of this definition only as allowed in § 60.4211(f)(3)(i).

* * * * *

Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines

■ 5. In § 60.4243:

■ a. Revise paragraphs (d) introductory text and (d)(2) introductory text;

■ b. Remove and reserve paragraphs (d)(2)(ii) and (iii); and

■ c. Revise paragraph (d)(3) introductory text.

The revisions read as follows:

§ 60.4243 What are my compliance requirements if I am an owner or operator of a stationary SI internal combustion engine?

* * * * *

(d) If you own or operate an emergency stationary ICE, you must operate the emergency stationary ICE according to the requirements in paragraphs (d)(1) through (3) of this section. In order for the engine to be considered an emergency stationary ICE under this subpart, any operation other than emergency operation, maintenance and testing, and operation in non-emergency situations for 50 hours per year, as described in paragraphs (d)(1) through (3), is prohibited. If you do not operate the engine according to the requirements in paragraphs (d)(1) through (3), the engine will not be considered an emergency engine under this subpart and must meet all requirements for non-emergency engines.

* * * * *

(2) You may operate your emergency stationary ICE for the purpose specified in paragraph (d)(2)(i) of this section for a maximum of 100 hours per calendar year. Any operation for non-emergency situations as allowed by paragraph (d)(3) of this section counts as part of the 100 hours per calendar year allowed by this paragraph (d)(2).

* * * * *

(3) Emergency stationary ICE may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing provided in paragraph (d)(2) of this section. Except as provided in paragraph (d)(3)(i) of this section, the 50 hours per year for non-emergency situations cannot be used for peak shaving or non-emergency demand response, or to generate income for a facility to an electric grid or otherwise supply power as part of a financial arrangement with another entity.

* * * * *

■ 6. Section 60.4245 is amended by revising paragraph (e) introductory text and removing and reserving paragraphs (e)(1)(v) and (vi).

The revision reads as follows:

§ 60.4245 What are my notification, reporting, and recordkeeping requirements if I am an owner or operator of a stationary SI internal combustion engine?

* * * * *

(e) If you own or operate an emergency stationary SI ICE with a maximum engine power more than 100 HP that operates for the purpose specified in § 60.4243(d)(3)(i), you must submit an annual report according to the requirements in paragraphs (e)(1) through (3) of this section.

* * * * *

■ 7. Section 60.4248 is amended by revising the definition “Emergency stationary internal combustion engine” to read as follows:

§ 60.4248 What definitions apply to this subpart?

* * * * *

Emergency stationary internal combustion engine means any stationary reciprocating internal combustion engine that meets all of the criteria in paragraphs (1) through (3) of this definition. All emergency stationary ICE must comply with the requirements specified in § 60.4243(d) in order to be considered emergency stationary ICE. If the engine does not comply with the requirements specified in § 60.4243(d), then it is not considered to be an emergency stationary ICE under this subpart.

(1) The stationary ICE is operated to provide electrical power or mechanical work during an emergency situation. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is

interrupted, or stationary ICE used to pump water in the case of fire or flood, etc.

(2) The stationary ICE is operated under limited circumstances for situations not included in paragraph (1) of this definition, as specified in § 60.4243(d).

(3) The stationary ICE operates as part of a financial arrangement with another entity in situations not included in paragraph (1) of this definition only as allowed in § 60.4243(d)(3)(i).

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 8. The authority citation for part 63 continues to read as follows:

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

Subpart ZZZZ—National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

■ 9. Section 63.6585 is amended by revising paragraphs (f)(1) through (3) to read as follows:

§ 63.6585 Am I subject to this subpart?

(f) Existing residential emergency stationary RICE located at an area source of HAP emissions that do not operate for the purpose specified in § 63.6640(f)(4)(ii).

(2) Existing commercial emergency stationary RICE located at an area source of HAP emissions that do not operate for the purpose specified in § 63.6640(f)(4)(ii).

(3) Existing institutional emergency stationary RICE located at an area source of HAP emissions that do not operate for the purpose specified in § 63.6640(f)(4)(ii).

■ 10. Section 63.6590 is amended by revising paragraphs (b)(1)(i) and (b)(3)(iii) to read as follows:

§ 63.6590 What parts of my plant does this subpart cover?

(b) (1) (i) The stationary RICE is a new or reconstructed emergency stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions.

(3) (iii) Existing emergency stationary RICE with a site rating of more than 500

brake HP located at a major source of HAP emissions.

■ 11. Section 63.6604 is amended by revising paragraph (b) and removing and reserving paragraph (c).

The revision reads as follows:

§ 63.6604 What fuel requirements must I meet if I own or operate a stationary CI RICE?

(b) Beginning January 1, 2015, if you own or operate an existing emergency CI stationary RICE with a site rating of more than 100 brake HP and a displacement of less than 30 liters per cylinder that uses diesel fuel and operates for the purpose specified in § 63.6640(f)(4)(ii), you must use diesel fuel that meets the requirements in 40 CFR 1090.305 for nonroad diesel fuel, except that any existing diesel fuel purchased (or otherwise obtained) prior to January 1, 2015, may be used until depleted.

■ 12. In § 63.6640:
 ■ a. Revise paragraphs (f) introductory text and (f)(2) introductory text;
 ■ c. Remove and reserve paragraphs (f)(2)(ii) and (iii); and
 ■ d. Revise paragraph (f)(3) and paragraph (f)(4) introductory text.

The revisions read as follows:

§ 63.6640 How do I demonstrate continuous compliance with the emission limitations, operating limitations, and other requirements?

(f) If you own or operate an emergency stationary RICE, you must operate the emergency stationary RICE according to the requirements in paragraphs (f)(1) through (4) of this section. In order for the engine to be considered an emergency stationary RICE under this subpart, any operation other than emergency operation, maintenance and testing, and operation in non-emergency situations for 50 hours per year, as described in paragraphs (f)(1) through (4), is prohibited. If you do not operate the engine according to the requirements in paragraphs (f)(1) through (4), the engine will not be considered an emergency engine under this subpart and must meet all requirements for non-emergency engines.

(2) You may operate your emergency stationary RICE for the purpose specified in paragraph (f)(2)(i) of this section for a maximum of 100 hours per calendar year. Any operation for non-emergency situations as allowed by paragraphs (f)(3) and (4) of this section

counts as part of the 100 hours per calendar year allowed by this paragraph (f)(2).

(3) Emergency stationary RICE located at major sources of HAP may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing provided in paragraph (f)(2) of this section. The 50 hours per year for non-emergency situations cannot be used for peak shaving or non-emergency demand response, or to generate income for a facility to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity.

(4) Emergency stationary RICE located at area sources of HAP may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing provided in paragraph (f)(2) of this section. Except as provided in paragraphs (f)(4)(i) and (ii) of this section, the 50 hours per year for non-emergency situations cannot be used for peak shaving or non-emergency demand response, or to generate income for a facility to an electric grid or otherwise supply power as part of a financial arrangement with another entity.

■ 13. Section 63.6650 is amended by revising paragraph (h) introductory text and removing and reserving paragraphs (h)(1)(v) and (vi).

The revision reads as follows:

§ 63.6650 What reports must I submit and when?

(h) If you own or operate an emergency stationary RICE with a site rating of more than 100 brake HP that operates for the purpose specified in § 63.6640(f)(4)(ii), you must submit an annual report according to the requirements in paragraphs (h)(1) through (3) of this section.

■ 14. Section 63.6655 is amended by revising paragraph (f) introductory text to read as follows:

§ 63.6655 What records must I keep?

(f) If you own or operate any of the stationary RICE in paragraphs (f)(1) through (2) of this section, you must keep records of the hours of operation of the engine that is recorded through the non-resettable hour meter. The

owner or operator must document how many hours are spent for emergency operation, including what classified the operation as emergency and how many hours are spent for non-emergency operation. If the engine is used for the purpose specified in § 63.6640(f)(4)(ii), the owner or operator must keep records of the notification of the emergency situation, and the date, start time, and end time of engine operation for these purposes.

* * * * *

■ 15. Section 63.6675 is amended by revising the definition “Emergency stationary RICE” to read as follows:

§ 63.6675 What definitions apply to this subpart?

* * * * *

Emergency stationary RICE means any stationary reciprocating internal

combustion engine that meets all of the criteria in paragraphs (1) through (3) of this definition. All emergency stationary RICE must comply with the requirements specified in § 63.6640(f) in order to be considered emergency stationary RICE. If the engine does not comply with the requirements specified in § 63.6640(f), then it is not considered to be an emergency stationary RICE under this subpart.

(1) The stationary RICE is operated to provide electrical power or mechanical work during an emergency situation.

Examples include stationary RICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary RICE used to

pump water in the case of fire or flood, etc.

(2) The stationary RICE is operated under limited circumstances for situations not included in paragraph (1) of this definition, as specified in § 63.6640(f).

(3) The stationary RICE operates as part of a financial arrangement with another entity in situations not included in paragraph (1) of this definition only as allowed in § 63.6640(f)(4)(i) or (ii).

* * * * *

■ 16. Table 7 to subpart ZZZZ of part 63 is revised to read as follows:

Table 7 to Subpart ZZZZ of Part 63—Requirements for Reports

As stated in § 63.6650, you must comply with the following requirements for reports:

For each . . .	You must submit a . . .	The report must contain . . .	You must submit the report . . .
1. Existing non-emergency, non-black start stationary RICE 100≤HP≤500 located at a major source of HAP; existing non-emergency, non-black start stationary CI RICE >500 HP located at a major source of HAP; existing non-emergency 4SRB stationary RICE >500 HP located at a major source of HAP; existing non-emergency, non-black start stationary CI RICE >300 HP located at an area source of HAP; new or reconstructed non-emergency stationary RICE >500 HP located at a major source of HAP; and new or reconstructed non-emergency 4SLB stationary RICE 250≤HP≤500 located at a major source of HAP.	Compliance report	<p>a. If there are no deviations from any emission limitations or operating limitations that apply to you, a statement that there were no deviations from the emission limitations or operating limitations during the reporting period. If there were no periods during which the CMS, including CEMS and CPMS, was out-of-control, as specified in § 63.8(c)(7), a statement that there were not periods during which the CMS was out-of-control during the reporting period; or</p> <p>b. If you had a deviation from any emission limitation or operating limitation during the reporting period, the information in § 63.6650(d). If there were periods during which the CMS, including CEMS and CPMS, was out-of-control, as specified in § 63.8(c)(7), the information in § 63.6650(e); or</p> <p>c. If you had a malfunction during the reporting period, the information in § 63.6650(c)(4)</p>	<p>i. Semiannually according to the requirements in § 63.6650(b)(1)–(5) for engines that are not limited use stationary RICE subject to numerical emission limitations; and</p> <p>ii. Annually according to the requirements in § 63.6650(b)(6)–(9) for engines that are limited use stationary RICE subject to numerical emission limitations.</p>
2. New or reconstructed non-emergency stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis.	Report	<p>a. The fuel flow rate of each fuel and the heating values that were used in your calculations, and you must demonstrate that the percentage of heat input provided by landfill gas or digester gas, is equivalent to 10 percent or more of the gross heat input on an annual basis; and</p> <p>b. The operating limits provided in your federally enforceable permit, and any deviations from these limits; and</p> <p>c. Any problems or errors suspected with the meters.</p>	<p>i. Semiannually according to the requirements in § 63.6650(b).</p> <p>ii. Annually according to the requirements in § 63.6650(b).</p>
3. Existing non-emergency, non-black start 4SLB and 4SRB stationary RICE >500 HP located at an area source of HAP that are not remote stationary RICE and that operate more than 24 hours per calendar year.	Compliance report	<p>a. The results of the annual compliance demonstration, if conducted during the reporting period.</p>	<p>i. See item 2.a.i.</p> <p>ii. See item 2.a.i.</p>
4. Emergency stationary RICE that operate for the purposes specified in § 63.6640(f)(4)(ii).	Report	<p>a. The information in § 63.6650(h)(1)</p>	<p>i. annually according to the requirements in § 63.6650(h)(2)–(3).</p>