Proposed Action on Regulations

Comparison to Federal Standards Submission and Response

Name:	Carolyn A Jones
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In accordance with Executive Order 01.01.1996.03 and memo dated July 26, 1996, the attached document is submitted to the Department of Business and Economic Development for review.

The Proposed Action is not more restrictive or stringent than corresponding federal standards.

COMAR Codification: 26.11.36.01 —.04

COMAR Codification: 26.11.02.01 & .10

Corresponding Federal Standard:

This action adopts the federal requirements as codified under 40 CFR Part 63, Subpart ZZZZ and 40 CFR Part 60, Subpart IIII or JJJJ. The NESHAP for RICE are outlined in the Code of Federal Regulations under 40 CFR 63, Subpart ZZZZ. Stationary Reciprocating Internal Combustion Engine is defined in 40 CFR §63.6675. The NSPS for Stationary Compression Ignition Internal Combustion Engines are outlined in the Code of Federal Regulations under 40 CFR Part 60, Subpart III. The NSPS for Stationary Spark Ignition Internal Combustion Engines are outlined in the Code of Federal Regulations under 40 CFR Part 60, Subpart JJJJ. Stationary Internal Combustion Engine is defined the same in 40 CFR §60.4219 and 40 CFR §60.4248.

Discussion/Justification:

This action removes Maryland's outdated definitions and requirements from COMAR 26.11.36. This action then clarifies definitions under the permitting requirements for stationary engines.

TO BE COMPLETED BY DBED

X- Agree

_-Disagree

Comments:

Commerce does not have the necessary expertise in this area. Commerce feels that the Maryland Department of the Environment does have the necessary expertise and therefore Commerce trusts their assertion that the proposal is not more restrictive/stringent than corresponding federal standards.

Name: Jennifer Cox

Date: 5/9/2017

_-Submit to Governor's Office

Governor's Office Response

Comments:

Transmittal Sheet **PROPOSED OR REPROPOSED** **Actions on Regulations**	**Date Filed with AELR Committee**	**TO BE COMPLETED BY DSD** Date Filed with Division of State Documents Document Number Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 7/7/2017

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
26	11	36	01 —.04
26	11	02	01 & .10

3. Name of Promulgating Authority

Department of the Environment

4. Name of Regulations Coordinator **Telephone Number**
Carolyn A Jones 410-537-4210

Mailing Address

1800 Washington Blvd

City	State	Zip Code
Baltimore	MD	21230

Email
carolyna.jones@maryland.gov

5. Name of Person to Call About this Document **Telephone No.**
Randy Mosier 410-384-4488

Email Address
Randy.Mosier@maryland.gov

6. Check applicable items:

_ New Regulations

X- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 12/05/2016.

_ Repeal of Existing Regulations

_ Recodification

_ Incorporation by Reference of Documents Requiring DSD Approval

_ Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

_ Yes **X-** No

8. Incorporation by Reference

_ Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

_ OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

_ OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

X- Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Roberta James, Assistant Attorney General, (telephone #410-537-3748) on March 31, 2017. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Benjamin H. Grumbles

Title	**Telephone No.**
Secretary of the Environment	410-537-3084

Date

May 6, 2017

Title 26
DEPARTMENT OF THE ENVIRONMENT

Subtitle 11 AIR QUALITY

26.11.36 Distributed Generation

Subtitle 11 AIR QUALITY

26.11.02 Permits, Approvals, and Registration

Authority: Environment Article, §§1-101, 1-404, 2-101—2-103, 2-301—2-303, and 2-401—2-404, Annotated Code of Maryland

Notice of Proposed Action

[]

The Secretary of the Environment proposes to amend Regulation .01 – Definitions, and Regulation .10 - Sources Exempt from Permits to Construct and Approvals, under COMAR 26.11.02 Permits, Approvals, and Registration. In addition this action proposes amendments to Regulations .01 - .04 under COMAR 26.11.36 –Distributed Generation.

Statement of Purpose

The purpose of this action is to amend existing requirements for emergency generators and load shaving units (engines) codified under COMAR 26.11.36 –Distributed Generation to reflect changes in the federal requirements for stationary internal combustion engines (ICE) and Reciprocating Internal Combustion Engines (RICE) (hereinafter collectively referred to as "stationary engines"). In addition, changes to Regulations .01 – Definitions, and .10 - Sources Exempt from Permits to Construct and Approvals, of COMAR 26.11.02 – Permits, Approvals, and Registration, are being completed to coincide with the amendments being made to COMAR 26.11.36.

This action will not be submitted to the U.S. Environmental Protection Agency (EPA) for approval as part of Maryland's State Implementation Plan (SIP).

Background

On May 18, 2009, the Maryland Department of the Environment (MDE) adopted new regulations under COMAR 26.11.09.08-1 which established nitrogen oxide (NOx) emission requirements for emergency generators and load shaving units. Traditionally, stationary engines were installed at facilities as an emergency back-up of power in the event of a failure of electric power from the grid. Over time, as the cost of electricity increased, many facilities would operate their stationary engines during non-emergencies to reduce their electric bill during high-demand days. Owners of stationary engines also entered into contractual agreements to operate their stationary engines and perform other electricity curtailment activities to both reduce the cost of electricity and

maintain electric system reliability. MDE adopted these regulations in an effort to achieve reductions in NOx emissions during the summer ozone season when these practices were most frequently employed. Most stationary engines are fired with diesel fuel and have minimal NOx emission controls which when operated resulted in excess NOx emissions on the hottest and worst days for air pollution. Reductions in NOx emissions help the State to maintain and attain the National Ambient Air Quality Standard (NAAQS) for Ozone.

On June 13, 2011, MDE further amended and re-codified the stationary engine regulations under a new Chapter COMAR 26.11.36 – Distributed Generation. The new COMAR 26.11.36 also established new annual reporting requirements for Curtailment Service Providers (CSPs) that negotiate contracts with facilities, that might operate onsite stationary engines under an electricity grid demand response event.

MDE excludes certain stationary engines from acquiring a "Permit to Construct & Registration Application" under COMAR 26.11.02 - Permits, Approvals and Registration. Emergency stationary engines with an output less than 500 hp and non-emergency stationary engines that serve as a primary source of power for agricultural equipment or industrial equipment, with an output less than 500 hp, are exempt from getting a permit to construct. The permit forms are located at MDE's website under "Air Quality Permitting" and "Permits to Construct and Operate Application Forms".

Facilities typically use stationary engines to provide electric power when the normal supply is interrupted. Stationary engines are common combustion sources that collectively can have a significant impact on air quality and public health. Stationary engines emit air pollutants when fuel is burned; including carbon monoxide (CO), NOx, volatile organic compounds (VOCs), and particulate matter (PM). The health effects of these pollutants include a range of respiratory issues, especially asthma among children and seniors. The Clean Air Act authorizes EPA to control emissions from stationary sources of air pollution. EPA regulates stationary engines through two types of regulations, the National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS). Specifically, NESHAP regulates emissions of hazardous air pollutants (HAPs) from new, existing and modified sources. These standards require application of technology-based emissions standards referred to as Maximum Achievable Control Technology (MACT). The NSPS regulates emissions of criteria pollutants from new, modified, and reconstructed sources. NSPS standards require initial performance testing and ongoing monitoring to demonstrate compliance with established standards for that source category.

MDE's action adopts 40 CFR Part 63, Subpart ZZZZ, and 40 CFR Part 60, Subpart IIII and JJJJ for stationary engines into COMAR 26.11.36 and makes the Maryland regulations consistent with the federal regulations.

MDE is exempting certain portions of the federal requirements due to the decision of the D.C. Circuit Court of Appeals in Delaware v. EPA. (Delaware v. EPA, 785 F .3d l (D.C. Cir. 2015)) In that case, the Delaware Department of Natural Resources

challenged the operation of stationary engines for up to 100 hours under Emergency Demand Response Operation. The court vacated the "100 hour provision" that allowed for emergency demand response operation in two circumstances: when a Reliability Coordinator (such as an independent electric grid operator) has declared an Energy Emergency Alert Level 2, or when there is a deviation of voltage or frequency of five percent or greater. The provisions that were vacated are 40 CFR §60.4211 (f)(2)(ii)-(iii), §60.4243(d)(2)(ii)-(iii), and §63.6640(f)(2)(ii)-(iii). Therefore, stationary engines are required to comply with the federal requirements in 40 CFR Part 63, Subpart ZZZZ and 40 CFR Part 60, Subpart IIII or JJJJ, except for these vacated provisions.

On April 15, 2016, EPA issued a guidance document addressing the vacatur of these provisions of the stationary engine NSPS and NESHAP rules: however, the CFR has not yet been updated to reflect these changes.

Sources Affected and Location

This action affects the owner or operator of stationary engines. These engines are typically located at businesses, commercial, industrial and institutional facilities, to provide electric power when the normal supply is interrupted. A common term for this type of engine is “back-up generator or emergency generator”.

Requirements

This action amends COMAR 26.11.36 - Distributed Generation by removing definitions from Regulation .01, clarifying applicability in Regulation .02, amending Regulation .03 NOx requirements which conflict with federal regulations, and clarifying Regulation .04. Additionally, this action will amend COMAR 26.11.02 - Permits, Approvals and Registration Regulations .01 – Definitions and .10 – Sources Exempt from Permits to Construct and Approvals, as needed in order to reflect the amendments being made to COMAR 26.11.36.

In summary, amendments to COMAR 26.11.36 and 26.11.02 incorporate 40 CFR Part 63, Subpart ZZZZ and 40 CFR Part 60, Subpart IIII and JJJJ, and changes necessitated by the vacatur language resulting from the above mentioned lawsuit. As currently required under COMAR 26.11.36.04, CSPs and their participating facilities are responsible for confirming that any stationary engine under contract to operate during electricity grid demand response (non-emergency events) operates and meets federal standards and emission limits.

MDE requires stationary engines to obtain a “Permit to Construct & Registration Application” under COMAR 26.11.02 - Permits, Approvals and Registration. Emergency stationary engines with an output less than 500 hp and non-emergency stationary engines that serve as a primary source of power for agricultural equipment or industrial equipment, with an output less than 500 hp, are exempt from permit to construct requirements.

Expected Emissions Reductions

There is no expected impact to emissions, since 40 CFR Part 63, Subpart ZZZZ and 40 CFR Part 60, Subpart IIII or JJJJ already regulate the operation, reporting and maintenance of the stationary engines. However, the federal restrictions on engine use should prevent certain older, less-controlled engines from running on hot days, which results in less pollutants from these engines and greater public health protections.

Economic Impact on Affected Sources, the Department, other State Agencies, Local Government, other Industries or Trade Groups, the Public

The economic impact has been determined under the federal regulations. The public health protections warrant the federal regulations, and Maryland is clarifying coordination of the federal and state regulations. This action will not have an economic impact on the Department, other state agencies, local government, other industries or trade groups, or the public.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Randy E. Mosier - see comments below, , , , or call , or email to , or fax to . Comments will be accepted through . A public hearing will be held, A public hearing will be held. The Department of the Environment will hold a public hearing on the proposed action on August 8, 2017 at 10:00 a.m. at the Department of the Environment, 1800 Washington Boulevard, 1st Floor Conference Rooms, Baltimore, Maryland 21230-1720. Interested persons are invited to attend and express their views. Comments may be sent to Mr. Randy Mosier, Chief of the Regulation Division, Air and Radiation Management Administration, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland 21230-1720, or email to randy.mosier@maryland.gov. Comments must be received no later than 5:00 p.m. on August 8, 2017 or be submitted at the hearing. For more information, call Randy Mosier at (410) 537-4488.

Copies of the proposed action and supporting documents are available for review at the following locations:
The Air and Radiation Management Administration offices Suite 700; and
Regional offices of the Department of the Environment in Cumberland and Salisbury; and The Department of the Environment's website at: http://mde.maryland.gov/programs/Regulations/air/Pages/reqcomments.aspx. Anyone needing special accommodations at the public hearing should contact the Department of the Environment's Fair Practices Office at (410) 537-3964. TTY users may contact the Department of the Environment through the Maryland Relay Service at 1-800-735-2258.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2018

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

A combination of Maryland Clean Air Funds (Special) and Air Pollution Control Program Grant Funds (Federal) will be used.

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

The economic impact to these engines has been determined under the federal regulations.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

There is no small business in Maryland that has been identified to incur substantial economic impact as a result of the proposed action.

G. Small Business Worksheet:

Attached Document:

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 11 AIR QUALITY

Chapter 02 Permits, Approvals, and Registration

Authority: Environment Article, §§1-101, 1-404, 1-601—1-606, 2-101—2-103, 2-301—2-303, and 2-401—2-404, Annotated Code of Maryland

.01 Definitions.

A. In this chapter and in COMAR 26.11.03, the following terms have the meanings indicated.

B. Terms Defined.

(1) − (17) (text unchanged)

(17-1)"Emergency Stationary Internal Combustion Engine" is defined in 40 CFR Part 60, Subpart IIII or JJJJ, as amended.

(17-2) "Emergency Stationary Reciprocating Internal Combustion Engine (RICE)" is defined in 40 CFR Part 63, Subpart ZZZZ, as amended.

(18) − (56) (text unchanged)

C. (text unchanged)

.02 - .09 (text unchanged).

.10 Sources Exempt from Permits to Construct and Approvals.

A person may construct or modify or cause to be constructed or modified any of the following sources without first obtaining, and having in current effect, a permit to construct:

A. – D. (text unchanged)

E. *Emergency* **[**S**]**stationary internal combustion engines or *emergency stationary reciprocating internal combustion engines (RICE*) with an output less than 500 brake horsepower (373 kilowatts) **[**and which are not used to generate electricity for sale or load shaving as that term is defined in COMAR 26.11.36.01B**]**;

E-1. Stationary internal combustion engines or stationary reciprocating internal combustion engines (RICE) *that serve as a primary source of power for agricultural equipment or industrial equipment, with an output less than 500 brake horsepower (373 kilowatts).*

F. – X. (text unchanged)

.11 - .19 (text unchanged).

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 11 AIR QUALITY

Chapter 36 Distributed Generation

Authority: Environment Article, §§1-101, 1-404, 2-101—2-103, 2-301—2-303, and 2-401—2-404, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) – (2) (text unchanged)

(3) "Demand response program" means a program that provides incentives to electricity consumers at a facility that curtails electricity usage **[**, particularly during peak periods or emergencies, and that affects pricing, system stability, and overall planning in the electricity market**]**.

[(4) "Economic response program" means a demand response program where a facility is economically incentivized to curtail on-site electricity demand from the grid when prices are high, which primarily occurs during peak electricity demand periods.

(5) Emergency.

(a) "Emergency" means a condition where the primary energy or power source is disrupted or discontinued due to conditions beyond the control of the owner or operator of a facility, including:

(i) A failure of the electrical grid;

(ii) On-site disaster or equipment failure; or

(iii) Public service emergencies such as flood, fire, natural disaster, or severe weather conditions.

(b) "Emergency" includes a PJM declared emergency.

(6) "Emergency generator" means:

(a) A engine used only during an emergency or for testing and engine maintenance purposes; and

(b) An engine that operates during an emergency according to the procedures in the PJM Emergency Operations Manual for a PJM declared emergency.

(7) "Emergency response program" means a demand response program where a facility curtails on-site electricity demand only during an emergency declared by the PJM in accordance with Manual 13, Emergency Operations, Revision 40, Effective Date August 13, 2010, as amended.**]**

[(8)**]***(4)* "Engine" means a stationary *reciprocating* internal combustion engine *(RICE) or stationary internal combustion engine, subject to 40 CFR Part 63 Subpart ZZZZ and 40 CFR Part 60 Subparts IIII or JJJJ, as amended*.

[(9)**]***(5)* "Facility" means a commercial, institutional, or industrial establishment that has on-site capability to generate electric power to be used internally to reduce on-site electric power consumption, to reduce the overall electric system demand, or for other purposes.

[(10) Load Shaving Unit.

(a) "Load shaving unit" means an engine that operates for other than an emergency to generate electricity for use on-site or for sale.

(b) "Load shaving unit" does not include an engine:

(i) Whose primary function is to generate electricity for use by the public; or

(ii) That serves as the primary source of power for agricultural equipment or industrial equipment, including the period when equipment or a facility is being maintained and the engine is used in place of the primary power source.**]**

[(11)**]***(6)* "Participating engine" means an internal combustion engine located at a participating facility that is operated as part of a demand response program.

[(12)**]***(7)* "Participating facility" means a facility that has entered into a valid contract with a CSP to participate in a demand response program.

[(13) "PJM declared emergency" means a condition that exists where the PJM Interconnection, LLC notifies electric distributors that an emergency exists or may occur and it is necessary to implement the procedures in the PJM Manual 13 Emergency Operations, as revised.**]**

.02 Applicability.

This chapter applies to a person who owns or operates an *engine as defined in §.01B of this chapter* **[**emergency generator, load shaving unit,**]** or *a* curtailment service provider.

.03 [Emergency Generators and Load Shaving Units NOx Requirements] ***Requirements for Stationary Engines*****.**

*A. The owner or operator of an engine is subject to requirements under 40 CFR Part 63 Subpart ZZZZ, as applicable.**

B. The owner or operator of an engine is subject to requirements, as applicable, under:

(1) 40 CFR Part 60 Subpart IIII; or*

(2) 40 CFR Part 60 Subpart JJJJ.*

[A. Applicability and General Requirements for Emergency Generators and Load Shaving Units.

(1) The owner or operator of an emergency generator may not operate the generator except for emergencies, testing, and maintenance purposes.

(2) Except as provided in §A(5) of this regulation, this regulation does not apply to any engine that is fueled with natural gas or propane.

(3) This regulation does not apply to any engine that operates as a redundant system for power without direct or indirect compensation that is:

(a) Located at a nuclear power plant; or

(b) Located at a facility where operation of the engine is necessary to support critical national activities relating to security, aerospace research, or communications.

(4) The owner or operator of an emergency generator or load shaving unit may be subject to the federal standards for stationary internal combustion engines under 40 CFR Parts 60 and 63.

(5) The owner or operator of an emergency generator or load shaving unit may not operate the engine for testing and engine maintenance purposes between 12:01 a.m. and 2:00 p.m. on any day on which the Department forecasts that the air quality will be a code orange, code red, or code purple unless the engine fails a test and engine maintenance and a re-test are necessary.

(6) The owner or operator of an engine that is used for any purpose other than for emergency purposes shall install and operate a non-resettable hourly time meter on the engine for the purpose of maintaining the operating log required in §E of this regulation.

B. Requirements for Existing Load Shaving Units Installed on or Before January 1, 2009.

(1) The owner or operator of an existing load shaving unit that was installed on or before January 1, 2009, shall:

(a) Install a NOx control system to meet an emissions standard of 1.4 grams per brake horsepower or less;

(b) Replace the engine with a new engine that meets federal new source performance standards and was manufactured after January 1, 2009; or

(c) Not operate the engine for more than a total of 10 hours during the period of May 1 to September 30 of any year.

(2) The 10-hour limit in §B(1)(c) of this regulation is exclusive of the time that the unit operates for emergency purposes and the time for testing and engine maintenance.

(3) Upon request and on a case-by-case basis, the Department may, for the purpose of engine registration and compliance, treat a group of small engines, under the same or different ownership and performing the same function, as a single entity and establish alternative requirements for the engines.

(4) For engines to be equipped with NOx controls or replaced with a new engine that meets federal standards, compliance shall be achieved by July 1, 2010, or a later date approved by the Department.

(5) If an owner or operator purchases and installs a used engine, that engine, for the purpose of this regulation, is considered an existing engine unless the used engine was manufactured after January 1, 2009.

C. Requirements for New Load Shaving Units Installed After January 1, 2009.

(1) Except as provided in §§B(1)(b) and C(3) of this regulation, a load shaving unit that is installed after January 1, 2009:

(a) Shall be equipped with a NOx control system that meets a NOx emissions rate of not more than 1.4 grams per brake horsepower; or

(b) May not operate the engine for more than a total of 10-hours during the period of May 1 to September 30 of any year.

(2) The-10 hour limit in §C(1)(b) of this regulation is exclusive of the time that the unit operates for emergency purposes and the time for testing and engine maintenance.

(3) An engine with a capacity of 1,000 horsepower or less manufactured and installed after January 1, 2009, that meets applicable federal new source performance standards is exempt from the requirements in §C(1) of this regulation.

D. Alternative Method of Achieving Compliance.

(1) The owner or operator of a load shaving unit may, in lieu of meeting the requirements of §B or C of this regulation, achieve compliance by securing ozone season NOx allowances for the NOx emitted for load shaving purposes during the period of May 1 to September 30 of each year.

(2) The owner or operator of a load shaving unit who chooses to secure ozone season NOx allowances in lieu of complying with §B or C of this regulation shall:

(a) Secure not less than one ozone season NOx allowance;

(b) Round up to the next whole number if the number of allowances to be secured under §D(3)(c) or (4)(d) results in a fractional number;

(c) When calculating the amount of NOx emitted for load shaving purposes during the period May 1 to September 30 under §D(3)(a) or (4)(a) and (b) of this regulation, exclude from those calculations the amount of NOx emitted during the initial 10 hours of operation during that period; and

(d) Secure the ozone season NOx allowances by December 31 of each year and submit those allowances to the Department for retirement by February 1 of the following year.

(3) The owner or operator of an existing load shaving unit installed on or before January 1, 2009, who chooses to secure ozone season NOx allowances in lieu of compliance with §B of this regulation shall:

(a) Calculate, in tons, the total amount of NOx emitted during the period May 1 to September 30;

(b) Multiply the total tons of NOx emitted, as calculated in §D(3)(a) of this regulation, by three; and

(c) Secure at least the same number of ozone season NOx allowances as the number resulting from the calculation performed in §D(3)(b) of this regulation.

(4) The owner or operator of a new load shaving unit installed after January 1, 2009, who chooses to secure ozone season NOx allowances in lieu of compliance with §C of this regulation shall:

(a) Calculate, in tons, the total amount of NOx emitted during the period May 1 to September 30;

(b) Calculate, in tons, the total amount of NOx that would have been emitted during the period May 1 to September 30 if the engine had met the NOx emission rate of 1.4 grams per brake horsepower;

(c) Subtract the number calculated in §D(4)(b) from the number calculated in §D(4)(a), then multiply the result by five; and

(d) Secure at least the same number of ozone season NOx allowances as the number resulting from the calculations performed in §D(4)(c) of this regulation.

E. Record Keeping.

(1) The owner or operator of a load shaving unit shall maintain an operating log that includes the date the unit operated and the total operating time for each day that the unit operated.

(2) The operating log shall be maintained for 5 years and made available to the Department upon request.

F. Determining a Violation. A load shaving unit required to meet the NOx emissions standards or the operational limitations in this regulation may be subject to a penalty for each day the unit operates in violation of the requirements.**]**

* In May 2015, the United States Court of Appeals for the District of Columbia Circuit vacated paragraphs 40 CFR 60.4211 (f)(2)(ii)-(iii), 60.4243(d)(2)(ii)-(iii), and 63.6640(f)(2)(ii)-(iii). Therefore, engines subject to this chapter do not have to comply with those provisions.

.04 Annual Report Requirement for Curtailment Service Providers (CSPs).

A. A CSP that administers a demand response program for a participating facility in the State shall provide the following information to the Department in an annual report:

(1) – (2) (text unchanged)

(3) A description of the demand response program for each participating engine **[**, that is, whether it is an economic response program or an emergency response program**]**;

(4) As called for by the CSP, the dates on which each engine was requested to operate during the year and the hours of operation on each date, including:

(a) The reason for operating the engine under a demand response program **[**, that is, whether it is an economic response program or an emergency response program**]**;

(b) – (c) (text unchanged)

(5) – (7) (text unchanged)

B. – C. (text unchanged)