

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission (Commission) hereby amends Chapter 23, “Emission Standards for Contaminants,” Iowa Administrative Code.

The purpose of the rule making is to adopt by reference the federal air toxics standards for stationary engines commonly known as the RICE NESHAP. RICE NESHAP is the acronym for National Emission Standards for Hazardous Air Pollutants (NESHAP) for Reciprocating Internal Combustion Engines (RICE) (40 Code of Federal Regulations (CFR) Part 63, Subpart ZZZZ). The Commission adopts the RICE NESHAP by reference into state rules so that all compliance deadlines will be in accordance with federal time lines.

The U.S. Environmental Protection Agency (EPA) recently updated the RICE NESHAP. The revised RICE NESHAP generally provides regulatory clarity to and relief from the previous requirements.

Upon the effective date of these amendments, the Department rather than EPA will implement and enforce these regulations in Iowa, thereby allowing the Department to provide compliance assistance and outreach to affected facilities as soon as possible.

In 2010, the Commission adopted an earlier version of the RICE NESHAP. In Executive Order (EO) 72, Governor Branstad subsequently rescinded adoption of the RICE NESHAP. EO 72 stated that the RICE NESHAP was too costly for small utilities that maintain and operate rarely used emergency engines and that the RICE NESHAP requirements could increase electricity rates for consumers.

In response to the concerns from Governor Branstad as expressed in EO 72 and concerns from other stakeholders, EPA agreed to reconsider the RICE NESHAP. Consequently, EPA made changes to the RICE NESHAP as published in the Federal Register on January 30, 2013 (available at [www.gpo.gov/fdsys/pkg/FR-2013-01-30/pdf/2013-01288.pdf](http://www.gpo.gov/fdsys/pkg/FR-2013-01-30/pdf/2013-01288.pdf)). The updated RICE NESHAP provides more circumstances for emergency engines and for engines that participate in electricity management programs to operate under non-emergency conditions. The Commission has adopted the amendments to the RICE NESHAP. If the Commission did not adopt the RICE NESHAP amendments, the inconsistency with federal regulations could have caused regulatory uncertainty and confusion for affected facilities.

Item 1 amends the introductory paragraph of subrule 23.1(4) to reference paragraph 23.1(4)“cz” for adoption of the RICE NESHAP.

Item 2 amends paragraph 23.1(4)“cz” to remove the earlier adoption date for the RICE NESHAP and to adopt the January 30, 2013, version of the federal regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 15, 2013, as **ARC 0740C**, and a public hearing was held on June 4, 2013. The Department of Natural Resources (Department) received no comments at the public hearing. The Department received two written comments prior to the June 4, 2013, deadline for public comments. Both comments supported the Commission’s adoption of the RICE NESHAP amendments. The Department’s Public Participation Responsiveness Summary is available from the Department upon request. The Commission did not make any changes to the adopted amendments from those published in the Notice of Intended Action.

**Jobs Impact Statement**

The following is a summary of the jobs impact statement. The complete jobs impact statement is available from the Department upon request.

After analysis and review, the Department has determined that jobs could be impacted. However, the amendments are only implementing federally mandated regulations. This rule making does not impose on Iowa businesses any regulations that are not required by federal law. The Commission adopts the federal RICE NESHAP by reference so the rules are identical to federal requirements. Additionally, facilities are impacted by the federal standards regardless of whether the Commission adopts the standards into state administrative rules.

The Commission minimized the impact of the RICE NESHAP by waiting to adopt the standards until after EPA completed its reconsideration. EPA's final rule generally provides regulatory relief from and clarity to the requirements that EPA initially mandated. In particular, the new RICE NESHAP will provide more flexibility and potential cost savings to affected industries.

According to EPA's regulatory impact analysis, the new standards for engines will have capital and annual costs, but these costs are substantially less than the costs EPA estimated for previous standards. Further, more facilities will be subject only to work practice or record-keeping requirements rather than have costs associated with controlling emissions and monitoring emissions.

Facilities that cannot meet EPA's revised requirements for emergency engines must comply with the requirements for non-emergency engines. However, until May 3, 2014, "area source" facilities that operate their engines as part of a load management program may still operate their engines for up to 50 hours in a calendar year to provide electricity to the grid or as part of a financial arrangement with another entity (also known as "peak shaving"). EPA defines an "area source" as one that emits less than 10 tons per year of any one air toxic and less than 25 tons per year of any combination of air toxics. Essentially, these facilities have an extra year after the RICE NESHAP compliance date to determine how to use these engines.

Some facilities have already replaced their engines or installed emissions control equipment or are preparing to do so to ensure these engines can operate without any restrictions. Additionally, a facility may receive an extension of up to one year to install control equipment. Because the deadline for facilities to request extensions occurred prior to the effective date of Iowa's adoption of the RICE NESHAP amendments, EPA Region 7 (rather than the Department) is responsible for processing extension requests. According to information that EPA provided to the Department to date, 54 Iowa facilities have submitted requests for extensions. EPA has granted 49 extensions and expects to act on the remaining 4 requests in the near future (1 request was withdrawn).

These amendments are intended to implement Iowa Code section 455B.133 and 42 U.S.C. Section 7412 (Title I of the Clean Air Act, Section 112).

These amendments will become effective on October 23, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 23.1(4), introductory paragraph, as follows:

**23.1(4)** *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through September 19, 2011, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses (except for paragraph 23.1(4) "cz," which specifies a later date for adoption by reference). 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded ( $F_{bio}$ ) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, "hazardous air pollutant" has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an "area source" means any stationary source of hazardous air pollutants that is not a "major source" as defined in this subrule. Paragraph 23.1(4) "a," general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 2. Amend paragraph **23.1(4)“cz”** as follows:

*cz. Emission standards for stationary reciprocating internal combustion engines.* These standards apply to new and existing major sources and to new and existing area sources with stationary reciprocating internal combustion engines (RICE). ~~These standards also apply to new and reconstructed RICE located at area sources.~~ For purposes of these standards, stationary RICE means any reciprocating internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. (Part 63, Subpart ZZZZ, as amended through ~~April 20, 2006~~ January 30, 2013)

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/13.