

## RULEMAKING NOTICE

Notice Number _____	Rule Number _____	Env-A 101.671
<p>1. Agency Name &amp; Address:</p> <p>Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</p>	<p>2. RSA Authority:</p> <p>3. Federal Authority:</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment _____</p>	<p>RSA 125-C:4, I(a)</p> <p>n/a</p> <p></p> <p></p> <p></p> <p></p> <p></p> <p>X</p>

5. Short Title: **Definition of “emergency generator”**

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

Existing Env-A 101 contains the definitions for terms used throughout subtitle Env-A. Existing Env-A 101.671 defines an “emergency generator”. The Department is proposing to amend the definition of “emergency generator” to make it consistent with a federal court decision and EPA guidance regarding implementation of 40 CFR 63, Subpart ZZZZ and 40 CFR 60 Subpart IIII and JJJJ. Under those federal regulations engines operating in certain circumstances are defined as “emergency generators” and exempt from federal requirements to install emission controls, conduct stack testing, and to burn specified fuels. Those circumstances typically involve storm or disaster related interruption of electrical power. In addition prior to 2015, engines operated by agreement with the regional transmission authority to reduce demand on the electrical grid during high use periods were also considered to be emergency generators and, thus, exempt from requirements applicable to non-emergency uses. In 2008, the Department amended the state definition of “emergency generator” to be consistent with federal regulations by including engines used under such agreements. In 2015, the U.S. Court of Appeals for the District of Columbia, in *Del. Dep’t of Natural Res. & Envtl. Control v. EPA*, 785 F.3d 1 (D.C. Cir. 2015), invalidated parts of the federal regulations allowing exemptions for engines used for such demand-response purposes. As a result, engines used for those purposes are no longer exempt from federal requirements regarding emission controls, stack testing, or fuel selection. The proposed amendments would make the state definition of “emergency generator” consistent with the decision of the DC Circuit and subsequent EPA guidance on implementation of the federal regulations impacted by that decision.

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

The rules apply to owners and operators of specified generators who were previously eligible to operate those generators as “emergency generators” under agreement with the regional transmission authority.

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

Rule Section(s)	State Statute(s) Implemented	Federal Statute or Regulation Implemented
Env-A 101.671	RSA 125-C:4, I(a); RSA 125-C:6, II & XIV; RSA 125-C:11, I & III	42 U.S.C. §§7410, 7502(c), 7511c

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

Name: Karla McManus Title: Planning and Rules Manager, Air Division  
Address: Dept. of Environmental Services Phone #: (603) 271-6854  
29 Hazen Drive; P.O. Box 95 Fax#: (603) 271-1381  
Concord, NH 03302-0095 E-mail: [Karla.McManus@des.nh.gov](mailto:Karla.McManus@des.nh.gov)

The rules also can be viewed in PDF at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm> 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, May 25, 2018**

**YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING THE PUBLIC HEARING**

Fax  E-mail  Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, May 17, 2018 at 1:00 PM**

Place: **Rooms 110-111, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 18:064 , dated 04/04/2018:

**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.

**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 rule does not create, modify, or expand any program in such a way as to require action by any political subdivision and so does not require any expenditures by political subdivisions. The rule thus does not violate Part I, Article 28-a of the NH Constitution.