

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of Climate, Air, & Energy, Deputy Commissioner
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MAR 18 2022

Ms. Lisa F. Garcia
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway, 26th Floor
New York, NY 10007-1866

Dear Administrator Garcia:

On behalf of the Governor of the State of New York, I am submitting for approval by the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to incorporate revisions to Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Subpart 202-2, "Emission Statements," as adopted on October 26, 2020.

Subpart 202-2 establishes the requirements for annual emission statements filed by facilities subject to Title V permits. The New York State Department of Environmental Conservation (DEC) adopted these revisions to Subpart 202-2 to require electronic submittal of annual emission statements.

A "Notice of Proposed Rulemaking" was published in the Environmental Notice Bulletin (ENB) and the New York State Register on April 29, 2020 and a public comment period was held for the proposed SIP revision. Due to the unprecedented nature of COVID-19, then-Governor Cuomo issued a PAUSE Order directing nonessential meetings and gatherings to be suspended or canceled.¹ Pursuant to these directives, DEC did not schedule or hold any public hearings for this rulemaking. No comments were received during the 60-day public comment period, though non-substantive revisions were made to the final Express Terms.

The following documents are enclosed with this proposed SIP revision:

1. Express Terms for 6 NYCRR Subpart 202-2, "Emission Statements" as proposed on April 29, 2020;
2. Notice of Proposed Rulemaking as published in the ENB and New York State Register on April 29, 2020;
3. Certificate of Adoption dated October 26, 2020;
4. Express Terms for 6 NYCRR Subpart 202-2 as adopted on October 26, 2020; and,

¹ See Executive Order 202 and subsequent additions, including Executive Order 202.15 which specifically addressed the suspension of public hearing requirements.



Department of
Environmental
Conservation

5. Notice of Adoption published in the ENB and New York State Register on November 18, 2020.

If you have any questions or concerns, please contact Mr. Christopher M. LaLone, Director, Division of Air Resources at (518) 402-8452.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Snyder', with a long, sweeping horizontal line extending to the right.

J. Jared Snyder
Deputy Commissioner
Office of Climate, Air, & Energy

Enclosures

c: R. Ruvo, EPA Region 2
C. LaLone

Express Terms

6 NYCRR Subpart 202-2, "Emission Statements"

Sec. 202-2.1 Applicability.

(a) This Subpart applies to:

(1) any owner or operator of a facility located in New York State which is determined to be a major source as defined in Subpart 201-2 of this Title for all or any part of such calendar year; and

(2) any owner or operator of a facility located in an ozone non-attainment area which emits NO_x or VOCs equal to or greater than 25 tons during any such calendar year.

(b) If a facility is subject to this Subpart, the owner or operator of such facility must report its actual annual emissions of regulated air contaminants as set forth in this rule.

(c) Electronic submittal of Emission Statements will become mandatory and will be included as an enforceable condition in new or renewed Title V permits issued after January 1, 2021. The first reporting year under this provision will be the reporting year in which the permit was issued or reporting year 2025 (emission statements due in 2026), whichever is earlier.

Sec. 202-2.2 Definitions.

(a) For the purpose of this Subpart, the general definitions of Parts 200 and 201 of this Title apply:

(b) The following definitions govern the provisions of this Subpart:

(1) 'Actual annual emissions.' The actual (or estimated) emissions of a regulated air contaminant after control equipment has been applied, including fugitive emissions and emissions during startups, shutdowns, and malfunction conditions which occurred during the calendar year being reported. Actual annual emissions are based on actual operating conditions for the calendar year (*i.e.*, actual fuel usage, actual material usage, actual operating rate) and are determined using one of the methods listed in section 202-2.4(d) of this Subpart.

(2) 'Annual process rate.' An actual (or estimated) measurable parameter or quantity per calendar year that directly or indirectly relates to the emissions of an air contaminant source. Depending on the type of emission source, measurable quantity or parameter may refer to the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed. The measurable quantity or parameter is typically the value that is multiplied by an emission factor to generate an emission estimate.

(3) 'Annual reportable emissions.' The actual annual emissions of a facility subject to this Subpart. In addition, every three years annual reportable emissions shall include the actual annual emissions of exempt emission sources as defined in section 201-3.2 of this Title. Emissions from exempt sources are required

to be reported every three years as part of the periodic emission inventory as set forth in section 202-2.3(e) of this Subpart.

(4) 'Chemical abstracts service registry number.' A CAS (chemical abstracts service) registry number is a unique numeric identifier which designates only one substance and has no chemical significance other than to link information about a specific chemical substance.

(5) 'Chemical family code.' A chemical family code is defined as the numerical code associated with a specific chemical family as determined in the following table:

<i>Chemical Family Code</i>	
1.	Particulates (PART)
2.	Sulfur Dioxide (SO ₂)
3.	Nitrogen Oxides (NO _x)
4.	Volatile Organic Compounds (VOC)
5.	Carbon Monoxide (CO)
6.	Other
7.	PM-10
8.	Particulates and Hazardous Air Pollutant (HAP)
9.	VOC and HAP
10.	HAP Only
11.	PM _{2.5}
12.	Hydrofluorocarbons (HFCs)
13.	Perfluorocarbons (PFCs)

(6) 'Control equipment type.' The type of control equipment used by a facility to regulate air emissions. The control equipment description reported on the emissions statement shall be consistent with the appropriate description contained in a list provided by the department for emission statement reporting purposes.

(7) 'Control efficiency.' The effectiveness of air pollution control equipment expressed as the percentage of the actual total emissions of an air contaminant prevented by the air pollution control equipment from being emitted into the outdoor atmosphere. Control efficiency is calculated by dividing the weight of such air contaminant collected, removed, or rendered less noxious (during a specific unit of time) by the control equipment, including equipment downtime and maintenance degradation, by the uncontrolled emission rate (based on an equal unit of time) of the contaminant, and multiplying by 100 percent.

(8) 'Design capacity.' A measure of the size of a point source, based on the reported maximum continuous capacity of the emission generating equipment.

(9) 'Emission factor.' An average value which relates the quantity of an air contaminant released to the atmosphere as a result of an associated activity or material throughput level, usually expressed as the weight of an air contaminant divided by a unit weight, volume, distance or duration of the activity that emits the air contaminant (*e.g.*, pounds of particulate matter emitted per ton of coal combusted).

(10) 'Emissions method code.' The code which identifies how emissions were determined for emission statement reporting purposes. Emissions must be calculated using the methods described by these codes.

(11) 'Exit gas flow rate.' Numerical value of stack gas flow rate (mass/time).

(12) 'Exit gas temperature.' Numerical value of stack gas temperature (°C or °F).

(13) 'Exit gas velocity.' Numerical value of stack gas velocity (distance/time).

(14) 'Material balance.' The process of determining emissions by comparing the material inputs of a process with the amount of material outputs of the process. For example, a certain chemical of a known quantity used in a process may be emitted to the atmosphere, retained in the product, destroyed in the process, or physically removed for reprocessing or disposal.

(15) 'Maximum nameplate capacity.' A measure of a unit's size which the manufacturer includes on the unit's nameplate.

(16) 'NAICS.' North American Industry Classification System. NAICS is a classification of business establishments by economic activity. It was adopted by Canada, Mexico, and the United States on January 1, 1997, to replace the Standard Industrial Classification (SIC) code.

(17) 'Peak carbon monoxide season.' The months of January, February and December in a given calendar year.

(18) 'Peak ozone season.' The period from June 1st through August 31st, inclusive in a given calendar year.

(19) 'Percent annual throughput.' The percent of the total yearly operation of a process which occurs

during each of the following periods: January, February, and December; March through May; June through August; and September through November.

(20) *SCC*. Source Classification Code. A process-level code that describes the equipment and/or operation which is emitting pollutants.

(21) ‘Stack diameter.’ The inside diameter or cross section at the exit of a stack or vent, expressed to the nearest inch.

(22) ‘Stack height.’ The height of the stack measured from ground level to the top of the stack or vent, expressed to the nearest foot.

(23) ‘Start time (hour).’ The hour of the day that the process equipment begins operation. This is the starting time used to calculate emission estimates for that equipment.

(24) ‘Work weekday.’ Any day of the week excluding Saturday or and Sunday.

Sec. 202-2.3 Required contents of an emission statement.

(a) Emission statements shall include the following:

(1) Certification by a responsible official. A responsible official must sign a form or other legal instrument provided by the department to certify the emission statement information. Further, the certification must include the e-mail address of the responsible official. This certification shall state that after reasonable inquiry, the responsible official has concluded that the statements and information in the document are accurate and complete in accordance with this Subpart, based on the best available information. The certification shall include the full name, title, original signature, date of signature, e-mail address and telephone number of the responsible official.

(2) Facility level information, consisting of:

(i) full name of facility;

(ii) owner's name;

(iii) street address (physical location) of the facility;

(iv) four-digit primary SIC code or NAICS code for the facility;

(v) calendar year for which emissions are being reported; and

(vi) total facility fuel use, average sulfur content, average ash content and heat value (for combustion installations).

(3) Process level information, consisting of:

(i) process identification;

(ii) eight-digit SCC for the process;

(iii) annual throughput or quantity of fuel consumed (combustion sources);

(iv) description of the process;

(v) description of installed air pollution control equipment;

(vi) the average number of hours of operation per day (including annual, peak ozone season and peak carbon monoxide season in carbon monoxide nonattainment or maintenance areas);

(vii) the average number of days of operation per week (including annual, peak ozone season and peak carbon monoxide season in carbon monoxide nonattainment or maintenance areas);

(viii) the number of weeks per year of operation (including annual, peak ozone season and peak carbon monoxide season in carbon monoxide nonattainment or maintenance areas);

(ix) percent operation by season, January, February, and December; March-May; June-August; September-November (percent fuel use by season for combustion sources). The sum of the four seasons [should] must equal 100 percent;

(x) total days of operation (during the peak ozone season, June-August, and peak carbon monoxide season, January, February, and December, in carbon monoxide nonattainment or maintenance areas);

(xi) control efficiencies achieved by the air pollution control equipment. The control efficiency should reflect the total control efficiency from all control equipment for a specific air contaminant (*e.g.*, VOCs, NO_x). If the actual control efficiency is unavailable, the design efficiency or the control efficiency limit imposed by a permit shall be used;

(xii) annual reportable process emissions, for each regulated air contaminant emitted, (in units of pounds per year). Emissions of individual contaminants (identified by CAS code) less than 10 pounds per year may be reported on a process basis as less than 10 pounds. For purposes of calculating emission fees, contaminants reported as less than 10 pounds will be treated as though 10 pounds of the contaminant were emitted. Reporting of emissions for processes with source classification codes beginning with 1 or 2 is optional. In such cases, the Department will calculate process-level emissions based upon the reported fuel use and published emission factors;

(xiii) annual reportable fugitive emissions. A facility must estimate fugitive emissions which are generated from its operation. A facility may aggregate fugitive emissions under a single process to account for total facility fugitive emissions where the origin of such emissions cannot be identified. The facility must indicate such aggregation has occurred on its emission statement;

(xiv) emissions estimate method (see section 202-2.4[d] of this Subpart);

(xv) emission factors and source from where the emission factor was obtained (if used to determine actual emissions);

(xvi) start time (hour); and

(xvii) work weekday emissions.

(b) The department shall provide instructions for completing the emission statements each year. These instructions shall include emissions method codes, chemical family codes, and control equipment types.

(c) A facility is required to report actual emissions for each contaminant listed on its title V operating permit. A facility must also report its actual emissions of each of the following contaminants:

(1) sulfur oxides (SO₂);

- (2) volatile organic compounds (VOCs);
- (3) nitrogen oxides (NO_x);
- (4) carbon monoxide (CO);
- (5) lead and lead compounds (Pb);
- (6) primary PM_{2.5} (includes filterable and condensable);
- (7) primary PM₁₀ (includes filterable and condensable);
- (8) ammonia (NH₃);
- (9) hazardous air pollutants (HAPs) reported at the CAS registry number level, as defined in Part 200 of this Title;
- (10) Carbon dioxide (CO₂);
- (11) Methane (CH₄);

(12) Nitrous oxide (N₂O);

(13) Hydrofluorocarbons (HFCs);

(14) Perfluorocarbons (PFCs);

(15) Sulfur hexafluoride (SF₆); and

(16) Any regulated air contaminant.

(d) [Facilities with title V operating permits will receive pre-printed emission statement survey forms provided by the department]The department will provide Title V facilities with emission statement survey forms that reflect the information contained in the facility's operating permit. A responsible official must certify to the accuracy of this information and correct or supplement the [pre-printed] provided emission statement if it contains incorrect or missing information. The submission of an emission statement by a facility does not constitute an application for a permit modification or relieve the facility of the requirement to submit a permit modification application in accordance with Part 201 of this Title as required. [Facilities that submit electronic emission statements in accordance with section 202-2.4(h) of this Subpart or otherwise generate and submit complete emission statements are not required to correct these pre-printed emission statement forms.]

(e) Facilities are required to report estimates of VOC, [NOX]NO_x, SO₂, primary PM_{2.5}, primary PM₁₀ and

CO emissions from exempt activities as defined in section 201-3.2(c) of this Title, every three years as part of the periodic inventory (beginning in 1990, *i.e.*, [1990, 1993, 1996, 1999, 2002,] 2017, 2020, 2023, 2026, etc.).

(f) As part of the periodic inventory, the department shall provide additional forms and instructions to facilities in order to verify or collect the following information for permitted activities in the Title V permit:

(1) X stack coordinate (longitude);

(2) Y stack coordinate (latitude);

(3) stack height;

(4) stack diameter;

(5) exit gas temperature;

(6) exit gas velocity;

(7) exit gas flow rate;

(8) design capacity; and

(9) maximum nameplate capacity.

Sec. 202-2.4 Procedures.

[(a) Emissions statements shall be postmarked on or before April 15th and submitted to the department each year. Emission statements shall report actual annual emissions generated from the facility during the previous calendar year.]

(a) Submission dates for emission statements. Emission statements shall report actual annual emissions generated from the facility during the previous calendar year and must be submitted by the deadlines set forth below.

(1) Until a facility is required to submit annual emission statements electronically, emission statements submitted via courier must be postmarked (or equivalent) to the department no later than April 15th of each year.

(2) Until a facility is required to submit annual emission statements electronically, emission statements submitted electronically must be received by the Department on or before April 15th of each year.

(3) Once a facility is required to submit annual emission statements electronically, emission statements must be submitted to the Department per the following schedule beginning the reporting year that a Title V permit containing a condition mandating electronic submittal is issued:

(i) March 15th of each year for facilities with 3 or fewer processes listed in their Title V permit;

(ii) March 31st of each year for facilities with 4 to 6 processes listed in their Title V permit;

(iii) April 15th of each year for facilities with 7 to 12 processes listed in their Title V permit; or

(iv) April 30th of each year for facilities with 13 or more processes listed in their Title V permit.

(4) A facility may submit its emission statement via courier per the schedule in paragraph 202-2.4(a)(3) of this Subpart in lieu of electronic submission under the following conditions:

(i) data cannot be labeled as confidential business information using the electronic interface by the facility in accordance with Part 616 of this Title; or

(ii) the facility receives permission from the Department after demonstrating a need to submit via courier due to a failure of the electronic reporting interface.

(b) If [April 15th] a facility's submission's date occurs on a Saturday, Sunday, or Federal holiday, the annual emission statement must be postmarked or submitted no later than the next business day immediately following the submission date[April 15th and submitted to the department].

(c) Notwithstanding subdivisions (a) and (b) of this section, the department reserves the right to extend the [April 15th] submission deadline provided a facility can demonstrate by clear and convincing evidence,

that due to unavoidable circumstances, it is unable to have the completed emission statement postmarked or submitted on or before [April 15th] the submission date. All extension requests are subject to the approval of the department and will be granted on a case-by-case basis. Extension requests must be submitted to the department in writing or by email by the facility [on or before April 1st] fifteen days before the submission date and must include, at a minimum, the following information:

(1) the reason(s) for the extension request; and

(2) the date the statement will be submitted.

(d) Emission estimates shall be based on the owner's or operator's use of the methods listed below and should be consistent with the compliance determination and monitoring methods specified in the [title]Title V operating permit. The methods are generally listed in order of most preferred to least preferred. Facility owners or operators shall utilize the method which results in the best possible emission estimate:

(1) continuous emissions monitoring systems (CEMS);

(2) material balance calculations or fuel analysis;

(3) stack test of emissions, including date of test;

(4) stack test of emissions from identical or similar emission sources;

(5) published emission factors;

(6) modeling, emission estimation software;

(7) best engineering judgment; and

(8) manufacturer's guarantee.

(e) The use of CEMS data is required for all processes where such equipment is installed. Owners or operators who utilize CEMS must account for emissions occurring during all hours of operation, including those hours for which valid CEMS data was not obtained. Emissions from hours when CEMS data was not collected must be estimated by using the procedures given in subdivision (f) of this section.

(f) Data substitution procedures used to satisfy subdivision (e) of this section above shall comply with the following:

(1) for units and contaminants that are subject to 40 CFR part 75, applicable data substitution procedures from that regulation shall be used; or

(2) for units and/or contaminants not subject to 40 CFR part 75;

(i) the 90th percentile value of all hourly values measured during the previous 90 days while burning the same fuel shall be used; or

(ii) methods specified in the hierarchy listed under subdivision (d) of this section may be used, subject to the approval of the department.

(g) If a source owner or operator is required to use a specific monitoring method to demonstrate compliance with other applicable requirements, the department may require that the emission estimates for the corresponding processes in the emission statement be based on information obtained from that specific monitoring method. The department may reject the use of a proposed method for a particular process if it can be demonstrated that the method does not provide a reliable representation of emissions.

(h) Any owner or operator of a reportable facility shall transmit the emission statement to the department in a format acceptable to the department. With the prior approval of the department, an emission statement which meets the requirements of this section may be submitted on electronic storage media or transmitted electronically[in lieu of a written submission]. Any electronic submissions must be properly formatted for printing and accompanied by an acceptably signed certification page, or the original signed certification page must be submitted under separate cover.

(i) The owner or operator of a facility may request that certain information submitted in an emission statement be designated as a trade secret or confidential commercial information, in accordance with Part 616 of

this Title. The determination whether to grant such a request shall be made by the department in accordance with the procedures contained in Part 616 of this Title, taking into account applicable State and Federal laws on public disclosure. All information required on the annual emission statement must be reported to the department. The department may withhold certain process level information from public disclosure, where the department or a court of competent jurisdiction determines that such information constitutes trade secrets or confidential commercial information within the meaning of Part 616 of this Title, the Public Officers Law or other applicable State or Federal law.

(j) Department review and approval. The department shall notify the facility if any part of the submitted emission statement is incomplete or incorrect. The department will allow the facility up to 15 business days following the facility's receipt of the department's notice to provide the required contents of the emission statement. If a complete and accurate emission statement is not submitted to the department by [April 15th]the submission date or within 15 days after receipt of the department's notification of an incomplete or incorrect emission statement, the facility may be subject to enforcement action including but not limited to monetary fines.

Sec. 202-2.5 Recordkeeping requirements.

(a) Each facility subject to this Subpart shall maintain the following records for at least five years:

- (1) a copy of each emission statement submitted to the department; and
- (2) records supporting how the information submitted in the emission statement was determined, including any calculations, data, measurements, and estimates used.

(b) These records shall be made available at the facility to representatives of the department upon request, during normal business hours.

ENB - Statewide Notices 4/29/2020

Notice of Proposed Rulemaking

6 NYCRR Part 202-2 "Emission Statements"

Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation (NYS DEC) hereby gives notice of the following:

The NYS DEC is proposing to revise 6 NYCRR Subpart 202-2, "Emission Statements" to require electronic submittal of annual emission statements. This requirement will be phased in beginning with Title V permits issued in 2021. The first electronic reporting year for each facility will be the year in which a new or renewed Title V permit is issued containing an enforceable condition mandating electronic submittal of the annual emission statement. By reporting year 2025, all emission statements will be subject to the electronic reporting requirements with certain exceptions. Subpart 202-2 will also be submitted to the United States Environmental Protection Agency (US EPA) as a revision to the State Implementation Plan (SIP) for New York State.

Documents pertaining to this [proposed rulemaking](http://www.dec.ny.gov/regulations/propregulations.html#public) can be found on the NYS DEC's website at <http://www.dec.ny.gov/regulations/propregulations.html#public>.

In light of the current emergency associated with the COVID-19 pandemic, Governor Cuomo has put New York State on PAUSE to limit the spread of the novel coronavirus. See Executive Order 202, including subsequent iterations and successors thereof, including Executive Order 202.15. Pursuant to these directives, non-essential meetings and gatherings of any size are currently prohibited, and rulemaking hearings are not required. Consistent with such requirements, NYS DEC will not hold a public hearing for this rulemaking.

Request for information and comments related to the proposed revisions to Subpart 202-2, may be obtained from: Carlos Mancilla, NYS DEC - Division of Air Resources, 625 Broadway, Albany NY 12233-3251, Phone: (518) 402-8396, E-mail: air.regs@dec.ny.gov. **Written statements may be submitted until 5:00 p.m. June 29, 2020.**

Requests for information and comments related to the SIP revision may be obtained from: Robert D. Bielawa, NYS DEC - Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: air.regs@dec.ny.gov. **Written statements may be submitted until 5:00 p.m., June 29, 2020.**

Action taken: Amendment of section 31 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0907

Subject: Black Bear hunting.

Purpose: Expand bear hunting opportunities in Wildlife Management Unit 4W to reduce bear abundance.

Text or summary was published in the July 3, 2019 issue of the Register, I.D. No. ENV-27-19-00003-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Jeremy Hurst, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8883, email: jeremy.hurst@dec.ny.gov

Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The original Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement as published in the Notice of Proposed Rule Making, remain valid and do not need to be amended.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department received about two dozen comments on the proposed amendment to include Wildlife Management Unit (WMU) 4W in the early bear hunting season. Several comments simply expressed support for the proposal without explanation or justification. For other comments, we reviewed the substance and merit of the comment and provide a summary and response here.

Comment:

Several writers noted their support for the proposal and indicated their perception that the bear population and associated human-bear conflicts have increased in WMU 4W in recent years.

Response:

The Department agrees that data from WMU 4W suggest that the bear population has increased, and current harvest levels are inadequate to achieve the desired management objective of maintaining a moderate density bear population. However, levels of human-bear conflict have not increased substantially.

Comment:

One writer expressed opposition to the proposal, indicating that the “no change” alternative be adopted and claiming that there is no scientifically-based biological data demonstrating need for the season expansion.

Response:

The Department disagrees. Annual bear harvest density provides a metric for monitoring bear population trends, and harvest records in WMU 4W demonstrate that current harvest levels are inadequate to achieve the management objective of maintaining a moderate density population.

Comment:

One writer asked whether it would be possible to assist other states with renewing their bear populations, presumably suggesting that bears from WMU 4W be captured and released in other jurisdictions.

Response:

All states in eastern North America report stable or increasing bear populations. In the few states where bears are rare or largely absent (e.g., Rhode Island, Delaware), their management objectives do not call for population augmentation through bear relocation and release.

Comment:

One writer requested that all bear hunting be stopped.

Response:

The Department believes discontinuing bear hunting would be an unwise and irresponsible action, constituting a failure to uphold our public trust management responsibilities. Regulated black bear hunting is an important method of managing bear populations, allowing hunters to sustainably utilize the excess production of the bear population. Hunting provides additional benefit through the annual removal of some habituated bears which cause conflicts with humans and damage to agricultural crops or livestock production.

Comment:

One writer expressed the opinion that an early season in 4W is not warranted at this time, believing that the bear harvests observed statewide over the past 6 years represent a significant increase in harvest rate compared to the prior 20 years, and suggesting that this should be keeping the population from increasing. This writer also suggested that additional hunting related changes should not be made until the iSeeMammals Citizen Science project is fully implemented and providing greater insight about the bear population.

Response:

We appreciate the writer’s concern, but it is inappropriate to ascribe statewide harvest trends to population analysis and management decisions of an individual WMU. Too, while iSeeMammals shows promise as a tool to collect information about bear presence and absence from participating citizen scientists for use in an integrated population modeling context, presently the iSeeMammals project does not have the intensity of use necessary for WMU level analysis. Existing metrics of bear abundance in 4W indicate that bear harvests are inadequate to achieve the management objective of maintaining a moderate density population.

Comment:

Several writers suggested additional modifications of bear hunting regulations to increase bear harvest, as intended with this rule change, including: allowing hunters to use bait to attract bears, creation of a spring bear hunting season, and expansion of the early bear hunting season into additional WMUs. Additionally, although this rule making did not propose anything beyond additional hunting opportunity in WMU 4W, one writer commented in opposition to potential alternative, non-proposed, bear hunting techniques (e.g., use of bait or dogs, cable restraints, spring seasons).

Response:

The use of bait or dogs to hunt black bears, while highly successful techniques to increase harvest rates of bears, are prohibited by New York State Law and thereby outside the Department’s current ability to implement. While both the establishment of a spring bear hunting season and further expansion of early bear season opportunities are within the Department’s purview, neither is necessary for population management at this time.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The Department’s Air Pollution Control Permitting Program

I.D. No. ENV-17-20-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Parts 200, 201, 212 and 621 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 70-0109, 71-2103, 71-2105; Clean Air Act (CAA or Act), sections 501-507 (title V)

Subject: The Department’s air pollution control permitting program.

Purpose: The purpose of this rulemaking is to improve the clarity and consistency of the Department’s air pollution permitting program.

Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/proproregulations.html> **#public):** The New York State Department of Environmental Conservation (Department) is proposing to revise its Operating Permit Program as set forth in Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; 212, Process Operations; and 621, Uniform Procedures (collectively, Part 201).

The proposed revisions to Part 200 revise the definition of ‘emergency power generating stationary internal combustion engine’ to allow operation for more than 500 hours during a declared state disaster emergency as defined under Section 28 of the New York State Executive Law. It also modifies the definition of ‘combustion installation’ and adds the definitions of ‘fossil fuel’ and ‘furnace’, which are being removed from Paragraph 201-2.1(b).

The proposed revisions to Part 621 correct minor language inconsistencies in Subdivision 621.4(g). The renewal application deadlines specified in Paragraph 621.11(a)(1) are being revised to be consistent with Part 201. Finally, the language of Subdivision 621.11(i) is being revised to be consistent with Part 201.

Subdivision 621.4(g) is revised to remove an outdated reference to 6 NYCRR Part 215. Subparagraph 621.4(g)(2)(ii) is revised to refer to air state facility permits and correct a reference to Part 201. Clauses 621.4(g)(2)(v)(‘a’) and 621.4(g)(2)(v)(‘b’) are deleted. Paragraph 621.11(a)(1) is revised to clarify the renewal application deadlines for air state facility, Title V facility, and Title IV facility permits. Subdivision 621.11(i) is revised to clarify the public noticing requirements for air permits containing emission caps.

Subdivision 212-1.4(a) is revised to clarify its requirements. Subdivision 212-1.4(k) is revised to address toxic emissions from the iron and steel industry. Paragraph 212-1-5(e)(2) is revised to include an alternative toxic impact assessment method. Table 2 in Section 212-2.2 is revised to

be consistent with Table 1 in Subpart 201-9 and to reflect the latest toxicological information. Table 6 in Subdivision 212-2.5(b) is revised to show permissible emission rates consistent with the formula presented in that Subdivision.

Subdivision 201-1.2(b) is revised and reworded to more clearly state its requirements. Sections 201-1.4, 201-1.5, 201-1.11, 201-1.12, and 201-1.13 are revised to more clearly state their requirements. Finally, a new Section 201-1.16 is added to specify certain criteria that owners or operators of research and development activities must meet to qualify for exemption from permitting requirements.

The definition of 'emergency' in Paragraph 201-2.1(b)(12) is revised to more clearly indicate situations that qualify as an emergency under Part 201. Paragraphs 201-2.1(b)(16) and 201-2.1(b)(17) are repealed and reserved. An extraneous sentence is removed from Paragraph 201-2.1(b)(20) to clarify its meaning. References to greenhouse gas emissions are removed from Paragraph 201-2.1(b)(21). Paragraph 201-2.1(b)(22) is revised to more clearly indicate situations that qualify as a malfunction under Part 201. Paragraph 201-2.1(b)(23) is repealed and reserved. Paragraph 201-2.1(b)(24) is revised to indicate that portable emission sources that remain at the same facility for 12 consecutive months will be treated as stationary emission sources. Paragraph 201-2.1(b)(26) is revised to include registrations. Paragraph 201-2.1(b)(29) is revised to more clearly indicate what qualifies as a temporary emission source. Finally, Paragraphs 201-2.1(b)(30), 201-2.1(b)(31), and 201-2.1(b)(32) are repealed.

Section 201-3.1 is revised to clarify its requirements and intent. Paragraph 201-3.2(c)(1) is revised to clarify the specific types of combustion installations that qualify for exemption. Paragraph 201-3.2(c)(6) is revised to remove engine test cells from the exempt activity. Paragraph 201-3.2(c)(13) is revised to clarify the emissions threshold for exempt graphic arts facilities. Paragraph 201-3.2(c)(21) is revised to remove liquid asphalt storage tanks from the exempt activity and add biodiesel storage tanks. Paragraph 201-3.2(c)(25) is revised to add liquid asphalt storage tanks to the exempt activity. Paragraph 201-3.2(c)(29) is revised to clarify which types of crushing operations qualify for exemption. Paragraph 201-3.2(c)(36) is revised to exclude plastic extrusion processes using halogenated polymers from the exempt activity. Paragraph 201-3.2(c)(40) is revised to clarify that laboratory operations producing commercial quantities of materials are not considered to be exempt. Paragraph 201-3.2(c)(44) is repealed and reserved. Paragraph 201-3.2(c)(46) is revised to include natural gas and methane fuel cells as an exempt activity. A new Paragraph 201-3.2(c)(49) is added to list covered manure storage exhausting to a flare or other appropriate control device as an exempt activity. A new Paragraph 201-3.2(c)(50) is added to list coffee roasting processes with a maximum operating capacity of less than 25 tons per year of green coffee beans as exempt activities. A new Paragraph 201-3.2(c)(51) is added to list process emission sources at breweries with total beer and malt liquor production less than 60,000 barrels per year as exempt activities. A new Paragraph 201-3.2(c)(52) is added to list process emission sources at wineries with total wine and brandy production less than 700,000 gallons per year as exempt activities. A new Paragraph 201-3.2(c)(53) is added to list process emission sources at distilleries with less than 10,000 distiller's bushels of grain input per year as exempt activities. A new Paragraph 201-3.2(c)(54) is added to list process emission sources at lumber drying kilns with an annual throughput of untreated wood less than 275,000 board feet as exempt activities.

Paragraph 201-3.3(c)(8) is revised to include nail salons as a trivial activity. Paragraph 201-3.3(c)(28) is repealed and replaced with an activity that applies to sub-slab depressurization systems. Paragraph 201-3.3(c)(29) is revised to clarify its intent. Paragraph 201-3.3(c)(30) is revised to clarify its intent. Paragraph 201-3.3(c)(41) is revised to remove tub grinders and construction and demolition waste crushers from the trivial activity. It is also revised to specifically exclude construction and demolition waste crushers and automotive and scrap metal shredding operations from the trivial activity. Paragraph 201-3.3(c)(63) is revised to more clearly indicate that the trivial activity does not apply to surface coating operations at woodworking facilities. Existing Paragraph 201-3.3(c)(84) is repealed and replaced with new language indicating that laser and plasma cutters and trimmers using appropriate emission control devices that do not emit hazardous air pollutants are considered trivial activities. Paragraph 201-3.3(c)(85) is repealed and reserved.

Paragraph 201-4.1(a)(2) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. Further, Paragraph 201-4.1(a)(2) is revised to more clearly indicate that emissions of high toxicity air contaminants from combustion sources and exempt and trivial activities are not included in the facility wide total when determining air facility registration applicability. Subdivision 201-4.2(d) is revised to more clearly indicate that an air facility registration must be issued by the Department prior to the commencement of construction of a new or modified facility or emission source. Subdivi-

sion 201-4.2(f) is revised to indicate that the Department may withdraw or revoke air facility registrations in a manner that is consistent with the procedures set forth in 6 NYCRR Part 621. Paragraph 201-4.3(a)(1) is revised to more clearly state the identification information that must be provided with registration applications. Paragraph 201-4.3(a)(5) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. Subdivision 201-4.4(a) is repealed. Subdivision 201-4.4(b) is renumbered as Subdivision 201-4.4(a) and revised to include a permit transfer application as part of the material that must be submitted following a change in facility ownership. Subdivision 201-4.5(a) is repealed and replaced with a new Subdivision 201-4.5(a) that more clearly states the purpose and applicability of cap-by-rule. Paragraph 201-4.5(j)(1) is renumbered as Subdivision 201-4.5(k).

Paragraph 201-5.1(a)(3) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. Further, Paragraph 201-5.1(a)(3) is revised to more clearly indicate that emissions of high toxicity air contaminants from combustion sources and exempt and trivial activities are not included in the facility wide total when determining state facility permit applicability. Existing Subdivision 201-5.1(b) is revised to more clearly state that construction or modification may not commence until a state facility permit is issued by the Department. Paragraph 201-5.2(b)(8) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. A new Subdivision 201-5.2(d) is added to state that renewal applications for state facility permits containing emissions caps are subject to public noticing requirements as described in 6 NYCRR Part 621. Subdivision 201-5.3(b) is revised to clarify which state facility permits are subject to recall as described in the Subdivision. Existing Section 201-5.4 is repealed and replaced with a new Section 201-5.4 that changes the modification procedures for state facility permits. The new Section 201-5.4 differentiates between significant and minor state facility permit modifications and establishes the necessary procedures for their review and issuance. Section 201-5.4 also describes appropriate procedures for certain changes at facilities holding a state facility permit that may be made without a permit modification in certain situations and following appropriate advance notification procedures. Finally, Section 201-5.4 allows the Department to require a permit modification for changes that would otherwise be subject to the advance notification provisions if an adverse environmental impact exists.

Subdivision 201-6.1(a) is revised to more clearly indicate that the described facilities may not be constructed or operated without first obtaining a Title V permit. Paragraph 201-6.2(a)(2) is revised to require the submission of a complete application prior to the commencement of construction of new or modified emission units that would make an existing facility subject to Title V permitting requirements. Paragraph 201-6.2(a)(2) is further revised to require the submission of a Title V permit application within one year of the commencement of operation of the new or modified emission units if the facility was issued an air state facility permit to construct. Subparagraph 201-6.2(d)(3)(i) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. Subparagraph 201-6.4(c)(3)(i) is revised to require that electronic monitoring reports be submitted in a format acceptable to the Department. Existing Subdivision 201-6.4(f) is repealed and replaced with a new Subdivision 201-6.4(f) that more clearly describes operational flexibility requirements for Title V permits. The new Subdivision 201-6.4(f) outlines the procedures facility owners and operators must follow to establish alternate operating scenarios and operational flexibility protocols should they choose to do so. Subdivision 201-6.5(c) is revised to reference the emergency defense provisions of Section 201-1.5 as they are better described at that Section.

Subdivision 201-7.1(c) is revised to more clearly describe the information that must be included in applications proposing one or more emissions caps.

Existing Subpart 201-9 is repealed and replaced to be consistent with Table 2 in 6 NYCRR Part 212-2.2.

A new Subpart 201-10 is added to include a severability clause for Part 201.

Text of proposed rule and any required statements and analyses may be obtained from: Mark Lanzafame, P. E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: air.regs@dec.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: June 29, 2020.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form and a Coastal Assessment Form have been prepared and are on file.

Summary of Regulatory Impact Statement (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/propregulations.html#public>):

The New York State Department of Environmental Conservation (Department) is proposing revisions to its Operating Permitting Program

(OPP). The OPP sets forth the regulatory requirements and procedures for owners and operators of air contamination sources applying for and obtaining a permit or registration from the Department for the construction and operation of the source. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by the Department through Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this proposal will modify 6 NYCRR Section 212-2.2, Table 2 – High Toxicity Air Contaminant (HTAC) list, to be consistent with Table 1 of Subpart 201-9. Finally, this proposal will also make minor changes to 6 NYCRR Part 212 to improve the clarity of its requirements.

1. STATUTORY AUTHORITY

The statutory authority for these regulations is found in Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 70-0109, 71-2103, and 71-2105 of the ECL, and Sections 501-507 (Title V) of the Clean Air Act (CAA or Act).

2. LEGISLATIVE OBJECTIVES

The CAA Amendments of 1990 established federal standards for state OPPs in order to fulfill the Act's environmental protection goals. Title V established standard requirements for state OPPs to ensure that major sources of air pollution complied with the requirements of the Act, along with any federal standards promulgated by EPA (Environmental Protection Agency) to protect air quality. Title V requires states to establish a permit program implementing the requirements of the Act and requires EPA to review and approve the program. The OPP must address both large and small sources of air pollution and provide a basis for implementing and enforcing federal and state regulations.

Articles 1 and 3 of the ECL define the legislative policy objective of reducing air pollution and providing clean air for the citizens of New York and provide authority for the Department to adopt and enforce regulations to accomplish these objectives. Additionally, Article 19 of the ECL was enacted to safeguard the air quality of the state from pollution, ensure the protection of public health and the welfare of the people of the State and, to that end, require the use of all available practical and reasonable methods to prevent and control air pollution in the State. In furtherance of these objectives, ECL Article 19 grants specific powers and duties to the Department, including the authority to promulgate regulations requiring sources of air pollution to obtain permits and registrations from the Department and the authority to control and abate new and existing sources of air pollution.

3. NEEDS AND BENEFITS

Need for Revisions to the OPP

On February 22, 2013, the Department adopted revisions to Part 201 which updated its requirements, improved its clarity and consistency, and made the air permitting process easier to implement. Despite the overall success of this rulemaking, the Department identified items that need additional clarification. The Department has received feedback from the regulated community regarding ways to improve implementation of Part 201. Accordingly, the Department is proposing to amend Parts 200, 201, 212, and 621 to ensure that the OPP is as efficient and up to date as possible, and that it is implemented consistently across the state.

Benefits of Air Permitting Program Revisions

Adopting the proposed revisions will allow the Department to further streamline the air permitting process and provide clarity to the requirements. As a result, the OPP will become more efficient and easier to implement, thus reducing the compliance burden on both the Department and regulated facilities. In addition, this proposal will allow the Department to better fulfill its mandate to protect the citizens and environment of the state by updating the list of HTACs to be consistent with the most recent toxicological data.

Proposed Amendments to Part 200

The Department is proposing to amend Part 200.1(cq) by revising the definition of 'emergency power generating stationary internal combustion engine' to allow emergency engines to operate more than 500 hours per year during a declared state of emergency. The Department did not intend to prohibit the operation of these engines during such an emergency. The Department is also proposing to amend Part 200.1(l) by revising the definition of 'combustion installation' to add "other solid, liquid, and gaseous fuels" to those listed. The Department is also proposing to relocate the definitions of the terms 'fossil fuel' and 'furnace' from Subpart 201-2 to Part 200.1.

Proposed Amendments to Part 621

Subdivision 621.4(g) will be revised to provide clarity and conform these provisions with the requirements of Part 201. Specifically, the proposed revisions will correct several minor inconsistencies in regulatory citations and language making it easier to understand and implement.

In addition, the proposal will correct an inconsistency with the renewal provisions for air state facility permits. Existing Paragraph 621.11(a)(1) states that renewal applications for non-major (i.e. state facility) air permits are due no later than 30 days prior to the expiration date of the permit. This is inconsistent with Subdivision 201-5.2(c), which states that renewal applications for state facility permits must be submitted no later than 180 days prior to the expiration date of the permit. It is the Department's intent that renewal applications for state facility permits be submitted as described in Subdivision 201-5.2(c).

Proposed Amendments to Part 201

Minor language revisions throughout Part 201 are being proposed. Further, the definitions of 'permit shield', 'Title V facility permit', 'Title V facility permit modification', and 'Title V facility permit revision' are being removed as those terms are more clearly described elsewhere within Part 201.

The proposal will add a new Section 201-1.16 addressing research and development (R&D) activities. These activities are currently exempt from permitting in situations where products are not being produced for commercial sale. An increase in R&D activities being conducted throughout the State necessitates a more thorough review of these activities and their emissions.

Several exempt and trivial activities will be updated to make it easier to determine whether an emission source qualifies for exemption. The Department is proposing a new exempt activity that applies to wood and lumber drying kilns processing 275,000 board feet or less of untreated wood on an annual basis. The Department is also proposing a new exempt activity that applies to coffee roasting processes with a maximum operating capacity of 3 kilograms or less per batch and 25 tons or less per year of green coffee beans. The proposed revisions also include three new exempt activities for certain small beverage alcohol production facilities. Finally, a new exemption for covered manure storage exhausting to a flare is proposed.

The proposed revisions to Section 201-3.2 will reduce the maximum size for exempt liquid asphalt storage tanks from 300,000 barrels (12,600,000 gallons) to 10,000 gallons and add biodiesel storage tanks to the exempt activity.

Finally, the Department is proposing to revise a trivial activity that applies to certain solid waste handling operations. This activity was revised during the February 2013 revisions to Part 201 to include tub grinders and construction and demolition waste crushers. It has become clear that both activities can be a significant source of nuisance dust and are therefore not appropriately classified as trivial activities.

Subdivision 201-4.5(a) will be clarified. The Department does not intend to prevent facility owners or operators from registering because they cannot cap-by-rule to avoid a state VOC RACT regulation. Such a facility could cap-by-rule in order to avoid major facility status while still complying with VOC RACT requirements.

Section 201-5.2 will be amended to state that state facility permits containing emissions caps must be publicly noticed when they are renewed or modified.

The modification procedures for state facility permits will be restructured. These new provisions mirror the modification provisions for Title V facility permits by addressing significant and minor modifications, allowing the Department to act more quickly on certain modification applications. Proposed Section 201-5.4 also includes provisions for changes that can be made at permitted facilities without a permit modification.

Subdivision 201-6.4(f) outlines the procedures for implementing operational flexibility at Title V facilities. This section will be revised to clarify its intent and simplify implementation.

The group of compounds listed as persistent, bioaccumulative and toxic compounds will be renamed as HTACs in order to be consistent with Part 212. This change does not affect the requirements for calculating HTAC emissions when determining what type of permit is required for a facility. Additionally, the Department has re-evaluated the list of HTACs based on the latest available data, resulting in several changes to the listed compounds.

Proposed Amendments to Part 212

The Department is proposing to update Table 2 – HTAC list, in Section 212-2.2 to be consistent with Table 1 in Subpart 201-9.

Subdivision 212-1.4(k) will be revised to address mercury and other toxic emissions from the iron and steel industry.

Paragraph 212-1.5(e) will be revised to simplify the toxic impact assessment requirements in certain situations.

4. COSTS

The Department does not anticipate any increase in costs to the regulated community as a result of this rulemaking. Affected facilities are already required to pay applicable fees, monitor operations, and operate pollution control equipment. Further, many of these facilities already employ the necessary staff required to complete these tasks. Any increase

in costs to the regulated community due to the HTAC list changes is expected to be minimal.

An informal survey of facility owners and operators conducted in 1996 by the New York State Environmental Facilities Corporation (EFC) determined the average cost of applying for a minor facility permit in two different regions of the state: downstate and upstate. When updated to 2017 dollars, the costs for state facility permit and registration applications in the downstate region ranged from \$1,600 to \$7,700 per emission point. In the upstate region, these costs are estimated at \$1,900 to \$4,300. Some facilities may choose to hire a consulting firm to assist with this process. The Department estimates that the cost of hiring a consulting firm is approximately \$6,000.

5. PAPERWORK

The proposed changes are not expected to increase the amount of paperwork required from affected facilities.

6. LOCAL GOVERNMENT MANDATES

The proposed revisions do not create any local government mandates and are not expected to result in any additional burdens to State or local governments.

7. DUPLICATION

The proposal does not duplicate any state or federal regulations or statutes. The final rule will conform to the requirements of the Act and the ECL.

8. ALTERNATIVES

The only alternative to this proposal is to take no action, which will have several negative consequences. Confusing language will remain in the regulations, resulting in inconsistent implementation and a lengthier permitting process. The mass emission thresholds for HTACs will remain inconsistent with the current assessment of their relative risk, potentially requiring the owner or operator of a facility emitting these compounds to unnecessarily obtain a state facility permit at a greater cost.

9. FEDERAL STANDARDS

The proposed revisions to Part 201 are consistent with federal standards and fulfill the Department's obligations under the Act.

The proposed revisions to Part 212 use federal NESHAP standards as a floor and build upon them to ensure that all air toxic emissions are appropriately regulated.

10. COMPLIANCE SCHEDULE

The proposed revisions do not result in the establishment of any compliance schedules. The regulation will take effect 30 days after publication in the State Register.

Regulatory Flexibility Analysis

The New York State Department of Environmental Conservation (Department) is proposing several revisions to its Operating Permitting Program (OPP). The OPP sets forth the regulatory requirements and procedures to allow owners and operators of an air contamination source to apply for and obtain a permit or registration from the Department for the construction and operation of such sources. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by the Department through Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this proposal will modify 6 NYCRR Section 212-2.2, Table 2 – High Toxicity Air Contaminant (HTAC) list, to make it consistent with Table 1 of Subpart 201-9. Finally, this proposal will also make several minor changes to 6 NYCRR Part 212 to clarify its requirements.

1. EFFECT OF RULE

The proposed revisions to Part 201 are not expected to adversely affect small businesses and local governments. The owner or operator of an air emission source is required to obtain and comply with a permit or registration for that source. Small businesses and local governments are currently required to comply with this requirement under the existing Part 201. The proposed revisions will make the terms and conditions of Part 201 easier to understand and implement, simplifying the compliance process.

2. COMPLIANCE REQUIREMENTS

Small businesses and local governments that own or operate a non-exempt stationary emission source are currently required to complete and file an appropriate permit or registration application for the construction and operation of that facility. Once a permit or registration is issued, the facility owner or operator is required to comply with all terms and conditions of that permit or registration, and ensure that it accurately reflects facility operations. This requirement will not change as a result of these proposed revisions.

3. PROFESSIONAL SERVICES

Small businesses and local governments are able to comply with the requirements of Part 201 without contracting with any professional

services. In some cases, however, small businesses and local governments may choose to hire a private consulting firm to assist them with meeting their obligations under Part 201. The decision to employ a consulting firm is voluntary, and any associated costs are incurred at the discretion of the affected facility.

4. COMPLIANCE COSTS

Compliance costs for small businesses and local governments are not expected to increase as a result of the proposed revisions. A more detailed analysis of the costs associated with this rulemaking is presented in the Regulatory Impact Statement.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The proposed revisions to Part 201 do not contain any additional technological requirements for affected facilities. Also, the Department does not expect a significant change in the economic feasibility of Part 201 as a result of these revisions. Affected facilities are currently required to obtain permits and registrations from the Department. Several thousand facilities of various sizes are currently operating in compliance with Part 201 throughout the State. This is expected to continue after these proposed revisions are promulgated.

6. MINIMIZING ADVERSE IMPACT

The proposed revisions to Part 201 are not expected to have an adverse impact on small businesses and local governments. New and existing facilities are already required to comply with the current version of Part 201, and the scope of the regulation is not changing as a result of the proposed revisions. These proposed revisions are intended to simplify the permitting process by making it easier to understand and more efficient.

To assist small businesses with environmental compliance, the Department provides free and confidential support through the Small Business Environmental Assistance Program (SBEAP), administered by the New York State Environmental Facilities Corporation. Interested facility owners and operators can contact SBEAP staff for free and confidential assistance filing permit and registration applications, as well as for advice and strategies for maintaining compliance with environmental regulations. This program provides small businesses with a cost saving option while ensuring that they are in compliance with the requirements of Part 201.

The proposed revisions will also add an alternative compliance option for facilities required to develop a Toxic Impact Assessment (TIA) pursuant to Paragraph 212-1.5(e)(2). This alternative compliance option would allow the facility owner or operator to demonstrate compliance with Part 212 by showing that the facility's emissions are below the applicable HTAC thresholds rather than by completing an air dispersion modeling analysis and TIA. As a result, the facility owner or operator would avoid the potentially high cost of performing the air dispersion modeling.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

As stated above, small businesses and local governments are not expected to be directly affected by the proposed revisions to Part 201. The Department conducted stakeholder outreach to all facilities potentially affected by this proposal, including national and local associations and manufacturers, and have given stakeholders several opportunities to participate in the development of the proposed rule. Potentially affected entities, including those involved in small businesses and local governments, will have the opportunity to review and comment on the draft rulemaking in accordance with State rulemaking requirements, and all comments will be considered during the development of the proposed requirements.

8. CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in this rulemaking. This proposal will not result in immediate violations or impositions of penalties for existing facilities.

9. INITIAL REVIEW

The initial review of these rules shall occur no later than the third calendar year after the year in which it is adopted.

Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation (Department) is proposing several minor revisions to its Operating Permitting Program (OPP). The OPP sets forth the regulatory requirements and procedures to allow owners and operators of an air contamination source to apply for and obtain a permit or registration from the Department for the construction and operation of such sources. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by the Department through Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this proposal will modify 6 NYCRR Section 212-2.2, Table 2 – High Toxicity Air Contaminant (HTAC) list, to make it consistent with Table 1 of Subpart 201-9. Finally, this proposal will also make several minor changes to 6 NYCRR Part 212 to improve the clarity of its requirements.

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

Part 201 applies to the owner or operator of any facility operating one or more stationary emission sources in New York State. Affected facilities range in scale from small industries with a handful of emission sources, to large scale industries with hundreds of emission sources. Affected facilities are located in communities throughout the state, including rural areas. The owner or operator of such a facility is already required to comply with the permitting and registration provisions of the existing Part 201. This proposal seeks to modify and update those provisions in order to make them easier to understand and implement. These changes are expected to result in increased efficiency at regulated facilities, potentially decreasing compliance costs. Accordingly, no adverse impacts on rural areas are anticipated due to this rulemaking.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

Facility owners and operators that are subject to the requirements of Part 201 are required to obtain a facility permit or registration from the Department based on the facility's potential to emit. Once issued, the permit or registration contains terms and conditions that the facility owner or operator is required to adhere to in order to demonstrate continuous compliance with state and federal rules and regulations that apply to the operation of that facility. Part 201 applies to all facilities operating stationary emission sources, regardless of their location. The proposed revisions will increase the clarity and efficiency of the rule, making compliance easier and more efficient for facility owners and operators.

Owners and operators of facilities subject to Part 201 may choose to hire a private consulting firm to assist them with meeting their obligations under Part 201. The decision to employ a consulting firm is voluntary, and any associated costs are incurred at the discretion of the affected facility.

3. COSTS

A detailed analysis of the costs for complying with the requirements of Part 201 can be found in the Regulatory Impact Statement for this rulemaking and is incorporated here. The annualized compliance costs and application preparation costs described in that analysis are expected to be comparable to those of affected facilities located in rural areas. The proposed revisions to Part 201 will increase the clarity and efficiency of the air permitting program, potentially leading to cost savings over the current regulation.

4. MINIMIZING ADVERSE IMPACT

The Department does not anticipate any adverse impacts to rural areas as a result of this proposal. Permitting sources of air pollution regardless of ownership or location is necessary to ensure that they are operated in a way that protects the public health and the environment. In addition, the proposed revisions to Part 201 will make it easier for facility owners and operators to understand and comply with its requirements.

The proposed revisions will add a new exempt activity for covered manure storage systems equipped with fumes. These systems are becoming increasingly prevalent at farms statewide as part of an effort to reduce methane emissions from their operations. As an exempt activity, such a system would not be required to obtain an air facility registration or air pollution control permit, making it easier for interested farms to purchase and install such a system. Additionally, this proposed exemption will eliminate any air pollution control permitting costs associated with a cover and fume system.

The proposed revisions will also add an alternative compliance option for facilities required to develop a Toxic Impact Assessment (TIA) pursuant to Paragraph 212-1.5(e)(2). This alternative compliance option would allow the facility owner or operator to demonstrate compliance with Part 212 by showing that the facility's emissions are below the applicable HTAC thresholds rather than by completing an air dispersion modeling analysis and TIA. As a result, the facility owner or operator would avoid the potentially high cost of performing the air dispersion modeling.

5. RURAL AREA PARTICIPATION

The Department conducted stakeholder outreach to all facilities potentially affected by this proposal, including those that are located in rural areas. Potentially affected entities, including those located in rural areas of the state, will have the opportunity to review and comment on the draft rulemaking in accordance with State rulemaking requirements, and all comments will be considered during the development of the proposed requirements.

Job Impact Statement

The New York State Department of Environmental Conservation (Department) is proposing several revisions to its Operating Permitting Program (OPP). The OPP sets forth the regulatory requirements and procedures to allow owners and operators of an air contamination source to apply for and obtain a permit or registration from the Department for the construction and operation of such sources. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by the Department through Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR)

Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this proposal will modify 6 NYCRR Section 212-2.2, Table 2 – High Toxicity Air Contaminant (HTAC) list, to make it consistent with Table 1 of Subpart 201-9. Finally, this proposal will also make several minor changes to 6 NYCRR Part 212 to improve the clarity of its requirements.

1. NATURE OF IMPACT

The proposed revisions to Part 201 are not expected to have any measurable impacts on jobs or employment opportunities in the state. Affected facilities are already required to comply with the OPP, and currently do so with existing staff or by contracting with outside consulting firms. The proposed revisions will make the terms and conditions of Part 201 easier to understand and implement, simplifying the compliance process and allowing existing resources at affected facilities to be used more efficiently.

2. CATEGORIES AND NUMBERS AFFECTED

Facility owners and operators affected by Part 201 may choose to hire professional engineering staff to assist with the completion of permit applications, and ensure their facility meets its obligations under their permit. Most facilities already employ the necessary staff to meet these needs. Professional engineering consultants may be retained where dedicated staff is unavailable, but that decision will be made by the facility owner or operator. In addition, the proposed changes will increase the clarity and efficiency of the air permitting process, allowing technical staff and consultants to complete the necessary work more quickly and efficiently.

3. REGIONS OF ADVERSE IMPACT

The proposed revisions to Part 201 are not anticipated to have any adverse impacts on jobs or employment opportunities in the state. Accordingly, there are no regions of disproportionate or adverse impacts.

4. MINIMIZING ADVERSE IMPACT

The proposed revisions to Part 201 are not anticipated to have any adverse impacts on jobs or employment opportunities in the state. Facilities are already required to comply with the current version of Part 201, and the scope of the regulation is not changing as a result of the proposed revisions. These proposed revisions are intended to simplify the permitting process by making it easier to understand and more efficient.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Emission Statements

I.D. No. ENV-17-20-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Subpart 202-2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: Emission Statements.

Purpose: The purpose of this rule making is to require electronic submittal of annual emission statements beginning in 2022.

Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/proproregulations.html>

#public): The purpose of 6 NYCRR Subpart 202-2 is to establish the requirements for annual emission statements filed by facilities subject to Title V permits. The New York State Department of Environmental Conservation (DEC) is proposing revisions to Subpart 202-2 to require electronic submittal of annual emission statements. This requirement will be phased in beginning with Title V permits issued in 2021. A summary of the revisions to Subpart 202-2 are presented in this document.

Proposed changes to Section 202-2.1, "Applicability:" A new subdivision 202-2.1(c) is proposed that mandates the electronic submittal of emission statements. The new requirement will be included as an enforceable condition in new or renewed Title V permits issued after January 1, 2021. Further, by reporting year 2025, all emission statements will be subject to the electronic submittal requirement.

Proposed changes to Section 202-2.3, "Required contents of an emission statement:" The first sentence of paragraph 202-2.3(a)(1) will be revised to read: "(A) responsible official must sign a form or other legal instrument provided by the department to certify the emission statement information" (proposed new text underlined). In addition, subparagraph 202-2.3(a)(3)(ix) will be modified to require that the sum of the percent operation by season reported in emission statements must equal 100. Further, subparagraph 202-2.3(a)(3)(xii) will be modified to state that report-

ing of emissions for processes with source classification codes beginning with a 1 or a 2 is optional. If the facilities don't report emissions for these processes, DEC will calculate process-level emissions based upon the process-level fuel use reported by a facility. Subdivision 202-2.3(d) will be edited to state that facilities with Title V operating permits will be provided emission statement survey forms provided by the Department. Finally, subdivision 202-2.3(e) will be revised to require that facilities report emissions of SO₂, primary PM_{2.5}, primary PM₁₀ for exempt sources during periodic inventory years in addition to the pollutants listed in the current version of the rule.

Proposed changes to Section 202-2.4, "Procedures:" Subdivision 202-2.4(a) will be repealed and replaced. New paragraph 202-2.4(a)(1) and 202-2.4(a)(2) will maintain the current April 15th deadline for submitting emissions statements until such time that a facility is subject to the electronic reporting requirement. New paragraph 202-2.4(a)(3) establishes the following deadlines for submitting emission statements under the new electronic submittal requirement:

- a) March 15th of each year for facilities with three (3) or fewer processes listed in their Title V permit;
- b) March 31st of each year for facilities with four (4) to six (6) processes listed in their Title V permit;
- c) April 15th of each year for facilities with seven (7) to twelve (12) processes listed in their Title V permit; or
- d) April 30th of each year for facilities with thirteen (13) or more processes listed in their Title V permit.

New paragraph 202-2.4(d) sets forth situations in which emission statements may be submitted via courier instead of electronic submittal:

- a) when data cannot be labeled as confidential business information using the Department's electronic interface in accordance with 6 NYCRR Part 616; or
- b) a facility receives permission from the Department after demonstrating a need to submit via courier due to a failure of the electronic reporting interface.

Subdivisions 202-2.4(b) and 202-2.4(c) were modified to account for the change in the due date for submitting emission statements from April 15th of each year to the dates provided in paragraph 202-2.4(a)(3).

Text of proposed rule and any required statements and analyses may be obtained from: Carlos Mancilla, P.E., Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: June 29, 2020.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form and a Coastal Assessment Form have been prepared and are on file.

Summary of Regulatory Impact Statement (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/prepublications.html#public>);

INTRODUCTION

The Department of Environmental Conservation (DEC) is proposing to revise Subpart 202-2 to require the electronic submission of annual Emission Statements beginning in 2022 (for calendar year 2021 emissions reporting) for facilities subject to Title V of the Clean Air Act (CAA). Electronic reporting has been available for Title V facilities since 2011 (for calendar year 2010 emissions reporting).

STATUTORY AUTHORITY

The statutory authority for the promulgation of 6 NYCRR Part 202-2 is found in the New York State Environmental Conservation Law (ECL), Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105.

LEGISLATIVE OBJECTIVES

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure protection of the public health and welfare, the natural resources of the state, and physical property by integrating industrial development with sound environmental practices. It is the policy of the state to require the use of all available, practical and reasonable methods to prevent and control air pollution in New York. To facilitate this objective, the Legislature granted specific powers and duties to the DEC, including the power to adopt and promulgate regulations to prevent, control and prohibit air pollution. The provisions cited above clearly provide the DEC with the requisite authority to create this regulation.

NEEDS AND BENEFITS

Background

Section 182(a)(3)(B) of the CAA required states to revise state implementation plans by November 15, 1990 to require owners or operators of stationary sources to submit emission statements on an annual basis beginning in 1993. The requirements for emission statements are set forth in EPA's Air Emissions Reporting Requirements rule (AERR, see 40 CFR

51). In order to implement the emissions statement requirements referenced above, the DEC adopted 6 NYCRR Subpart 202-2, "Emission Statements" on July 15, 1994. Subpart 202-2 was subsequently revised on April 29, 2005.

Pursuant to Section 202-2.4 of the current rule, emission statements must be submitted by April 15th of each year. Emission statements were submitted on paper only from 1993 through 2010. Since 2011 (for calendar year 2010 emissions reporting), facilities had the option of submitting emission statements via paper or electronically. In 2019 (for calendar year 2018 emissions reporting), 62 percent of facilities in New York subject to Title V of the CAA submitted their emission statement electronically.

The DEC's Division of Air Resources (DAR) must develop an estimate of the billable emissions from the prior year by June 1st of each year. For statements that have not been processed as of June 1st, emissions are estimated based on the emissions reported in the last emissions statement submitted or a facility's potential-to-emit if no prior statement has been submitted. This estimate is factored into the annual Operating Permit Program Fee Rule (6 NYCRR Subpart 482-2) which must be posted in the Environmental Notice Bulletin and filed with the DEC of State by July 1st of each year or 30 days after the state budget is passed, whichever is later.

DEC issues invoices for fee bills to facilities subject to Title V of the CAA on or about September 1st of each year. In order to meet that deadline, all emission statements must be processed by August 1st of each year to allow sufficient time to conduct quality assurance audits and prepare invoices.

This proposed rulemaking will affect how facilities submit emission statements to the DEC beginning in 2022 for the 2021 reporting period. DEC is proposing to require that emission statements be submitted electronically. The compliance schedule and exceptions to the electronic reporting requirement are outlined below.

Electronic Reporting Schedule

The new electronic reporting requirement will apply to facilities issued a new or renewed Title V permit on or after January 1, 2021. The first reporting year in which the electronic reporting requirement will apply is the year of permit issuance. For example, a facility issued a new or renewed Title V permit during calendar year 2023 must submit emission statements electronically beginning in 2024 (for calendar year 2023 emissions reporting). All emission statements submitted in 2026 (for calendar year 2025 emissions reporting) and thereafter must be submitted electronically except under certain situations (see below).

The due dates for submitting an annual emission statement will be based on the number of processes listed in a Title V permit as follows:

1. March 15th of each year for facilities with 3 or fewer processes listed in a Title V permit;
2. March 31st of each year for facilities with 4 to 6 processes listed in a Title V permit;
3. April 15th of each year for facilities with 7 to 12 processes listed in a Title V permit; or
4. April 30th of each year for facilities with 13 or more processes listed in a Title V permit.

This schedule was established based upon a review of the number of processes listed in Title V permits as of February 28, 2019. The data generated during that review was divided into quartiles. It was assumed that, in general, the level of effort required to prepare an emission statement is directly proportional to the number of processes for which emissions are reported.

Facilities subject to electronic reporting may submit an emission statement via courier (e.g., United States Postal Service) under the following situations:

1. a facility cannot designate data (e.g., process-throughputs) considered confidential business information using the electronic reporting interface; or
2. a facility receives permission from the DEC due to a failure of the electronic interface or other related problems.

In cases where one of the above exemptions apply, the emission statement due date will continue to be based upon the above-referenced schedule.

Benefits

It is anticipated that after the first electronic submittal the process for submitting emission statements should be simpler with a lower overall cost. The first electronic submittal may take more time to complete than a paper copy depending on the complexity of the processes at a facility (e.g., some industrial processes emit dozens of pollutants). DEC is looking into ways to minimize this initial burden (e.g., DEC could pre-populate pollutants at the process level).

From the second year on, the list of pollutants for each process will be saved in the electronic reporting system. As a result, facilities would need only to enter process throughput and emissions data along with any facility process changes that occurred during the reporting year. DEC anticipates this will reduce the level of effort required to prepare and submit subsequent emission statements.

The DEC issued a policy document (DAR-11) on August 19, 2009 that describes the three roles facility staff (or consultants) may have in preparing, reviewing and submitting emissions statements electronically (see: <http://www.dec.ny.gov/chemical/55796.html>). The three roles are:

1. **Responsible Official** – The term ‘responsible official’ is defined at 6 NYCRR 201-2(b)(28) as a company officer, elected official or other person who has the authority to legally bind an entity which operates a facility subject to Part 201. A Responsible Official may enter data on the website and may submit a report to the DEC.

2. **Report Editor** – may enter data on the website but may not submit a report to the DEC.

3. **Report Reviewer** – has read-only access to the electronic website. A Report Reviewer may review data entered on the website, but may not revise the data.

The proposed rule would be beneficial to the DEC for a number of reasons including the following. First, electronic submittal and uploads to DEC’s emissions database reduces the level of effort necessary to manually input data into the DEC’s emissions inventory database. Second, the level of accuracy of the data uploaded into the emissions database would be greater because the manual input of data will be minimized. Third, the annual fee bill estimate would be more accurate because a higher percentage of statements would be processed prior to June 1st. Fourth, all the statements could be processed by the August 1st deadline in order to initiate the process of preparing invoices for the Title V fee bills. Finally, electronic storage of emission statements will simplify file management.

COSTS

It is estimated that the average cost to prepare and submit emission statements on paper is \$900 per facility or six hours per facility. For the average facility, utilizing the current electronic reporting system for the first-time costs approximately \$1200 (eight hours per facility), but these costs are expected to decrease to \$450 (three hours per facility) for each time thereafter. It is expected that uploading data electronically will be much easier after the initial submission because subsequent emissions data can be uploaded via DEC-provided templates (Excel files). The simple payback period is estimated at 1.8 years.

The review and processing of paper emissions statements cost DEC approximately \$480 (approximately six hours) per facility. The review of a similar report, submitted electronically, costs approximately \$160 (approximately two hours per facility). Therefore, the annual savings for DEC are anticipated to be \$43,200 per year (\$320 times 135 facilities that currently submit paper copies of their emission statements).

LOCAL GOVERNMENT MANDATES

The rule in general, does not impose any program, service, duty, or responsibility on any county, city, town, village, school district, fire district or other special district. Some government entities operate Title V facilities and some of them already submit their emission statements electronically.

PAPERWORK

The rule revision changes the format in which emission statements are submitted from paper to electronic.

After the first emission statement is submitted electronically, the process of preparing an emission statement should be simpler than it was for paper submittals. The process of certifying an emission statement will be more complex because the responsible official for a facility must apply for and use an electronic signature.

DUPLICATION

The rule does not duplicate, overlap or conflict with any federal or state legal requirement.

ALTERNATIVES

1. **No Action:** The current process for submitting and processing emission statements would remain in place. DAR staff would try to encourage more facilities to submit electronically, but, without a regulatory requirement, it is not expected that the number of electronic files would increase significantly.

2. **Require Electronic Submittal of Emission Statements by April 15th beginning in 2022:** There are two concerns with this scenario. First, there are approximately 135 facilities that would need to be enrolled into the electronic reporting system which constitutes a significant workload for the DEC. As a result, the DEC proposes to spread this workload over five (5) years in order to allow for a smooth transition to electronic reporting of emission statements. Second, staggered reporting dates, as set forth in the proposed rule, will minimize traffic on the server at any given time. If there is a single compliance date, server overloading could occur which would become a burden to the regulated community and the DEC.

FEDERAL STANDARDS

The rule does not exceed any minimum standards of the federal government for the submission of annual emission reports.

COMPLIANCE SCHEDULE

Electronic submittal of emission statements will be included as an enforceable condition in new or renewed Title V permits issued after January

1, 2021. For each Title V facility, the first reporting year the electronic submittal mandate will apply will be the reporting year in which the permit was issued or renewed. All emission statements submitted in 2026 (for calendar year 2025 emissions reporting) and thereafter must be submitted electronically.

The annual due dates for submitting an annual emission statement will be based on the number of processes listed in a Title V permit as follows:

1. March 15th of each year for facilities with 3 or fewer processes listed in a Title V permit;

2. March 31st of each year for facilities with 4 to 6 processes listed in a Title V permit;

3. April 15th of each year for facilities with 7 to 12 processes listed in a Title V permit; or

4. April 30th of each year for facilities with 13 or more processes listed in a Title V permit.

¹ See Environmental Conservation Law Section 72-0303.

Regulatory Flexibility Analysis

The Department of Environmental Conservation (DEC) is proposing to revise Subpart 202-2 to require electronic submittal of annual Emission Statements beginning in 2022 (for calendar year 2021 emissions reporting) for facilities subject to Title V of the Clean Air Act (CAA). Emission statements were submitted on paper only from 1993 through 2010. Beginning in 2011 (for calendar year 2010 emissions reporting), facilities have an option of submitting emission statements via paper or electronically through the DEC’s Air Compliance and Emissions (ACE) Electronic Reporting Tool. It is expected that electronic reporting will be beneficial for Title V facilities in the long term as well as the DEC. These benefits include reduced costs, processing time, improved accuracy and file management.

EFFECT OF THE RULE

This rule will apply to facilities subject to Title V permitting requirements. There are local governments (cities, towns and counties) and small businesses that own and operate Title V facilities that will have to submit their emission statements electronically instead of on paper. Facilities operated by local governments include wastewater treatment plants, municipal waste combustors, landfills and waste-to-energy facilities. Facilities owned and operated by small businesses include printing operations, small power plants, compressor stations and small manufacturing facilities.

COMPLIANCE REQUIREMENTS

This proposed rulemaking will affect how facilities submit emission statements to the DEC beginning in 2022 for the 2021 reporting period. The new electronic reporting requirement will apply to facilities issued a new or renewed Title V permit on or after January 1, 2021. The first reporting year in which the electronic reporting requirement will apply is the year of permit issuance. For example, a facility issued a new or renewed Title V permit during calendar year 2023 must submit emission statements electronically beginning in 2024 (for calendar year 2023 emissions reporting). All emission statements submitted in 2026 (for calendar year 2025 emissions reporting) and thereafter must be submitted electronically except under certain situations (see below).

The due dates for submitting an annual emission statement will be based on the number of processes listed in a Title V permit as follows:

1. March 15th of each year for facilities with 3 or fewer processes listed in a Title V permit;

2. March 31st of each year for facilities with 4 to 6 processes listed in a Title V permit;

3. April 15th of each year for facilities with 7 to 12 processes listed in a Title V permit; or

4. April 30th of each year for facilities with 13 or more processes listed in a Title V permit.

Facilities subject to electronic reporting may submit an emission statement via courier (e.g., United States Postal Service) under the following situations:

1. a facility cannot designate data (e.g., process-throughputs) that are considered confidential business information using the electronic reporting interface; or

2. a facility receives permission from the DEC due to a failure of the electronic interface or other related problems.

In cases where one of the above exemptions apply, the emission statement due date will still be based upon the above-referenced schedule.

PROFESSIONAL SERVICES

Many facilities hire consultants to prepare emission statements. These consultants (some of which are small businesses) will need to learn how to use the electronic reporting system. No adverse impacts to consultants are anticipated if the proposed rule is adopted. Small businesses and local governments are not required to hire consultants to prepare electronic emission statements to comply with this rule. Most Title V facilities that

submit emission statements electronically prepare their statements with in-house staff.

COMPLIANCE COSTS

It is estimated that the average cost to prepare and submit emission statements on paper is \$900 per facility or six hours per facility.¹ For the average facility, utilizing the current electronic reporting system for the first-time costs approximately \$1200 (eight hours per facility), but these costs are expected decrease to \$450 (three hours per facility) for each time thereafter. It is expected that uploading data via the current electronic reporting system will be much easier after the initial submission because subsequent emissions data can be uploaded via templates (Excel files) provided by DEC. The simple payback period is estimated at 1.8 years.

The review and processing of paper emissions statements cost DEC approximately \$480 (approximately six hours) per facility.² The review of a similar report, submitted electronically, costs approximately \$160 (approximately two hours per facility). Therefore, the annual savings for DEC are anticipated to be \$43,200 per year (\$320 times 135 facilities that currently submit paper copies of their emission statements). In addition to these monetary savings for DEC and the regulated community, this proposal would eliminate the handling and storage of paper files.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The technical and economic feasibility of submitting emission statements electronically are demonstrated by the electronic submission progression (see Table 1). Each year more facilities submit their emissions statements electronically while very few revert back to submitting statements on paper after submitting a statement electronically. This is an indication that those facilities that have submitted emissions statements electronically prefer the electronic mode of reporting over submitting paper reports to the DEC.

Table 1: SUBMISSION THRU ACE PROGRESSION

Year	Number Facilities Submitting	Number Facilities Submitting Electronically	Percent Facilities Submitting Electronically
2010	435	79	18
2011	430	121	28
2012	414	165	40
2013	401	171	43
2014	402	180	45
2015	390	192	49
2016	386	213	55
2017	375	218	58
2018	360	224	62

MINIMIZING ADVERSE IMPACT

There are three components incorporated into the proposed rule designed to reduce adverse impacts to facilities subject to the rule. First, applicability to the rule is staggered over a multi-year period to allow an orderly process for registering new users to the current electronic reporting system. Second, the due dates for submitting annual emission statements are staggered over the period of March 15th through April 30th of each year to reduce congestion on the server. Finally, exceptions to the electronic reporting requirement are included in the proposed rule based on feedback from stakeholders.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

DEC held stakeholder meetings via webinars in May 2018 and August 2019. Representatives from Title V facilities and consultants, including any small business and local governments affected, that prepare emission statements were invited to participate on the webinars.

CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in the revisions to Part 202-2. This proposal will not result in immediate violations or impositions of penalties for existing facilities. While revisions to Part 202-2 will become effective immediately after promulgation, to help reduce impacts on affected sources, the compliance period is phased in between 2022 and 2026.

INITIAL REVIEW

The initial review of this rule shall occur within the third year after this rule is adopted.

¹ Assuming a labor cost of \$150 per hour. This is based on an informal survey of consultants that complete emission statements.

² Assumptions: Grade 24 pay rate of \$97,448 per year and an overhead rate of 62.48 percent. Per: <https://www.osc.state.ny.us/agencies/guide/MyWebHelp/#VII/9/9.htm>

Rural Area Flexibility Analysis

INTRODUCTION

The Department of Environmental Conservation (DEC) is proposing to revise Subpart 202-2 to require electronic submission of annual Emission Statements beginning in 2022 (for calendar year 2021 emissions reporting) for facilities subject to Title V of the Clean Air Act (CAA). Electronic reporting has been available for Title V facilities since 2011 (for calendar year 2010 emissions reporting). It is expected that electronic reporting will be beneficial for Title V facilities in the long term as well as the DEC. These benefits include reduced costs and processing time, and improved accuracy and file management.

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED

This rule will affect Title V facilities located in rural areas throughout New York State.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

Section 182(a)(3)(B) of the CAA required states to revise State Implementation Plans by November 15, 1990 to require the owners or operators of stationary sources to submit emission statements on an annual basis beginning in 1993. The requirements for emission statements are set forth in EPA's Air Emissions Reporting Requirements rule (AERR, see 40 CFR 51). In order to implement the emissions statement requirements referenced above, the DEC adopted 6 NYCRR Subpart 202-2, "Emission Statements" on July 15, 1994. Subpart 202-2 was subsequently revised on April 29, 2005.

Emission statements were submitted on paper only from 1993 through 2010. Since 2011 (for calendar year 2010 emissions reporting), facilities had an option of submitting emission statements via paper or electronically through the DEC's Air Compliance and Emissions (ACE) Electronic Reporting Tool.

This proposed rulemaking will affect how facilities submit emission statements to the DEC beginning in 2022 (for calendar year 2021 emissions reporting). The new electronic reporting requirement will apply to facilities issued a new or renewed Title V permit after January 1, 2021. The first reporting year in which the electronic reporting requirement will apply is the year of permit issuance. For example, a facility issued a new or renewed Title V permit during calendar year 2023 must submit emission statements electronically beginning in 2024 (for calendar year 2023 emissions reporting). All emission statements submitted in 2026 (for calendar year 2025 emissions reporting) and thereafter must be submitted electronically except under certain situations (see below).

The due dates for submitting an annual emission statement will be based on the number of processes listed in a Title V permit as follows:

1. March 15th of each year for facilities with 3 or fewer processes listed in a Title V permit;
2. March 31st of each year for facilities with 4 to 6 processes listed in a Title V permit;
3. April 15th of each year for facilities with 7 to 12 processes listed in a Title V permit; or
4. April 30th of each year for facilities with 13 or more processes listed in a Title V permit.

Facilities subject to electronic reporting may submit an emission statement via courier (e.g., United States Postal Service) under the following situations:

1. a facility cannot designate data (e.g., process-throughputs) that are considered confidential business information using the electronic reporting interface; or
2. a facility receives permission from the DEC due to a failure of the electronic interface or other related problems.

In cases where one of the above exemptions apply, the emission statement due date will still be based upon the above-referenced schedule.

COSTS

It is estimated that the average cost to prepare and submit emission statements on paper is \$900 per facility or six hours per facility.¹ For the average facility, utilizing the current electronic reporting system for the first-time costs approximately \$1200 (eight hours per facility), but these costs are expected decrease to \$450 (three hours per facility) for each time thereafter. It is expected that uploading data via current electronic reporting system will be much easier after the initial submission because subsequent emissions data can be uploaded via DEC-provided templates (Excel files). The simple payback period is estimated at 1.8 years.

The review and processing of paper emissions statements cost DEC approximately \$480 (approximately six hours) per facility.² The review of a similar report, submitted electronically, costs approximately \$160 (approximately two hours per facility). Therefore, the annual savings for DEC are anticipated to be \$43,200 per year (\$320 times 135 facilities that currently submit paper copies of their emission statements). In addition to these monetary savings for DEC and the regulated community, this proposal would eliminate the handling and storage of paper files in this context.

MINIMIZING ADVERSE IMPACT

There are three components incorporated into the proposed rule designed to reduce adverse impacts to facilities subject to the rule. First, applicability to the rule is staggered over a multi-year period to allow an orderly process for registering new users to the current electronic reporting system. Second, the due dates for submitting annual emission statements are staggered over the period of March 15th through April 30th of each year to reduce congestion on the server. Finally, exceptions to the electronic reporting requirement are included in the proposed rule based on feedback from stakeholders.

RURAL AREA PARTICIPATION

All Title V facilities, including those located in rural areas, had the opportunity to participate in the rule making process by participating in stakeholder webinars held in May 2018 and August 2019 and providing feedback to the DEC.

INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

¹ Assuming a labor cost of \$150 per hour. This is based on an informal survey of consultants that complete emission statements.

² Assumptions: Grade 24 pay rate of \$97,448 per year and an overhead rate of 62.48 percent. Per: <https://www.osc.state.ny.us/agencies/guide/MyWebHelp/#VII/9/9.htm>

Job Impact Statement**INTRODUCTION**

The Department of Environmental Conservation (DEC) is proposing to revise Subpart 202-2 to require electronic submissions of annual Emission Statements beginning in 2022 (for calendar year 2021 emissions reporting) for facilities subject to Title V of the Clean Air Act (CAA). Electronic reporting has been available for Title V facilities since 2010. It is expected that electronic reporting will be beneficial for Title V facilities in the long term and for the DEC as well.

NATURE OF IMPACT

There are no expected negative impacts on jobs or employment opportunities from these new revisions. The same staff that prepare paper copies of emission statements can prepare electronic reports.

CATEGORIES AND NUMBER OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED

There are several categories of employment opportunities affected, however no adverse impacts to those opportunities are anticipated. Among the categories affected are:

1. Consultants

Several facilities contract out emission statement development to consulting firms. These firms will still be able to create emissions statements in formats appropriate to submit through the DEC's electronic reporting system. There are some changes in format, but this is not expected to impact employment opportunities at consulting firms.

2. Facility Engineers, Environmental and Health Professionals

In most cases facility personnel create annual emission statements. This rule will change the way facilities report their emissions, but no changes in employment opportunities are anticipated.

3. DEC staff

The level of effort required to process emission statements will be reduced as a result of this rule. This will allow staff to address other DEC priorities. No impacts on employment opportunities at DEC are anticipated.

REGIONS OF ADVERSE IMPACT

The proposed rule revision will apply statewide. No adverse impacts to employment opportunities are anticipated in any region of the state.

MINIMIZING ADVERSE IMPACT

No measures have been taken to minimize any unnecessary adverse impact on existing jobs since no impacts are expected to occur from this rule revision.

SELF-EMPLOYMENT OPPORTUNITIES

No adverse impacts to self-employment opportunities are anticipated if the proposed rule revision is adopted.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

CO₂ Budget Trading Program

I.D. No. ENV-17-20-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Parts 200 and 242 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: CO₂ Budget trading program.

Purpose: To lower the emissions cap established under Part 242.

Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/proproregulations.html>

#public): The New York State CO₂ Budget Trading Program, 6 NYCRR Part 242 (CO₂ Budget Trading Program or Part 242) is designed to reduce anthropogenic emissions of carbon dioxide (CO₂), a greenhouse gas (GHG), from CO₂ budget sources in an economically efficient manner. The proposed revisions to Part 242 include a proposed reduction in the annual CO₂ emission budgets, the creation of an Emissions Containment Reserve (ECR), the elimination of two offset categories, and an expansion of applicability to certain units that serve an electricity generator with a nameplate capacity equal to or greater than 15 MW.

The proposed revisions to Part 242 will reduce the annual base budgets by nearly 30 percent for the period 2020-2030. In particular, the proposed revisions to Section 242-5.1 establish that, for allocation year 2021, the Statewide CO₂ Budget Trading Program base budget will be 29,056,270 tons, decreasing thereafter as follows: to 28,175,777 tons in 2022, to 27,295,284 tons in 2023, to 26,414,791 tons in 2024, to 25,534,298 tons in 2025, to 24,653,805 tons in 2026, to 23,773,312 tons in 2027.

In addition to the proposed reduction in annual CO₂ Budget Trading Program base budgets, the proposed revisions to Part 242 also include a third adjustment for banked allowances. The Third Adjustment for Banked Allowances will adjust the budget for 100 percent of the pre-2021 vintage allowances held by market participants as of the end of 2020, that are in excess of the total quantity of 2018, 2019, and 2020 emissions. The third adjustment would be implemented over the five-year period of 2021-2025, after the size of the 2020 vintage private bank is determined.

The proposed Program revisions retain the Cost Containment Reserve (CCR), which helps provide additional flexibility and cost containment for the Program. While the proposed revisions to the Program retain the CCR, the revisions would modify the CCR trigger price and the maximum amount of CCR allowances available at auction each year. In particular, the CCR allowances will be triggered and released at auctions at \$10.77 in 2020 and will increase to \$13.00 starting in 2021. Each year after 2021, the CCR trigger price will increase by seven percent. If the trigger price is reached, up to 10 million additional CCR allowances will be available regionally for purchase at auction in 2020. Beginning in 2021, up to 10 percent of the regional cap of additional CCR allowances will be available for purchase at auction if the CCR trigger price is reached.

The proposed revisions to Part 242 also include the creation of the Emissions Containment Reserve (ECR), which will also help secure additional emissions reductions if prices fall below established ECR trigger prices. The ECR will only be triggered, and allowances withheld from auctions, if CO₂ emission reduction costs are lower than projected. The states implementing the ECR will withhold up to 10 percent of their respective annual base budgets per year. The ECR trigger price will start at \$6.00 in 2021 and will increase by seven percent each year thereafter.

The proposed revisions to Part 242 will retain only the offset provisions for avoided methane emissions from agricultural manure management operations. While an individual state may choose to retain no, some, or all three eligible offset project categories, any offset allowances awarded by an individual state would remain fully fungible across all the participating states for compliance purposes.

The Department proposes to create the 2019 and 2020 program review allowance retirement set-aside account. The Department proposes to transfer 184,237 allowances from the 2020 annual adjusted budget allocated to the Energy Efficiency and Clean Energy Technology (EE&CET) Account into the 2019 and 2020 program review allowance retirement set-aside account to account for the 184,237 allowance increase to the 2019 base budget in Rhode Island's recently adopted regulation. The Department proposes to retire these allowances to keep the regional cap whole for the 2019 allocation year. The Department is proposing to take the 184,237 allowances from allocation year 2020. Similarly, the Department proposes to transfer 179,632 allowances from the 2020 annual adjusted budget allocated to the EE&CET Account into the 2019 and 2020 program review allowance retirement set-aside account to account for the 179,632 allowance increase to the 2020 base budget in Rhode Island's recently adopted regulation. The Department proposes to retire these allowances to keep the regional cap whole for the 2020 allocation year.

New York stakeholders raised concerns during the extensive outreach efforts that the cost of complying with RGGI might result in increased operation at units not subject to the regulatory provisions of Part 242, particularly at smaller units below the existing 25 megawatt (MW) applicability threshold. To address this concern, New York is also proposing to expand applicability under Part 242 to capture certain units that serve

an electricity generator with a nameplate capacity equal to or greater than 15 MW. This applicability expansion will apply to any unit 15 MW or greater that resides at an existing CO₂ budget source, and to any 15 MW unit that resides at a facility where there are two or more units with a nameplate capacity of 15 MW or larger.

Under the proposed revisions, the control periods will remain unchanged with a CO₂ allowance transfer deadline of March 1st of each year for interim compliance and every third year for control period compliance. The revised Program will require affected sources already subject to the Program to continue to comply.

The proposed Program revisions will retain the interim compliance obligation. In addition to demonstrating full compliance at the end of each three-year compliance period, regulated entities will continue to have to demonstrate that they are holding allowances equal to at least 50 percent of their emissions at the end of each of the first two years in each three-year compliance period. Units 15 MW and larger will be subject to both the interim control period and control period requirements on the later of January 1, 2021 or the date the unit commences operation.

The majority of the proceeds from the sale of New York's allowances will continue to be dedicated to strategic energy or consumer benefits, such as energy efficiency and clean energy technologies. The New York State Energy Research and Development Authority (NYSERDA) will continue to administer the energy efficiency and clean technology account pursuant to 21 NYCRR Part 507 (CO₂ Allowance Auction Program).

The Reserve Price is the minimum acceptable price for each CO₂ allowance in a specific auction. The reserve price is either the Minimum Reserve Price (MRP) or the CCR trigger price, depending on the level of demand for allowances at the auction. The proposed revisions to Part 242, would retain the existing CCR trigger price for 2020 and will set the new CCR trigger price at \$13.00 starting in 2021. After 2021 the CCR trigger price will increase by seven percent each year thereafter.

The proposed revisions to Part 242 would maintain the amount of CO₂ allowances allocated to the long-term contract set-aside accounts under the Program, while proposing to increase the size of the voluntary renewable energy market and eligible biomass set-aside by 200,000 allowances beginning in 2021. Accordingly, the Department will allocate 700,000 and 1,500,000 tons to the voluntary renewable energy market and eligible biomass set-aside and long-term contract set-aside accounts, respectively, from the CO₂ Budget Trading Program annual adjusted budget in 2020. Starting in 2021, the Department will allocate 900,000 and 1,500,000 tons to the voluntary renewable energy market and eligible biomass set-aside and long-term contract set-aside accounts, respectively, from the CO₂ Budget Trading Program annual adjusted budget. The 700,000 ton voluntary renewable energy market set-aside was calculated using information from the renewable energy market as it relates to the RPS with allowance for some market growth. The Department proposes to increase the size of the existing "voluntary renewable energy market set-aside" in subdivision 242-5.3(c) to account for anticipated increases in the voluntary renewable energy market in the next couple of years. This revision in conjunction with the revision from the previous rulemaking for Part 242 expands eligibility for retiring CO₂ allowances from the set-aside to include CO₂ budget sources that co-fire eligible biomass as a compliance mechanism should address concerns raised by voluntary market participants in the near term. The Department plans to evaluate the emission factor used in determining the number of allowances to retire on behalf of each voluntary renewable energy purchase applicant and the size of the newly expanded set-aside again in the next regional program review. The proposed expansion in the size of the set-aside in subdivision 242-5.3(c) addresses the likelihood that the set-aside will continue to be over-subscribed in the future. However, should the set-aside of 900,000 be over-subscribed, the Department maintains the proportional retirement provision in the set-aside, and any undistributed allowances from the set-aside may remain in the set-aside account for future retirement.

The proposed revisions to the Program maintain the existing provisions for voluntary renewable energy purchases. A voluntary renewable energy purchase is a purchase of electricity from renewable energy generation or from renewable energy attribute credits by a retail electricity customer on a voluntary basis. Renewable energy includes electricity generated from biomass, wind, solar thermal, photovoltaic, geothermal, hydroelectric facilities certified by the Low Impact Hydropower Institute, wave and tidal action, and fuel cells powered by renewable fuels. The renewable energy generation or renewable energy attribute credits related to such purchases may not be used by the generator or purchaser to meet any regulatory mandate, such as an RPS. The Department will continue to retire allowances under the voluntary renewable energy market and eligible biomass set-aside for voluntary renewable energy purchases.

Finally, the proposed revisions to Part 200 include updated references that are incorporated by reference into the proposed revisions to Part 242.

Text of proposed rule and any required statements and analyses may be obtained from: Laura Stevens, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: June 29, 2020.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, and a Coastal Assessment Form have been prepared and are on file.

Summary of Regulatory Impact Statement (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/propregulations.html#public>):

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative, historic effort among New York and nine Participating States¹ and is the first mandatory, market-based carbon dioxide (CO₂) emissions reduction program in the United States. Recently, New York along with the Participating States, completed a comprehensive program review and announced a proposal to lower the regional emissions cap established under RGGI to approximately 75 million tons in 2021, declining 3.0 percent a year through 2030². To implement the updated RGGI program in New York State, the Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Part 242, CO₂ Budget Trading Program (the Program) and 6 NYCRR Part 200, General Provisions.

The statutory authority to revise the Program to reduce the CO₂ emissions cap, provide for the budget adjustments, and add an emissions containment reserve derives primarily from the Department's authority to use all available practical and reasonable methods to prevent and control air pollution, as set out in the Environmental Conservation Law (ECL) at Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, 71-2105. The Allowance Auction Program (21 NYCRR Part 507) will also be revised by the New York State Energy Research and Development Authority (NYSERDA) as part of this rulemaking. The statutory sections that grant NYSERDA authority to implement the Allowance Auction Program, which were outlined in the Regulatory Impact Statement accompanying such rulemaking, are briefly outlined in the full Regulatory Impact Statement as background and context for the proposed Program revisions.

The warming climate represents an enormous environmental challenge for the State, because unabated, climate change will continue to have serious adverse impacts on the State's natural resources, public health and infrastructure. New York power plants represent approximately 13 percent of all GHG emissions in the State³. In 2018, New York power plants in the State subject to the Program burned fossil fuels to produce approximately 27.3 million tons of CO₂ into the atmosphere⁴.

The Department complied with Sections 202-a, 202-b and 202-bb of the State Administrative Procedures Act through an extensive Regional program review process that included public participation by all Participating States. New York coordinated an additional stakeholder process to gather input from the public within its borders. New York and the Participating States had committed to a comprehensive program review during the initial development of RGGI and agreed to evaluate: program success; program impacts; additional emissions reductions; imports and emissions leakage; and offsets. On November 2012, after completion of the first extensive and comprehensive RGGI Program Review, the RGGI Participating States proposed program revisions to reduce the regional emissions cap to 91 million tons in 2014 and committed to reduce that level by 2.5 percent each year through 2020. Further, to account for the full bank of excess allowances at the end of 2014, additional cap adjustments were made over the course of the program from 2014 to 2018, and additional adjustments will be made over the 2019 to 2020 time period. The Participating States initiated program review in the fall of 2015 with the announcement of the first stakeholder meeting, and concluded the process in August 2017. New York conducted an in-state separate stakeholder process designed to provide updates on the status of the regional process and to afford additional opportunity for New York's stakeholders to provide comment.

Mitigating the impacts of a changing climate represents one of the most pressing environmental challenges for the State, the nation and the world. Extensive scientific data demonstrates the need for immediate worldwide action to reduce emissions from burning fossil fuels and supports the conclusion that great benefits will accrue if fossil fuel-fired emissions are reduced through programs like RGGI.

A naturally occurring greenhouse effect has regulated the earth's climate system for millions of years. CO₂ and other naturally occurring GHGs trap heat in our atmosphere, maintaining the average temperature of the planet approximately 60°F above what it would be otherwise. An enhanced greenhouse effect and associated climate change results as large quantities of anthropogenic GHGs, especially CO₂ from the burning of fossil fuels, are added to the atmosphere. Since the mid-1700's, atmospheric concentrations of GHGs have increased substantially due to human activities such as fossil fuel use and land-use change. Average atmospheric CO₂ concentrations exceeded 407 parts per million in 2018, which according to ice core data is higher than at any point in the past 800,000 years and the rate

of increase is 100 times faster than previous natural increases at the end of the last ice age⁵.

The need for the reduction of CO₂ emissions through the proposed revisions to the Program is clearly supported by numerous direct impacts that have been observed in New York State and presented in the 2011 New York State ClimAID⁶ assessment and the 2014 update to ClimAID⁷. Temperatures in New York State have risen during the twentieth century, with the greatest warming coming in recent decades - temperatures have risen on average 0.25°F per decade over the past century. This warming includes an increase in the number of extreme hot days (days at or above 90°F) and a decrease in the number of cold days (days at or below 32°F). Sea levels in the coastal waters of New York have been steadily rising over the twentieth century, chiefly as a result of thermal expansion of ocean waters, melting land ice and local changes in the height of land relative to the height of the continental land mass. Tide-gauge observations in New York indicate that rates of relative sea level rise were significantly greater than the global mean, ranging from 0.9 to 1.5 inches per decade.

Predictions of future impacts associated with emissions in New York further support the need for a substantial reduction in the CO₂ emissions cap. The 2011 New York State ClimAID assessment and 2014 update also examined how sea level rise, changes in precipitation patterns, and more frequent severe weather conditions will affect New York's economy, environment, community life and human health. ClimAID used regionalized climate projections to develop adaptation recommendations and is a climate change preparedness resource for planners, policymakers, and the public⁸. The ClimAID assessment and update predicted the following: Air temperatures are expected to rise across New York, by 2.0°F to 3.4°F by the 2020s, 4.1°F to 6.8°F by the 2050s, and 5.3°F to 10.1°F by the 2080s. Annual average precipitation in New York is projected to increase by up to five percent by the 2020s, up to 12 percent by the 2050s and up to 15 percent by the 2080s, with the greatest increases in the northern part of the State. The Department promulgated science-based projections of sea level rise based on the multiple scenarios identified in the 2014 ClimAID assessment and update. These projections identify the potential rise in sea level through 2100 in three coastal regions of the state⁹.

Extreme climate events, such as heat waves and heavy rainstorms, significantly impact New York's communities and natural resources. Heat waves are expected to become more frequent, and storm-related coastal flooding is expected to increase with rising sea levels.

The need for the significantly reduced CO₂ emissions cap and budget adjustments are further supported by the ClimAID assessment¹⁰ which provides predictions regarding the effects climate change will have on specific resources and communities in New York State. Rising air temperatures intensify the water cycle by driving increased evaporation and precipitation, resulting in altered patterns of precipitation including more rain falling in heavy events, often with longer dry periods in between. High water levels, strong winds, and heavy precipitation resulting from strong coastal storms already cause billions of dollars in damage and disrupt transportation and power distribution systems. Barrier islands are being dramatically altered by strong coastal storms, such as Hurricane Sandy, as ocean waters over wash dunes, create new inlets, and erode beaches. Sea level rise will lead to more frequent and extensive coastal flooding, more frequent flooding, permanent inundation of low-lying areas, encroachment of saltwater into freshwater areas, and increased beach erosion. Loss of coastal wetlands reduces species diversity. Within the next several decades, New York State is likely to see widespread shifts in species composition in the State's forests and other natural landscapes. Lakes, streams, inland wetlands and associated aquatic species will be highly vulnerable to changes in the timing, supply, and intensity of rainfall and snowmelt, groundwater recharge and duration of ice cover. Increased summer heat stress will negatively affect cool-season crops and livestock unless farmers take adaptive measures such as shifting to more heat-tolerant crop varieties and improving cooling capacity of livestock facilities. A warmer climate would result in a different crop mix and decreased milk production¹¹ for New York's farmers. Demand for health services and the need for public health surveillance and monitoring will increase due to increasing rates of heat related illness and death, respiratory diseases, vector-borne diseases, and water- and food-borne illnesses. Over the next few decades, heat waves and heavy precipitation events are likely to increase transportation problems such as flooded streets and delays in mass transit. Communication service delivery is vulnerable to hurricanes, lightning, ice, snow, wind storms, and other extreme weather events, some of which are projected to change in frequency and/or intensity. Impacts of climate change on energy demand are likely to be more significant than impacts on supply. Climate change will adversely affect system operations, increase the difficulty of ensuring adequate supply during peak demand periods, and exacerbate problematic conditions, such as the urban heat island effect.

The proposed Program revisions will cap regional emissions at approximately 75 million tons annually beginning in 2021 and will reduce

that level by 3.0 percent each year through 2030. Further, to account for the existing private bank of CO₂ emissions allowances already acquired at auction, and to help create a binding cap, the proposed Program revisions provide for a third budget (cap) adjustment. To provide flexibility and cost containment the proposed Program revisions retain the Cost Containment Reserve (CCR), and create an Emissions Containment Reserve (ECR). The proposed Program revisions retain the interim compliance obligation. The RGGI Model Rule revisions eliminated two offset categories, the "SF6 Offset Category" and the "End-Use Energy Efficiency Offsets Category" and updated and retained three offset categories. New York is proposing to only retain the offset provision for avoided methane emissions from agricultural management operations. Finally, to address stakeholder concerns, New York is proposing to expand applicability under Part 242 to capture certain units that serve an electricity generator with a nameplate capacity equal to or greater than 15 MW. This applicability expansion will apply to any unit 15 MW or greater that resides at an existing CO₂ budget source and to any 15 MW unit that resides at a facility where there are two or more units with a nameplate capacity of 15 MW or larger.

The Department, NYSEERDA and the New York State Department of Public Service (DPS) analyzed costs and impacts associated with compliance with the proposed revisions to the Program. Under the Reference Case, without the revisions to the program, CO₂ allowance prices (the cost of complying with RGGI) are projected to increase through 2023 to \$2.60/ton (2015 dollars) and then decline to the auction reserve price by 2026, as a result of added renewable generation, where they will remain through 2031. Under the Model Rule Policy Case, New York's wholesale electricity prices (including both energy and capacity costs) are projected to be \$1.29/MWh (2015 dollars) higher in 2031 than the Reference Case, a three percent increase. A macro-economic impact study of the Program was also conducted. The study concluded that the economic impacts of RGGI on the economies of the participating states, including New York, were generally positive, albeit relatively small.

There will be costs associated with the administration of the Program. The Department will continue to incur staff costs associated with the implementation of the revised Program. NYSEERDA will also continue to incur costs to administer and evaluate the use of auction proceeds from the Program. It should be noted, that the Department's costs and NYSEERDA's administrative and evaluation rates are expected to remain unchanged as a result of the Program revisions. A significant portion of Program costs are allocated to the operation and administration of the CO₂ Allowance Tracking System (COATS) and conducting allowance auctions. It is anticipated that these costs will not change in the future.

Under the existing Program and the proposed revisions to the Program, the owners and operators of each source and each unit at the source shall retain the following documents for a period of ten years from the date the document is created: account certificate of representation form; emissions monitoring information; copies of all reports and compliance certifications; copies of all documents used to complete a permit application; copies of all documents used to complete a consistency application; and copies of all documents required as part of an auction application.

For each control period in which one or more units at a source are subject to the CO₂ budget emission limitation, the CO₂ authorized account representative of the source shall submit to the Department, a compliance certification report for each source covering all such units. This must be submitted by the March 1st following the relevant control period for all units subject to the Program.

The Department examined the "No Action" alternative which would leave the current Program in place and the Program cap and flexibility provisions within it would remain unchanged. Since the "No Action" alternative would leave the Program unchanged and would not address the results of the regional Program Review at the end of 2017 it was not selected. The Department also considered different regional emissions cap levels as additional alternatives, rather than the approximately 75 million ton regional emission cap that is proposed to be implemented under the revised Program. Lastly, flexibility provided for under the Program provided through the revision to the CCR and offset provisions, and the inclusion of the ECR were evaluated.

The proposed revisions to the Program are protective of public health and the environment in the absence of similar federal emission standards. The potential adverse impact to global air quality and New York State's environment from CO₂ emissions necessitates that New York State take action now to minimize CO₂ emissions that contribute to climate change. Due in part to the lack of a federal program, the Department has determined that fossil fuel-fired electricity generators must continue to reduce emissions of CO₂ now.

The proposed revisions to the Program include an expansion of the applicability provisions of the current Program. The revised Program will require affected sources already subject to the Program to continue to comply. Units newly subject to the Program under the expansion to certain

units 15 MW and larger will be subject to the Program for compliance purposes beginning in 2021. The Program revisions retain the interim compliance obligation. Units 15 MW and larger that are subject to the Program will be subject to both the interim control period and control period requirements on the later of January 1, 2021 or the date the unit commences operation.

The proposed Program revisions also include minor revisions and updates to all references. Finally, The majority of the proceeds from the sale of New York's allowances will continue to be dedicated to strategic energy or consumer benefits, such as energy efficiency and clean energy technologies.

¹ In addition to New York, the RGGI Participating States include: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont. Additional states, including Pennsylvania and Virginia, have expressed interest in potentially becoming RGGI Participating States.

² The Participating States released the Updated Model Rule on August 23, 2017.

³ NYSDA 2019. New York State Greenhouse Gas Inventory 1990-2016. Available at: <https://www.nysda.ny.gov/About/Publications/EA-Reports-and-Studies/Energy-Statistics>

⁴ <https://rggi-coats.org/eats/rggi>

⁵ World Meteorological Organization. Greenhouse Gas Bulletin. 2017. Report Number 13. Available at <http://public.wmo.int/en/programmes/global-atmosphere-watch-programme>

⁶ Rosenzweig, C., W. Solecki, A. DeGaetano, M. O'Grady, S. Hassol, P. Grabhorn (Eds.). 'Responding to Climate Change in New York State: The ClimAID Integrated Assessment for Effective Climate Change Adaptation'. New York State Energy Research and Development Authority (NYSDA). <http://www.nysda.ny.gov/climaid>

⁷ Horton, R., D. Bader, C. Rosenzweig, A. DeGaetano, and W. Solecki. 2014. Climate Change in New York State; Updating the 2011 ClimAID Climate Risk Information, New York State Energy Research and Development Authority (NYSDA), Albany, New York.

⁸ Rosenzweig, 'op.cit.' 6 NYCRR Part 490, Projected Sea-level Rise.

⁹ 6 NYCRR Part 490, Projected Sea-level Rise.

¹⁰ Rosenzweig, 'op.cit.'

¹¹ Garcia, Alvaro. Dealing with Heat Stress in Dairy Cows. South Dakota Cooperative Extension Service. September 2002. Page 1.

Summary of Regulatory Flexibility Analysis (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/proregulations.html#public>):

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative, historic effort among New York and nine Participating States¹ and is the first mandatory, market-based carbon dioxide (CO₂) emissions reduction program in the United States. Since its inception in 2008, RGGI has utilized a market-based mechanism to cap and cost-effectively reduce emissions that cause climate change. Recently, New York along with the Participating States, completed a comprehensive program review and announced a proposal to lower the regional emissions cap established under RGGI to approximately 75 million tons in 2021, declining 3.0 percent a year through 2030². Accordingly, New York and the Participating States committed to propose revisions, pursuant to state-specific regulatory processes, to their respective CO₂ Budget Trading Programs to further reduce CO₂ emissions from power plants in the region. To implement the updated RGGI program in New York State, the Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Part 242, CO₂ Budget Trading Program (the Program) and 6 NYCRR Part 200, General Provisions.

The only local governments affected by the proposed Program revisions are the Jamestown Board of Public Utilities (JBPU), which owns and operates the S. A. Carlson Generating Station (SACGS), and the Village of Freeport, which owns and operates the Freeport Power Plant No. 2. The emissions monitoring at both facilities currently meet the monitoring provisions of the proposed revisions. No additional monitoring costs will be incurred. The costs associated with their compliance with the proposed revisions will be similar to those incurred by other privately held sources. Their compliance costs in addition to those already incurred for compliance with the Program will depend upon their need to solicit professional services for compliance. No small businesses will be directly affected by the adoption of the proposed revisions.

The proposed Program revisions, capping regional CO₂ emissions at approximately 75 million tons annually beginning in 2021, represent a nearly 30 percent reduction in the regional cap for the period 2020-2030. After 2021, the cap will decline by 2.275 million tons annually. The proposed revisions provide a Third Adjustment for Banked Allowances

which will adjust the budget for 100 percent of the pre-2021 vintage allowances held by market participants as of the end of 2020, that are in excess of the total quantity of 2018, 2019 and 2020 emissions. This adjustment will be implemented over the period 2021-2025, after the actual size of the 2020 vintage private bank is determined.

The proposed Program revisions retain the Cost Containment Reserve (CCR) and modifies the CCR trigger price and the maximum amount of CCR allowances available at auction each year. CCR allowances will be triggered and released at auctions at \$10.77 in 2020, at \$13.00 in 2021 and will increase by seven percent each year thereafter. If the trigger price is reached, up to 10 million additional CCR allowances will be available for purchase at auction in 2020, increasing to up to 10 percent of the regional cap of additional CCR allowances beginning in 2021.

The proposed program revisions create an Emissions Containment Reserve (ECR), which will help secure additional emissions reductions by withholding allowances from auction if prices fall below established trigger prices. The states implementing the ECR will withhold up to 10 percent of their annual base budgets per year. The ECR trigger price will start at \$6.00 in 2021 and will increase by seven percent each year thereafter.

The proposed Program revisions retain the interim compliance obligation.

EFFECT ON SMALL BUSINESSES AND LOCAL GOVERNMENTS
No small businesses will be directly affected by the adoption of the proposed Program revisions.

COMPLIANCE REQUIREMENTS

As noted above, the JBPU and the Village of Freeport will need to comply with the proposed revisions to the Program, as described more fully in the Regulatory Impact Statement.

New York stakeholders raised concerns during our extensive outreach effort, that the cost of RGGI might result in increased operation at units not subject to the regulatory provisions of Part 242. To address this concern, New York is proposing to expand applicability under Part 242 to capture units that serve an electricity generator with a nameplate capacity equal to or greater than 15 megawatts (MW), that reside at an existing CO₂ budget source, and to 15 MW units that reside at a facility where there are two or more units with a nameplate capacity of 15 MW or larger.

The proposed Program revisions retain the interim compliance obligation. In addition to demonstrating full compliance at the end of each three-year compliance period, regulated entities will continue to have to demonstrate that they are holding allowances equal to at least 50 percent of their emissions at the end of each of the first two years in each three-year compliance period. The proposed Program revisions also include minor revisions and updates to all references. The majority of the proceeds from the sale of New York's allowances will continue to be dedicated to strategic energy or consumer benefits, such as energy efficiency and clean energy technologies.

PROFESSIONAL SERVICES

There are two local governments affected by the proposed revisions to the Program, the Jamestown Board of Public Utilities (JBPU) and the Village of Freeport, and like other privately held sources, they may need to solicit professional consultants and contractors for its compliance with the proposed revisions to the Program. The Department also confirmed that no capital improvements to plant operations will be needed for JBPU's or the Village of Freeport's compliance with the proposed Program revisions.

COSTS

In addition to the costs identified for regulated parties and the public, State and local governments will incur costs. The Jamestown Board of Public Utilities (JBPU) and the Village of Freeport own and operate affected facilities. Emissions monitoring at both facilities currently meets the monitoring provisions of the Program, and no additional monitoring costs will be incurred under the proposed revisions. Just like any other owner or operator of any source subject to the Program, the JBPU and the Village of Freeport will need to purchase CO₂ allowances equal to the number of tons of CO₂ emitted. The Department limited the analysis of control costs to the purchase of allowances to comply with the Program and assumed that the costs of allowances will be between \$5.96 in 2020 and \$9.77 in 2031 (in 2015 \$) per ton for CO₂ under the Program Case. To estimate total costs for SACGS under the Program, the Department reviewed 2013 through 2018 emissions from Jamestown's affected unit. During that time period, Jamestown's emissions ranged from a low of 71,255 tons to a high of 135,579 tons. An estimate of compliance costs, based on these emissions values, indicates that purchasing allowances to cover emissions will result in estimated costs between a low of \$425,000 and a potential high of \$1.3 million annually. To estimate total costs for Freeport Power Plant No. 2 under the Program, the Department reviewed 2013 through 2018 emissions from Freeport's affected unit. During that time period, Freeport's emissions ranged from a low of 23,662 tons to a high of 37,850 tons. An estimate of compliance costs, based on these emissions values, indicates that purchasing allowances to cover emissions will result in estimated costs between a low of \$141,000 and a potential high of

\$369,795 annually. These costs will eventually be passed on to the consumers of electricity from the JBPU and the Village of Freeport. These estimated compliance costs are costs associated with compliance with the Program overall, meaning that the incremental cost of compliance associated with the revisions to the Program would be less.

The JBPU and the Village of Freeport have a range of compliance options to comply. Since the program has a three-year control period with the compliance obligation at the end of the control period, the emission peaks associated with electricity generation will be averaged out and more long-term planning options will be available to SACGS and Freeport Power Plant No. 2. Although the proposed Program revisions retain the Interim Control Period, that will require JBPU and the Village of Freeport to cover 50 percent of their emissions in each of the first two years of a three-year control period, it is not anticipated that this interim requirement will significantly reduce the flexibility available to JBPU and the Village of Freeport. The JBPU and the Village of Freeport will also incur costs associated with the administration of the revised Program.

MINIMIZING ADVERSE IMPACTS

The proposed revisions do not directly affect small businesses. Only two local governments are affected by the proposed. The proposed Program revisions constitute an emissions allowance-based cap-and-trade program. Cap and trade systems are the most cost-effective means for implementing emission reductions from large stationary sources. By continuing to implement the Program and proposed Program revisions, the Department will minimize any associated adverse economic impacts on the JBPU and the Village of Freeport.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The Participating States initiated the most recent program review in the fall of 2015 and concluded the process in August 2017. The Participating States and RGGI Incorporated (RGGI, Inc.)³ conducted stakeholder meetings and webinars during this period, during which they obtained public input on a number of program elements. Prior to each stakeholder meeting, agency staff and RGGI, Inc. distributed pertinent material to the over 250 participants on the list serve and posted meeting documents on the RGGI, Inc. website. The stakeholder meetings were open to the public and all interested parties were encouraged to provide comment. The Draft Updated Model Rule was released to stakeholders for comment on August 23, 2017. On December 19, 2017, the Participating States released the final version of the Updated Model Rule, which contained additional updates based on stakeholder feedback received on the Draft Updated Model Rule.

New York conducted an in-state stakeholder process designed to provide updates on the status of the regional process and to afford additional opportunity for New York's stakeholders to provide comment. The Department held stakeholder meetings and sent list-serve notices to New York stakeholders announcing regional meetings and webinars. The input provided by stakeholders during both the regional and in-state processes have been considered and incorporated by the Department in developing the proposed revisions to the Program. The Department's records from those stakeholder meetings do not reflect that the JBPU or Freeport attended those meetings.

CURE PERIOD OF AMELIORATIVE ACTION

The proposed Program revisions will be effective beginning in 2021. The revised Program will require affected sources already subject to the Program to continue to comply, and units newly subject to the emission limitations under the expansion of the Program to certain units 15 MW beginning in 2021. No additional cure period or other additional opportunity for ameliorative action is included in the Program revisions. First, aside from the proposed applicability expansion to certain units 15 MW or larger, most sources that will be subject to the proposed Program revisions are already subject to the existing Program and have been since the regulation was initially promulgated in 2008 (or since they commenced operation). This includes the SACGS and Freeport Power Plant No. 2. Second, because of the cap-and-invest nature of the revisions to the Program which includes periodic compliance deadlines, sources have flexibility to emit any amount of CO₂ during a control period, provided such emissions are covered by an adequate amount of CO₂ allowances by the relevant CO₂ allowance transfer deadline. This is unchanged under the proposed revisions and will continue to provide sources with flexibility to comply with the proposed Program revisions. Finally, while the proposed Program revisions retain the interim compliance requirement, the first interim compliance period was in 2015 and subsequent interim compliance periods will continue to be each of the first two years of the three-year control period. For these reasons, no additional cure period or other additional opportunity for ameliorative action is necessary for the proposed Program revisions.

New Jersey, Rhode Island, and Vermont. Additional states, including Pennsylvania and Virginia, have expressed interest in potentially becoming RGGI Participating States.

² The Participating States released the Updated Model Rule on August 23, 2017.

³ RGGI, Inc. is a 501(c)(3) non-profit corporation created to provide technical and administrative services to the Participating States.

Rural Area Flexibility Analysis

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative, historic effort among New York and nine Participating States¹ and is the first mandatory, market-based carbon dioxide (CO₂) emissions reduction program in the United States. Since its inception in 2008, RGGI has utilized a market-based mechanism to cap and cost-effectively reduce emissions that cause climate change. Recently, New York along with the Participating States, completed a comprehensive program review and announced a proposal to lower the regional emissions cap established under RGGI to approximately 75 million tons in 2021, declining 3.0 percent a year through 2030². Accordingly, New York and the Participating States committed to propose revisions, pursuant to state-specific regulatory processes, to their respective CO₂ Budget Trading Programs to further reduce CO₂ emissions from power plants in the region. To implement the updated RGGI program in New York State, the Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Part 242, CO₂ Budget Trading Program (the Program) and 6 NYCRR Part 200, General Provisions.

The promulgation of the proposed revisions to Part 242 and the amendments to Part 200 will apply equally to affected sources statewide; rural areas will not be disproportionately impacted. The Department will implement the proposed Program revisions through a cap-and-invest program because allowance-based cap-and-invest systems are a cost-effective means for implementing emission reductions from stationary sources.

The regulatory flexibility inherent in a cap-and-investment program, as well as the flexibility provided under the revisions to the Program, including the Cost Containment Reserve (CCR) and Offset provisions, helps to ensure continued reliability and adequacy of the State's electricity supply, assists in the furtherance of public health, and is necessary for continued industrial development and preservation of physical property, while minimizing any potential adverse impacts of the revised Program on a statewide basis.

The Proposed Program Revisions

The proposed Program revisions, which will cap regional CO₂ emissions at approximately 75 million tons annually beginning in 2021, represent a nearly 30 percent reduction in the regional cap for the period 2020-2030. After 2021, the cap will decline by 2.275 million tons annually. Further, to account for the existing private bank of CO₂ emissions allowances already acquired at auction, and to help create a binding cap, the proposed Program revisions provide a budget adjustment for banked allowed. The Third Adjustment for Banked Allowances will adjust the budget for 100 percent of the pre-2021 vintage allowances held by market participants as of the end of 2020 that are in excess of the total quantity of 2018, 2019 and 2020 emissions. The third adjustment would be implemented over the five-year period of 2021-2025, after the size of the 2020 vintage private bank is determined.

The proposed Program revisions retain the CCR, which helps provide additional flexibility and cost containment for the Program. While the proposed revisions to the Program retain the CCR, the revisions would modify the CCR trigger price and the maximum amount of CCR allowances available at auction each year. In particular, the CCR allowances will be triggered and released at auctions at \$10.77 in 2020 and will increase to \$13.00 starting in 2021. Each year after 2021, the CCR trigger price will increase by seven percent. If the trigger price is reached, up to 10 million additional CCR allowances will be available for purchase at auction in 2020. Beginning in 2021, up to 10 percent of the regional base budgets of additional CCR allowances will be available for purchase at auction if the CCR trigger is reached.

The proposed program revisions create an Emissions Containment Reserve (ECR), which will also help secure additional emissions reductions if prices fall below established trigger prices. The ECR will only be triggered and allowances will be withheld from auctions if reduction costs are lower than projected. The states implementing the ECR will withhold up to 10 percent of their annual base budgets per year. The ECR trigger price will start at \$6.00 in 2021 and will increase by seven percent each year thereafter.

New York stakeholders raised concerns during our extensive outreach effort, that the cost of RGGI might result in increased operation at units not subject to the regulatory provisions of Part 242. To address this concern, New York is also proposing to expand applicability under Part 242 to capture certain units that serve an electricity generator with a nameplate capacity equal to or greater than 15 megawatts (MW). This ap-

¹ In addition to New York, the RGGI Participating States include: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire,

plicability expansion will apply to any unit 15 MW or greater that resides at an existing CO₂ budget source, and to any 15 MW unit that resides at a facility where there are two or more units with a nameplate capacity of 15 MW or larger.

Finally, the proposed Program revisions will retain the interim compliance obligation. In addition to demonstrating full compliance at the end of each three-year compliance period, regulated entities will continue to have to demonstrate that they are holding allowances equal to at least 50 percent of their emissions at the end of each of the first two years in each three-year compliance period. The proposed Program revisions also include minor revisions and updates to all references. The majority of the proceeds from the sale of New York's allowances will continue to be dedicated to strategic energy or consumer benefits, such as energy efficiency and clean energy technologies.

The nature of the proposed Program revisions, generally described above and discussed more thoroughly in the accompanying Regulatory Impact Statement (RIS), is such that they clearly will minimize any potential adverse impacts of the revised Program on a statewide basis, including any potential adverse impacts to rural areas.

TYPES AND NUMBERS OF RURAL AREAS AFFECTED

The promulgation of the proposed Program revisions and the amendments to Part 200, will apply equally to affected public and private sources statewide; rural areas will not be disproportionately impacted.

COMPLIANCE REQUIREMENTS

The proposed Program revisions include an expansion of the applicability provisions of the current Program. The revised Program will require affected sources already subject to the Program to continue to comply. Units newly subject to the Program under the proposed expansion to certain units 15 MW and larger will be subject to the Program for compliance purposes beginning in 2021. The Program revisions retain the interim compliance obligation. Units 15 MW and larger that are subject to the Program will be subject to both the interim control period and control period requirements on the later of January 1, 2021 or the date the unit commences operation.

COSTS

The Department, New York State Energy Research Development Authority (NYSERDA) and New York State Department of Public Service (DPS) analyzed costs, including statewide impacts to jobs, total Gross State Product and total Personal Income, associated with compliance with the proposed revisions to Part 242. As discussed below, this analysis concludes that the proposed Program revisions will not disproportionately affect sources in rural areas of the State and best enables the Department to balance the competing interests of the protection of the public health and welfare with continued industrial development on a statewide basis. By revising the Program, the Department is able to balance these competing interests and minimize any potential adverse impacts of the revised Program.

To evaluate the potential cost impacts of the reduced CO₂ emissions cap and budget adjustments, Integrated Planning Model (IPM®³) was used to compare a future case with the proposed Program (Program Case) to a Reference Case (Business as Usual scenario) to project how the regional electricity system would function if the Program remained unchanged and proposed revisions were not implemented. The modeling assumptions and input data were developed through a stakeholder process, including representatives from the electricity generation sector, business and industry, environmental advocates and consumer interest groups. Subsequently, modeling results were presented to stakeholders for review and comment throughout the development of the proposed Program revisions. For a greater explanation of NYSERDA's analysis and a summary of the (IPM®) modeling conducted by ICF International (ICF), see Regulatory Impact Statement pages 53-72.

A macroeconomic study of the Program was conducted to estimate the potential impact of the reduced CO₂ emissions cap, budget adjustments and the remainder of the proposed Program revisions on the economies of the Participating States. The study, using the REMI computer model, concluded that the impacts on the jobs, the economy and customer bills^{4,5}, in New York would be generally positive, albeit relatively small. The estimated cumulative, positive change in employment in New York associated with the proposed Program revisions will be about 23,234 additional job-years over the period 2017 to 2031. A job-year is equivalent to one person employed for one year. Further, the study estimates that the cumulative changes in New York's Gross State Product and Personal Income associated with the proposed Program revisions will be approximately \$2.1 billion and \$1.2 billion, respectively⁶. Although these cumulative changes are minimal, they represent positive impacts for total State employment, total Gross State Product and total Personal Income.

MINIMIZING ADVERSE IMPACT

The Department will implement the proposed Program revisions through a cap-and-invest program because allowance and market-based systems are a cost-effective means for implementing emission reductions

from stationary sources. The regulatory flexibility inherent in a cap-and-invest program that allows for interstate trading of emission allowances will not disproportionately affect sources in rural areas of the State and best enables the Department to balance the competing interests of the protection of the public health and welfare with continued industrial development of the State. By revising the Program, the Department is further able to balance these competing interests and minimize any potential adverse employment impacts of the revised Program.

RURAL AREA PARTICIPATION

The Department complied with Sections 202-a, 202-b and 202-bb of the State Administrative Procedures Act through an extensive Regional program review process that included public participation by all Participating States. New York coordinated an additional stakeholder process to gather input from the public within its borders. New York and the Participating States had committed to a comprehensive program review during the initial development of RGGI and agreed to evaluate: program success; program impacts; additional emissions reductions; imports and emissions leakage; and offsets.

New York conducted an in-state stakeholder process designed to provide updates on the status of the regional process and to afford additional opportunity for New York's stakeholders to provide comment. The Department held stakeholder meetings and sent list-serve notices to New York stakeholders announcing regional meetings and webinars. The input provided by stakeholders during the in-state process have been considered and incorporated by the Department in developing the proposed revisions to the Program.

¹ In addition to New York, the RGGI Participating States include: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont. Additional states, including Pennsylvania and Virginia, have expressed interest in potentially becoming RGGI Participating States.

² The Participating States released the Updated Model Rule on August 23, 2017.

³ IPM® is a nationally recognized modeling tool used by the U.S. Environmental Protection Agency (EPA), state energy and environmental agencies, and private sector firms such as utilities and generation companies.

⁴ "RGGI Program Review: REMI modeling Results, Inputs and Draft Results from MRPS Case Run," by ICF, December 2017. https://www.rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/REMI_2017_12_19.pdf

⁵ https://www.rggi.org/sites/default/files/Uploads/Program-Review/9-25-2017/Customer_Bills_Results_Overview_09_25_17.pdf

⁶ This is provided in 2015 dollars, calculated as the present value of estimated annual changes over the period 2017 to 2031, discounted at three percent per year to account for the time-value of money.

Job Impact Statement

NATURE OF IMPACT

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative, historic effort among New York and nine Participating States¹ and is the first mandatory, market-based carbon dioxide (CO₂) emissions reduction program in the United States. Since its inception in 2008, RGGI has utilized a market-based mechanism to cap and cost-effectively reduce emissions that cause climate change. Recently, New York along with the Participating States, completed a comprehensive program review and announced a proposal to lower the regional emissions cap established under RGGI to approximately 75 million tons in 2021, declining 3.0 percent a year through 2030². Accordingly, New York and the Participating States committed to propose revisions, pursuant to state-specific regulatory processes, to their respective CO₂ Budget Trading Programs to further reduce CO₂ emissions from power plants in the region. To implement the updated RGGI program in New York State, the Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Part 242, CO₂ Budget Trading Program (Part 242 or the Program) and 6 NYCRR Part 200, General Provisions.

The Department, New York State Energy Research Development Authority (NYSERDA) and the New York State Department of Public Service (DPS) analyzed costs, including impacts to jobs, total Gross State Product and total Personal Income, associated with compliance with the proposed revisions to Part 242. As discussed below, this analysis concludes that the proposed revisions to the Program will not have an adverse impact on jobs and employment opportunities in New York. At the direction of New York and Participating States, Northeast States Coordinated Air Use Management (NESCAUM) conducted a macroeconomic impact study called "Regional Economic Models, Inc. Policy Insight™ (REMI). The macroeconomic results reflect the potential impacts associated with the proposed revisions to the program (including the investment of auction

proceeds in an estimated portfolio of energy efficiency, clean energy and carbon abatement programs). The study concluded that the economic impacts of RGGI on the economies of the Participating States, including New York, were generally positive, albeit relatively small. For example, the cumulative changes in New York's Gross State Product and Personal Income associated with the proposed revisions to the Program will be about \$2.1 billion and \$1.2 billion, respectively (2015 dollars, calculated as the present value of estimated annual changes over the period 2017 to 2031, discounted at three percent per year to account for the time-value of money). The cumulative change in employment in New York associated with the Program will be about 23,234 job-years over the period 2017 to 2031. A job-year is equivalent to one person employed for one year.

The proposed Program revisions, which will cap regional CO₂ emissions at approximately 75 million tons annually beginning in 2021, represent a nearly 30 percent reduction in the regional cap for the period 2020-2030. After 2021, the cap will decline by 2.275 million tons annually. Further, to account for the existing private bank of CO₂ emissions allowances already acquired at auction, and to help create a binding cap, the proposed Program revisions provide a budget adjustment. The Third Adjustment for Banked Allowances will adjust the budget for 100 percent of the pre-2021 vintage allowances held by market participants as of the end of 2020, that are in excess of the total quantity of 2018, 2019, and 2020 emissions. The third adjustment would be implemented over the five-year period of 2021-2025, after the size of the 2020 vintage private bank is determined.

The proposed revisions to Part 242 also retain the Cost Containment Reserve (CCR), which helps provide additional flexibility and cost containment for the Program. While the proposed revisions to the Program retain the CCR, the revisions would modify the CCR trigger price and the maximum amount of CCR allowances available at auction each year. In particular, the CCR allowances will be triggered and released at auctions at \$10.77 in 2020 and will increase to \$13.00/ton starting in 2021. Each year after 2021, the CCR trigger price will increase by seven percent. If the trigger price is reached, up to 10 million additional CCR allowances will be available for purchase at auction in 2020. Beginning in 2021, up to 10 percent of the regional cap of additional CCR allowances will be available for purchase at auction if the CCR trigger price is reached.

The proposed Program revisions create an Emissions Containment Reserve (ECR), which will also help secure additional emissions reductions if prices fall below established ECR trigger prices. The ECR will only be triggered, and allowances withheld from auctions, if CO₂ emission reduction costs are lower than projected. The states implementing the ECR will withhold up to 10 percent of their respective annual base budgets per year. The ECR trigger price will start at \$6.00 in 2021 and will increase by seven percent each year thereafter.

The proposed model rule revisions eliminated two offset categories, the "SF6 Offset Category" and the "End-Use Energy Efficiency Offsets Category". The proposed model rule revisions also updated and retained three offset categories that some states may continue to implement. While an individual state may choose to retain no, some, or all three eligible offset project categories, any offset allowances awarded by an individual state would remain fully fungible across all the participating states for compliance purposes. In the revisions to Part 242, New York is proposing to only retain the offset provisions for avoided methane emissions from agricultural manure management operations.

Finally, the proposed Program revisions will retain the interim compliance obligation. In addition to demonstrating full compliance at the end of each three-year compliance period, regulated entities will continue to have to demonstrate that they are holding allowances equal to at least 50 percent of their emissions at the end of each of the first two years in each three-year compliance period. The proposed Program revisions also include minor revisions and updates to all references. The majority of the proceeds from the sale of New York's allowances will continue to be dedicated to strategic energy or consumer benefits, such as energy efficiency and clean energy technologies.

New York stakeholders raised concerns during our extensive outreach effort, that the cost of RGGI might result in increased operation at units not subject to the regulatory provisions of Part 242. To address this concern, New York is also proposing to expand applicability under Part 242 to capture certain units that serve an electricity generator with a nameplate capacity equal to or greater than 15 megawatts (MW). This applicability expansion will apply to any unit 15 MW or greater that resides at an existing CO₂ budget source, and to any 15 MW unit that resides at a facility where there are two or more units with a nameplate capacity of 15 MW or larger.

The nature of the proposed Program revisions, generally described above and discussed more thoroughly in the accompanying Regulatory Impact Statement, is such that they clearly will not have an adverse impact on jobs and employment opportunities.

CATEGORIES AND NUMBERS AFFECTED

As indicated above, the Department, NYSDERDA and DPS analyzed costs, including impacts to jobs, total Gross State Product and total Personal Income, associated with compliance with the proposed revisions to Part 242. Modeling analysis and review was coordinated by RGGI Inc. and New York staff, and included input from energy and environmental representatives from the Participating States and each regional Independent Systems Operator.

To evaluate potential cost impacts of the reduced CO₂ emissions cap and budget adjustments, Integrated Planning Model (IPM®)³ modeling conducted by ICF International (ICF) was used to compare a future case with the proposed Program revisions (Program Case) to a Reference Case (Business as Usual scenario) to project how the regional electricity system would function if the Program remained unchanged and proposed revisions were not implemented. The modeling assumptions and input data were developed with input from a stakeholder process, including representatives from the electricity generation sector, business and industry, environmental advocates and consumer interest groups. Subsequently, modeling results were presented to stakeholders for review and comment throughout the development of the proposed Program revisions. For a greater explanation of NYSDERDA's analysis and a summary of the IPM® modeling conducted by ICF, see Regulatory Impact Statement pages 53-72.

Utilizing New York's Investments of RGGI Allowance Proceeds and output data from IPM®, the REMI macroeconomic study estimates that the impact of the reduced CO₂ emissions cap, budget adjustments and the remainder of the proposed Program revisions on jobs, the economy and electricity customer bills^{4,5}, in New York will be very small and generally positive. The REMI study estimates the cumulative change in employment in New York associated with the Program revisions will be about 23,234 job-years over the period 2017 to 2031. A job-year is equivalent to one person employed for one year.

Further, the REMI study estimates that the cumulative changes in New York's Gross State Product and Personal Income associated with the proposed revisions to the Program will be about \$2.1 billion and \$1.2 billion, respectively (2015 dollars, calculated as the present value of estimated annual changes over the period 2017 to 2031, discounted at three percent per year to account for the time-value of money).

REGIONS OF ADVERSE IMPACT

A Statewide analysis of the impacts of these revisions on electricity prices in New York State was performed. Under the Model Rule Policy Case, New York's wholesale electricity prices (including both energy and capacity costs) are projected to be \$1.29/MWh (2015 dollars) higher in 2031 than the Reference Case, a three percent increase. While wholesale electricity prices are projected to increase, the energy savings realized as a result of New York's application of 35 percent of proceeds to energy efficiency projects offsets that increase and results in projected decreases in bills over time. For a typical New York residential customer (using 530 kWh per month), the projected increase in wholesale electricity prices in 2031 translates into a monthly retail bill decrease of about 0.4 percent or a \$0.36 savings. In 2020, the projected increase in wholesale electricity prices translates into a monthly residential retail bill increase of about 0.1 percent or \$0.05. For commercial customers, the projected retail price impact of RGGI is about 0.0 percent in 2016 and -1.3 percent in 2031 (-\$0.13 and -\$5.93 per month, respectively). For industrial customers, the projected retail price impact of RGGI is about -0.7 percent in 2020 and -5.7 percent in 2031.

MINIMIZING ADVERSE IMPACT

The Department will implement the proposed Program revisions through a cap-and-invest program because allowance-based cap-and-invest systems are a cost-effective means for implementing emission reductions from large stationary sources. The regulatory flexibility inherent in a cap-and-invest program, as well as the flexibility provided under the revisions to the Program, including the CCR and Offset provisions, helps to ensure continued reliability and adequacy of the State's electricity supply, assists in the furtherance of public health, and is necessary for continued industrial development and preservation of physical property, while minimizing any potential adverse employment impacts.

¹ In addition to New York, the RGGI Participating States include: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont. Additional states, including Pennsylvania and Virginia, have expressed interest in potentially becoming RGGI Participating States.

² The Participating States released the Updated Model Rule on August 23, 2017.

³ IPM® is a nationally recognized modeling tool used by the U.S. Environmental Protection Agency (EPA), state energy and environmental agencies, and private sector firms such as utilities and generation companies.

⁴ “RGGI Program Review: REMI modeling Results, Inputs and Draft Results from MRPS Case Run,” by ICF, December 2017. https://www.rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/REMI_2017_12_19.pdf

⁵ https://www.rggi.org/sites/default/files/Uploads/Program-Review/9-25-2017/Customer_Bills_Results_Overview_09_25_17.pdf

Department of Financial Services

NOTICE OF ADOPTION

Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure

I.D. No. DFS-51-19-00015-A

Filing No. 288

Filing Date: 2020-04-14

Effective Date: 2020-07-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 52 (Regulation 62) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 3216, 3217, 3221, 4303; L. 2019, ch. 57, part J, subpart D

Subject: Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure.

Purpose: Clarifying discriminatory activities prohibited by and coverages included within preventive care and screenings under the Insurance Law.

Text or summary was published in the December 18, 2019 issue of the Register, I.D. No. DFS-51-19-00015-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Colleen Rumsey, Department of Financial Services, One Commerce Plaza, Albany, NY 12231, (518) 474-0154, email: Colleen.Rumsey@dfs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2023, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Department of Financial Services (the “Department”) received comments from an association that represents insurers and health maintenance organizations (“issuers”) requesting changes to or clarifications of the regulation.

Comment: The commenter sought clarification that Section 52.75(a)(1) of the regulation addresses policy form provisions while paragraph (4) addresses claim denials.

Response: The commenter’s observation is correct and supported by a plain reading of the text. Thus, the Department did not make any changes to the regulation in response to this comment.

Comment: The commenter stated that, although issuers have removed gender edits when a diagnosis code indicates gender dysphoria is present in accordance with Insurance Circular Letter No. 12 (2017), the regulation would require the removal of all gender edits. The commenter also stated that the regulation may necessitate the review of CMS’s National Correct Coding Initiative standards and the Department may need to issue formal guidance to issuers. The commenter observed that issuers do not necessarily request additional information to determine an insured’s eligibility prior to denying a claim. The commenter further stated that the regulation would potentially impact any gender edits currently in use that comply with national coding standards. Finally, the commenter also alleged that the regulation conflicts with Medicare claims processing guidance.

Response: The regulation requires an issuer that receives a claim from an insured of one gender or sex for a service that is typically or exclusively provided to an individual of another gender or sex to take reasonable steps, including requesting additional information, to determine whether the insured is eligible for the services prior to denying the claim. The regulation is consistent with the guidance previously provided by the Department in Insurance Circular Letter No. 12 (2017). A gender edit is a coding determination that results in the automatic denial of a claim due to a conflict between the gender and diagnosis or procedure codes. The regula-

tion neither requires the removal of all gender edits nor requires an issuer to request additional information for all claims. Rather, it requires issuers to take reasonable steps to determine whether the insured is eligible for the services prior to denying the claim, which may include requesting additional information. The regulation does not preclude the use of gender edits that are consistent with national coding standards, CMS’s National Correct Coding Initiative, or Medicare claims processing guidance, but requires an issuer to take reasonable steps to ensure that transgender individuals are protected from automatic denials. The Department expects issuers to comply with the regulation as they have already complied with the Department guidance issued in 2017. Thus, the Department did not make any changes to the regulation in response to these comments.

Comment: The commenter noted that New York City allows a gender neutral “X” to be listed on a birth certificate and noted that if New York State added gender “X” to enrollment transactions, issuers could remove edits that may inadvertently impact transgender individuals without losing gender edits for other erroneous claims.

Response: It is the Department’s understanding that an enrollment transaction is the electronic transfer of enrollment information between an issuer and an employer or other entity, such as the New York State of Health, the Official Health Plan Marketplace. Enrollment transactions are outside the purview of the regulation. Thus, the Department did not make any changes to the regulation in response to this comment.

Comment: The commenter requested clarification regarding coverage for preexposure prophylaxis with effective antiretroviral therapy for persons who are at high risk of HIV acquisition. The commenter stated that the regulation requires such coverage for “high-risk populations,” irrespective of the United States Preventive Services Task Force (“USPSTF”) recommendation and requested the means to identify a high-risk population should the USPSTF rating or description change.

Response: The regulation requires an issuer to provide coverage for preventive care and screenings pursuant to Insurance Law Sections 3216(i)(17)(E), 3221(l)(8)(E) and (F), and 4303(j)(3), including coverage for preexposure prophylaxis with effective antiretroviral therapy to insureds who are at high risk of HIV acquisition. Insurance Law Sections 3216(i)(17)(E), 3221(l)(8)(E) and (F), and 4303(j)(3) require coverage for evidence-based items or services for preventive care and screenings that have in effect a rating of “A” or “B” in the current recommendations of the USPSTF. The USPSTF recommendation regarding preexposure prophylaxis, which has received an “A” rating, states that clinicians should offer preexposure prophylaxis with effective antiretroviral therapy to persons who are at high-risk of HIV acquisition. The recommendation statement provides further detail regarding individuals who are at high-risk of HIV acquisition. As the proposed regulation cites to Insurance Law Sections 3216(i)(17)(E), 3221(l)(8)(E) and (F), and 4303(j)(3), issuers should use the USPSTF recommendation statement, including any updated statement, when determining which individuals are considered at high-risk of HIV acquisition. The Insurance Law already requires issuers to provide coverage for preexposure prophylaxis in this manner. The regulation merely codifies a specific current USPSTF recommendation as referenced in the Insurance Law. Thus, the Department did not make any changes to the regulation in response to this comment.

Comment: The commenter noted that the regulation requires policies to cover preventive care and screenings specified in any recommendation or guideline described in the Insurance Law through the last day of the “policy year,” even if the recommendation or guideline changes during the policy year. The commenter noted that continuing a preventive service recommendation through the end of the policy year for individual comprehensive health insurance may be achievable as that coverage runs on a calendar year basis. The commenter noted that the same requirement would pose logistical difficulties for the Essential Plan or small group comprehensive health insurance policies given that the plan year is not required to run on a calendar year basis. The commenter recommended that issuers have flexibility to subject any claim with a date of service after the recommendation or guideline change to the new requirements.

Response: The regulation requires a policy that provides coverage for preventive care and screenings specified in any recommendation or guideline described in Insurance Law Sections 3216(i)(17)(E), 3221(l)(8)(E) and (F), and 4303(j)(3) to provide coverage through the last day of the policy year, even if the recommendation or guideline changes during the policy year. This requirement is consistent with the minimum standards for coverage of preventive care set forth in 45 C.F.R. Section 147.130(b)(2)(i). Additionally, the regulation is consistent with 11 NYCRR Sections 52.17(a)(25)(ii) and 52.18(a)(8)(ii), which prohibit an issuer from making a unilateral modification to an existing hospital, surgical, or medical expense insurance policy except at the time of coverage renewal. Therefore, the Department did not make any changes to the regulation in response to this comment.

OFFICE OF THE COMMISSIONER

New York State Department of Environmental Conservation
625 Broadway, 14th Floor, Albany, New York 12233-1010
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www.dec.ny.gov

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CERTIFICATE OF ADOPTION

AGENCY ACTION: 6 NYCRR Part 202-2 "Emission Statements"

Pursuant to the provisions of Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), I, Basil Seggos, Commissioner of the Department of Environmental Conservation (DEC), hereby certify that the amendments to 6 NYCRR Part 202-2 "Emission Statements" be adopted to read as on the attached original, and certify that this is the original thereof, as adopted by me on October 26, 2020, to be effective 30 days after filing with the Department of State.

I further certify that prior notice, as required under the State Administrative Procedure Act, was published in the State Register on April 29, 2020 under Notice No. ENV-17-20-00006-P. I also further certify that due to the unprecedented nature of COVID-19, Governor Cuomo issued a PAUSE Order directing non-essential meetings/gatherings to be suspended or cancelled. See Executive Order 202 and subsequent additions, including Executive Order 202.15 which specifically addressed the suspending of public hearing requirements. Pursuant to these directives, the Department did not schedule or hold any public hearings for this proposed rulemaking.



Basil Seggos
Commissioner

DATED: October 26, 2020

Albany, New York



Department of
Environmental
Conservation

Express Terms

6 NYCRR Subpart 202-2, "Emission Statements"

Sec. 202-2.1 Applicability.

(a) This Subpart applies to:

(1) any owner or operator of a facility located in New York State which is determined to be a major source as defined in Subpart 201-2 of this Title for all or any part of such calendar year; and

(2) any owner or operator of a facility located in an ozone non-attainment area which emits NO_x or VOCs equal to or greater than 25 tons during any such calendar year.

(b) If a facility is subject to this Subpart, the owner or operator of such facility must report its actual annual emissions of regulated air contaminants as set forth in this rule.

(c) Electronic submittal of Emission Statements will become mandatory and will be included as an enforceable condition in new or renewed Title V permits issued after January 1, 2021. The first reporting year under this provision will be the reporting year in which the permit was issued or reporting year 2025 (emission statements due in 2026), whichever is earlier.

Sec. 202-2.2 Definitions.

(a) For the purpose of this Subpart, the general definitions of Parts 200 and 201 of this Title apply:

(b) The following definitions govern the provisions of this Subpart:

(1) 'Actual annual emissions.' The actual (or estimated) emissions of a regulated air contaminant after control equipment has been applied, including fugitive emissions and emissions during startups, shutdowns, and malfunction conditions which occurred during the calendar year being reported. Actual annual emissions are based on actual operating conditions for the calendar year (*i.e.*, actual fuel usage, actual material usage, actual operating rate) and are determined using one of the methods listed in section 202-2.4(d) of this Subpart.

(2) 'Annual process rate.' An actual (or estimated) measurable parameter or quantity per calendar year that directly or indirectly relates to the emissions of an air contaminant source. Depending on the type of emission source, measurable quantity or parameter may refer to the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed. The measurable quantity or parameter is typically the value that is multiplied by an emission factor to generate an emission estimate.

(3) 'Annual reportable emissions.' The actual annual emissions of a facility subject to this Subpart. In addition, every three years annual reportable emissions shall include the actual annual emissions of exempt emission sources as defined in section 201-3.2 of this Title. Emissions from exempt sources are required

to be reported every three years as part of the periodic emission inventory as set forth in section 202-2.3(e) of this Subpart.

(4) 'Chemical abstracts service registry number.' A CAS (chemical abstracts service) registry number is a unique numeric identifier which designates only one substance and has no chemical significance other than to link information about a specific chemical substance.

(5) 'Chemical family code.' A chemical family code is defined as the numerical code associated with a specific chemical family as determined in the following table:

<i>Chemical Family Code</i>	
1.	Particulates (PART)
2.	Sulfur Dioxide (SO ₂)
3.	Nitrogen Oxides (NO _x)
4.	Volatile Organic Compounds (VOC)
5.	Carbon Monoxide (CO)
6.	Other
7.	PM-10
8.	Particulates and Hazardous Air Pollutant (HAP)
9.	VOC and HAP
10.	HAP Only
11.	PM _{2.5}
12.	Hydrofluorocarbons (HFCs)
13.	Perfluorocarbons (PFCs)

(6) 'Control equipment type.' The type of control equipment used by a facility to regulate air emissions. The control equipment description reported on the emissions statement shall be consistent with the appropriate description contained in a list provided by the department for emission statement reporting purposes.

(7) 'Control efficiency.' The effectiveness of air pollution control equipment expressed as the percentage of the actual total emissions of an air contaminant prevented by the air pollution control equipment from being emitted into the outdoor atmosphere. Control efficiency is calculated by dividing the weight of such air contaminant collected, removed, or rendered less noxious (during a specific unit of time) by the control equipment, including equipment downtime and maintenance degradation, by the uncontrolled emission rate (based on an equal unit of time) of the contaminant, and multiplying by 100 percent.

(8) 'Design capacity.' A measure of the size of a point source, based on the reported maximum continuous capacity of the emission generating equipment.

(9) 'Emission factor.' An average value which relates the quantity of an air contaminant released to the atmosphere as a result of an associated activity or material throughput level, usually expressed as the weight of an air contaminant divided by a unit weight, volume, distance or duration of the activity that emits the air contaminant (*e.g.*, pounds of particulate matter emitted per ton of coal combusted).

(10) 'Emissions method code.' The code which identifies how emissions were determined for emission statement reporting purposes. Emissions must be calculated using the methods described by these codes.

(11) 'Exit gas flow rate.' Numerical value of stack gas flow rate (mass/time).

(12) 'Exit gas temperature.' Numerical value of stack gas temperature (°C or °F).

(13) 'Exit gas velocity.' Numerical value of stack gas velocity (distance/time).

(14) 'Material balance.' The process of determining emissions by comparing the material inputs of a process with the amount of material outputs of the process. For example, a certain chemical of a known quantity used in a process may be emitted to the atmosphere, retained in the product, destroyed in the process, or physically removed for reprocessing or disposal.

(15) 'Maximum nameplate capacity.' A measure of a unit's size which the manufacturer includes on the unit's nameplate.

(16) 'NAICS.' North American Industry Classification System. NAICS is a classification of business establishments by economic activity. It was adopted by Canada, Mexico, and the United States on January 1, 1997, to replace the Standard Industrial Classification (SIC) code.

(17) 'Peak carbon monoxide season.' The months of January, February and December in a given calendar year.

(18) 'Peak ozone season.' The period from June 1st through August 31st, inclusive in a given calendar year.

(19) 'Percent annual throughput.' The percent of the total yearly operation of a process which occurs

during each of the following periods: January, February, and December; March through May; June through August; and September through November.

(20) *SCC*. Source Classification Code. A process-level code that describes the equipment and/or operation which is emitting pollutants.

(21) ‘Stack diameter.’ The inside diameter or cross section at the exit of a stack or vent, expressed to the nearest inch.

(22) ‘Stack height.’ The height of the stack measured from ground level to the top of the stack or vent, expressed to the nearest foot.

(23) ‘Start time (hour).’ The hour of the day that the process equipment begins operation. This is the starting time used to calculate emission estimates for that equipment.

(24) ‘Work weekday.’ Any day of the week excluding Saturday or and Sunday.

Sec. 202-2.3 Required contents of an emission statement.

(a) Emission statements shall include the following:

(1) Certification by a responsible official. A responsible official must sign a form or other legal instrument provided by the department to certify the emission statement information. Further, the certification must include the e-mail address of the responsible official. This certification shall state that after reasonable inquiry, the responsible official has concluded that the statements and information in the document are accurate and complete in accordance with this Subpart, based on the best available information. The certification shall include the full name, title, original signature, date of signature, e-mail address and telephone number of the responsible official.

(2) Facility level information, consisting of:

(i) full name of facility;

(ii) owner's name;

(iii) street address (physical location) of the facility;

(iv) four-digit primary SIC code or NAICS code for the facility;

(v) calendar year for which emissions are being reported; and

(vi) total facility fuel use, average sulfur content, average ash content and heat value (for combustion installations).

(3) Process level information, consisting of:

(i) process identification;

(ii) eight-digit SCC for the process;

(iii) annual throughput or quantity of fuel consumed (combustion sources);

(iv) description of the process;

(v) description of installed air pollution control equipment;

(vi) the average number of hours of operation per day (including annual, peak ozone season and peak carbon monoxide season in carbon monoxide nonattainment or maintenance areas);

(vii) the average number of days of operation per week (including annual, peak ozone season and peak carbon monoxide season in carbon monoxide nonattainment or maintenance areas);

(viii) the number of weeks per year of operation (including annual, peak ozone season and peak carbon monoxide season in carbon monoxide nonattainment or maintenance areas);

(ix) percent operation by season, January, February, and December; March-May; June-August; September-November (percent fuel use by season for combustion sources). The sum of the four seasons [should] must equal 100 percent;

(x) total days of operation (during the peak ozone season, June-August, and peak carbon monoxide season, January, February, and December, in carbon monoxide nonattainment or maintenance areas);

(xi) control efficiencies achieved by the air pollution control equipment. The control efficiency should reflect the total control efficiency from all control equipment for a specific air contaminant (*e.g.*, VOCs, NO_x). If the actual control efficiency is unavailable, the design efficiency or the control efficiency limit imposed by a permit shall be used;

(xii) annual reportable process emissions, for each regulated air contaminant emitted, (in units of pounds per year). Emissions of individual contaminants (identified by CAS code) less than 10 pounds per year may be reported on a process basis as less than 10 pounds. For purposes of calculating emission fees, contaminants reported as less than 10 pounds will be treated as though 10 pounds of the contaminant were emitted. Reporting of emissions for processes with source classification codes beginning with 1 or 2 is optional. In such cases, the Department will calculate process-level emissions based upon the reported fuel use and published emission factors;

(xiii) annual reportable fugitive emissions. A facility must estimate fugitive emissions which are generated from its operation. A facility may aggregate fugitive emissions under a single process to account for total facility fugitive emissions where the origin of such emissions cannot be identified. The facility must indicate such aggregation has occurred on its emission statement;

(xiv) emissions estimate method (see section 202-2.4[d] of this Subpart);

(xv) emission factors and source from where the emission factor was obtained (if used to determine actual emissions);

(xvi) start time (hour); and

(xvii) work weekday emissions.

(b) The department shall provide instructions for completing the emission statements each year. These instructions shall include emissions method codes, chemical family codes, and control equipment types.

(c) A facility is required to report actual emissions for each contaminant listed on its title V operating permit. A facility must also report its actual emissions of each of the following contaminants:

(1) sulfur oxides (SO₂);

- (2) volatile organic compounds (VOCs);
- (3) nitrogen oxides (NO_x);
- (4) carbon monoxide (CO);
- (5) lead and lead compounds (Pb);
- (6) primary PM_{2.5} (includes filterable and condensable);
- (7) primary PM₁₀ (includes filterable and condensable);
- (8) ammonia (NH₃);
- (9) hazardous air pollutants (HAPs) reported at the CAS registry number level, as defined in Part 200 of this Title;
- (10) Carbon dioxide (CO₂);
- (11) Methane (CH₄);

(12) Nitrous oxide (N₂O);

(13) Hydrofluorocarbons (HFCs);

(14) Perfluorocarbons (PFCs);

(15) Sulfur hexafluoride (SF₆); and

(16) Any regulated air contaminant.

(d) [Facilities with title V operating permits will receive pre-printed emission statement survey forms provided by the department]The department will provide Title V facilities with emission statement survey forms that reflect the information contained in the facility's operating permit. A responsible official must certify to the accuracy of this information and correct or supplement the [pre-printed] provided emission statement if it contains incorrect or missing information. The submission of an emission statement by a facility does not constitute an application for a permit modification or relieve the facility of the requirement to submit a permit modification application in accordance with Part 201 of this Title as required. [Facilities that submit electronic emission statements in accordance with section 202-2.4(h) of this Subpart or otherwise generate and submit complete emission statements are not required to correct these pre-printed emission statement forms.]

(e) Facilities are required to report estimates of VOC, [NOX]NO_x, SO₂, primary PM_{2.5}, primary PM₁₀ and

CO emissions from exempt activities as defined in section 201-3.2(c) of this Title, every three years as part of the periodic inventory (beginning in 1990, *i.e.*, [1990, 1993, 1996, 1999, 2002,] 2017, 2020, 2023, 2026, etc.).

(f) As part of the periodic inventory, the department shall provide additional forms and instructions to facilities in order to verify or collect the following information for permitted activities in the Title V permit:

(1) X stack coordinate (longitude);

(2) Y stack coordinate (latitude);

(3) stack height;

(4) stack diameter;

(5) exit gas temperature;

(6) exit gas velocity;

(7) exit gas flow rate;

(8) design capacity; and

(9) maximum nameplate capacity.

Sec. 202-2.4 Procedures.

[(a) Emissions statements shall be postmarked on or before April 15th and submitted to the department each year. Emission statements shall report actual annual emissions generated from the facility during the previous calendar year.]

(a) Submission dates for emission statements. Emission statements shall report actual annual emissions generated from the facility during the previous calendar year and must be submitted by the deadlines set forth below.

(1) Until a facility is required to submit annual emission statements electronically, emission statements submitted via courier must be postmarked (or equivalent) to the department no later than April 15th of each year.

(2) Until a facility is required to submit annual emission statements electronically, emission statements submitted electronically must be received by the Department on or before April 15th of each year.

(3) Once a facility is required to submit annual emission statements electronically, emission statements must be submitted to the Department per the following schedule beginning the reporting year that a Title V permit containing a condition mandating electronic submittal is issued:

(i) March 15th of each year for facilities with 3 or fewer processes listed in their Title V permit;

(ii) March 31st of each year for facilities with 4 to 6 processes listed in their Title V permit;

(iii) April 15th of each year for facilities with 7 to 12 processes listed in their Title V permit; or

(iv) April 30th of each year for facilities with 13 or more processes listed in their Title V permit.

(4) A facility may submit its emission statement via courier per the schedule in paragraph 202-2.4(a)(3) of this Subpart in lieu of electronic submission under the following conditions:

(i) data cannot be labeled as confidential business information using the electronic interface by the facility in accordance with Part 616 of this Title; or

(ii) the facility receives permission from the Department after demonstrating a need to submit via courier due to a failure of the electronic reporting interface.

(b) If [April 15th] a facility's submission's date occurs on a Saturday, Sunday, or Federal holiday, the annual emission statement must be postmarked or submitted no later than the next business day immediately following the submission date[April 15th and submitted to the department].

(c) Notwithstanding subdivisions (a) and (b) of this section, the department reserves the right to extend the [April 15th] submission deadline provided a facility can demonstrate by clear and convincing evidence,

that due to unavoidable circumstances, it is unable to have the completed emission statement postmarked or submitted on or before [April 15th] the submission date. All extension requests are subject to the approval of the department and will be granted on a case-by-case basis. Extension requests must be submitted to the department in writing or by email by the facility [on or before April 1st] fifteen days before the submission date and must include, at a minimum, the following information:

(1) the reason(s) for the extension request; and

(2) the date the statement will be submitted.

(d) Emission estimates shall be based on the owner's or operator's use of the methods listed below and should be consistent with the compliance determination and monitoring methods specified in the [title]Title V operating permit. The methods are generally listed in order of most preferred to least preferred. Facility owners or operators shall utilize the method which results in the best possible emission estimate:

(1) continuous emissions monitoring systems (CEMS);

(2) material balance calculations or fuel analysis;

(3) stack test of emissions, including date of test;

(4) stack test of emissions from identical or similar emission sources;

(5) published emission factors;

(6) modeling, emission estimation software;

(7) best engineering judgment; and

(8) manufacturer's guarantee.

(e) The use of CEMS data is required for all processes where such equipment is installed. Owners or operators who utilize CEMS must account for emissions occurring during all hours of operation, including those hours for which valid CEMS data was not obtained. Emissions from hours when CEMS data was not collected must be estimated by using the procedures given in subdivision (f) of this section.

(f) Data substitution procedures used to satisfy subdivision (e) of this section above shall comply with the following:

(1) for units and contaminants that are subject to 40 CFR part 75, applicable data substitution procedures from that regulation shall be used; or

(2) for units and/or contaminants not subject to 40 CFR part 75;

(i) the 90th percentile value of all hourly values measured during the previous 90 days while burning the same fuel shall be used; or

(ii) methods specified in the hierarchy listed under subdivision (d) of this section may be used, subject to the approval of the department.

(g) If a source owner or operator is required to use a specific monitoring method to demonstrate compliance with other applicable requirements, the department may require that the emission estimates for the corresponding processes in the emission statement be based on information obtained from that specific monitoring method. The department may reject the use of a proposed method for a particular process if it can be demonstrated that the method does not provide a reliable representation of emissions.

(h) Any owner or operator of a reportable facility shall transmit the emission statement to the department in a format acceptable to the department. With the prior approval of the department, an emission statement which meets the requirements of this section may be submitted on electronic storage media or transmitted electronically[in lieu of a written submission]. Any electronic submissions must be properly formatted for printing and accompanied by an acceptably signed certification page, or the original signed certification page must be submitted under separate cover.

(i) The owner or operator of a facility may request that certain information submitted in an emission statement be designated as a trade secret or confidential commercial information, in accordance with Part 616 of

this Title. The determination whether to grant such a request shall be made by the department in accordance with the procedures contained in Part 616 of this Title, taking into account applicable State and Federal laws on public disclosure. All information required on the annual emission statement must be reported to the department. The department may withhold certain process level information from public disclosure, where the department or a court of competent jurisdiction determines that such information constitutes trade secrets or confidential commercial information within the meaning of Part 616 of this Title, the Public Officers Law or other applicable State or Federal law.

(j) Department review and approval. The department shall notify the facility if any part of the submitted emission statement is incomplete or incorrect. The department will allow the facility up to 15 business days following the facility's receipt of the department's notice to provide the required contents of the emission statement. If a complete and accurate emission statement is not submitted to the department by [April 15th]the submission date or within 15 days after receipt of the department's notification of an incomplete or incorrect emission statement, the facility may be subject to enforcement action including but not limited to monetary fines.

Sec. 202-2.5 Recordkeeping requirements.

(a) Each facility subject to this Subpart shall maintain the following records for at least five years:

- (1) a copy of each emission statement submitted to the department; and
- (2) records supporting how the information submitted in the emission statement was determined, including any calculations, data, measurements, and estimates used.

(b) These records shall be made available at the facility to representatives of the department upon request, during normal business hours.

ENB Statewide Notices 11/18/2020

Public Notice

Notice of Adoption of 6 NYCRR Part 202-2 "Emission Statements"

Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation (NYS DEC) hereby gives notice of the following:

The NYS DEC revised 6 NYCRR Subpart 202-2, "Emission Statements" to require electronic submittal of annual emission statements. This requirement will be phased in beginning with Title V permits issued in 2021. The first electronic reporting year for each facility will be the year in which a new or renewed Title V permit is issued containing an enforceable condition mandating electronic submittal of the annual emission statement. By reporting year 2025, all emission statements will be subject to the electronic reporting requirements with certain exceptions. Subpart 202-2 will also be submitted to the United States Environmental Protection Agency as a revision to the State Implementation Plan (SIP) for New York State.

Documents pertaining to this rulemaking can be found on the NYS DEC's website at: <http://www.dec.ny.gov/regulations/propregulations.html#public>.

Due to the unprecedented nature of COVID-19, Governor Cuomo issued a PAUSE Order directing non-essential meetings/gatherings to be suspended or cancelled. See Executive Order 202 and subsequent additions, including Executive Order 202.15 which specifically addressed the suspension of public hearing requirements. Pursuant to these directives, NYS DEC did not schedule or hold any public hearings for this rulemaking.

Requests for information related to the SIP revision may be obtained from: Robert D. Bielawa, NYS DEC - Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: air.regs@dec.ny.gov

Request for information related to the revisions to Subpart 202-2, may be obtained from: Carlos Mancilla, NYS DEC - Division of Air Resources, 625 Broadway, Albany NY 12233-3251, Phone, (518) 402-8396, E-mail: air.regs@dec.ny.gov

Response:

Previously, because law enforcement officers do not “brandish” their weapons, the Division adopted a definition of brandish that was analogous to use and discharge for firearms, and use and deploy for impact weapons and electronic control weapons.

In consultation with key stakeholders, including endorsement by the Council, the Division revised the definitions pertaining to a chemical agent, firearm, electronic control weapon, and impact weapon. The following is the new definitional language that addresses the comments received.

1. displays a chemical agent by pointing a chemical agent at a person or persons; or
2. uses/deploys a chemical agent by operating the chemical agent against a person or persons in a manner capable of causing physical injury as defined in article 10 of the Penal Law; or
3. brandishes a firearm by pointing a firearm at a person or persons; or
4. uses/discharges a firearm by discharging a firearm at or in the direction of a person or persons; or
5. brandishes an electronic control weapon by pointing an electronic control weapon at a person or persons; or
6. uses/deploys an electronic control weapon by operating an electronic control weapon against a person or persons in a manner capable of causing physical injury as defined in article 10 of the Penal Law; or
7. brandishes an impact weapon by pointing an impact weapon at a person or persons; or
8. uses/deploys an impact weapon by operating an impact weapon against a person or persons in a manner capable of causing physical injury as defined in article 10 of the Penal Law; or
9. uses a chokehold or other similar restraint, which is any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air; or
10. engages in conduct which results in the death or serious bodily injury of another person. Serious bodily injury means a bodily injury that creates or causes a substantial risk of death; or unconsciousness; or serious and protracted disfigurement; or protracted loss or impairment of the function of any bodily member, organ or mental faculty.

Comment:

...original regulations used the definition of § 837-t which includes a bodily injury involving “protracted and obvious disfigurement.” The change in the new regulations to “serious and protracted disfigurement” will invite police discretion in deciding if a protracted disfigurement is “serious” enough to report.

Response:

The change to “serious and protracted disfigurement” is to make the regulatory definition of serious bodily injury consistent with the definition of serious physical injury under NYS Penal Law. Further, a protracted disfigurement or loss, especially if obvious, is a serious injury. Accordingly, the proposed definition is warranted, and no further revisions are made.

Comment:

The employer reporting requirements in § 6058.3 and 6058.5 also contain errors that will result in serious underreporting, in derogation of the statutory intent. Under these sections, while the race, sex, ethnicity and age would be reported of all persons “engaging in the use of force,” such demographic information exposed to the same use of force would only be provided if the person or persons “suffer[ed] an injury from the use of force.” The “injury” referred to in § 837-t(2), the demographic reporting subdivision, clearly refers to exposure to the use of force. The proposed regulation, as worded, may be misunderstood to mean that demographic information only need be reported concerning persons who actually suffer a bodily injury. This would mean that key demographic data, such as whether chokeholds are being used disproportionately on specific demographic groups, would not be reported.

Response:

The regulatory language is taken verbatim from Executive Law § 837-t. Accordingly, since the proposal is supported by statute, no further revisions are made.

Department of Environmental Conservation

NOTICE OF ADOPTION

Emission Statements

I.D. No. ENV-17-20-00006-A

Filing No. 710

Filing Date: 2020-11-03

Effective Date: 30 days after filing

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Subpart 202-2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: Emission Statements.

Purpose: The purpose of this rule making is to require electronic submittal of annual emission statements beginning in 2022.

Substance of final rule: The purpose of 6 NYCRR Subpart 202-2 is to establish the requirements for annual emission statements filed by facilities subject to Title V permits. The New York State Department of Environmental Conservation (DEC) is proposing revisions to Subpart 202-2 to require electronic submittal of annual emission statements. This requirement will be phased in beginning with Title V permits issued in 2021. A summary of the revisions to Subpart 202-2 are presented in this document.

Changes to Section 202-2.1, “Applicability:” A new subdivision 202-2.1(c) mandates the electronic submittal of emission statements. The new requirement will be included as an enforceable condition in new or renewed Title V permits issued after January 1, 2021. Further, by reporting year 2025, all emission statements will be subject to the electronic submittal requirement.

Changes to Section 202-2.3, “Required contents of an emission statement:” The first sentence of paragraph 202-2.3(a)(1) has been revised to read: “(A) responsible official must sign a form or other legal instrument provided by the department to certify the emission statement information” (proposed new text underlined). In addition, subparagraph 202-2.3(a)(3)(ix) was modified to require that the sum of the percent operation by season reported in emission statements must equal 100. Further, subparagraph 202-2.3(a)(3)(xii) was modified to state that reporting of emissions for processes with source classification codes beginning with a 1 or a 2 is optional. If the facilities don’t report emissions for these processes, DEC will calculate process-level emissions based upon the process-level fuel use reported by a facility. Subdivision 202-2.3(d) has been edited to state that facilities with Title V operating permits will receive emission statement survey forms provided by the Department. Finally, subdivision 202-2.3(e) was revised to require that facilities report emissions of SO₂, primary PM_{2.5}, and primary PM₁₀ for exempt sources during periodic inventory years in addition to the pollutants listed in the current version of the rule.

Changes to Section 202-2.4, “Procedures:” Subdivision 202-2.4(a) was repealed and replaced. New paragraph 202-2.4(a)(1) and 202-2.4(a)(2) will maintain the current April 15th deadline for submitting emissions statements until such time that a facility is subject to the electronic reporting requirement. New paragraph 202-2.4(a)(3) establishes the following deadlines for submitting emission statements under the new electronic submittal requirement:

- a) March 15th of each year for facilities with three (3) or fewer processes listed in their Title V permit;
- b) March 31st of each year for facilities with four (4) to six (6) processes listed in their Title V permit;
- c) April 15th of each year for facilities with seven (7) to twelve (12) processes listed in their Title V permit; or
- d) April 30th of each year for facilities with thirteen (13) or more processes listed in their Title V permit.

New paragraph 202-2.4(d) sets forth situations in which emission statements may be submitted via courier instead of electronic submittal:

- a) when data cannot be labeled as confidential business information using the Department’s electronic interface in accordance with 6 NYCRR Part 616; or
- b) a facility receives permission from the Department after demonstrat-

ing a need to submit via courier due to a failure of the electronic reporting interface.

Subdivisions 202-2.4(b) and 202-2.4(c) were modified to account for the change in the due date for submitting emission statements from April 15th of each year to the dates provided in paragraph 202-2.4(a)(3).

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 202-2.1(a)(1), 202-2.2, (b)(20), (21), (22), (23), (24), 202-2.3(a)(3)(vi), (vii), (viii), (xii), (e), 202-2.4(a)(2), (3) and (4)(ii).

Text of rule and any required statements and analyses may be obtained from: Carlos Mancilla, P.E., Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form and a Coastal Assessment Form have been prepared and are on file.

Summary of Revised Regulatory Impact Statement

INTRODUCTION

The Department of Environmental Conservation (DEC) has revised Subpart 202-2 to require the electronic submission of annual Emission Statements beginning in 2022 (for calendar year 2021 emissions reporting) for facilities subject to Title V of the Clean Air Act (CAA). Electronic reporting has been available for Title V facilities since 2011 (for calendar year 2010 emissions reporting).

STATUTORY AUTHORITY

The statutory authority for the promulgation of 6 NYCRR Part 202-2 is found in the New York State Environmental Conservation Law (ECL), Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105.

LEGISLATIVE OBJECTIVES

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure

protection of the public health and welfare, the natural resources of the state, and physical property by integrating industrial development with sound environmental practices. It is the policy of the state to require the use of all available, practical and reasonable methods to prevent and control air pollution in New York. To facilitate this objective, the Legislature granted specific powers and duties to the DEC, including the power to adopt and promulgate regulations to prevent, control and prohibit air pollution. The provisions cited above clearly provide the DEC with the requisite authority to create this regulation.

NEEDS AND BENEFITS

Background

Section 182(a)(3)(B) of the CAA required states to revise state implementation plans by November 15, 1990 to require owners or operators of stationary sources to submit emission statements on an annual basis beginning in 1993. The requirements for emission statements are set forth in EPA's Air Emissions Reporting Requirements rule (AERR, see 40 CFR 51). In order to implement the emissions statement requirements referenced above, the DEC adopted 6 NYCRR Subpart 202-2, "Emission Statements" on July 15, 1994. Subpart 202-2 was subsequently revised on April 29, 2005.

Pursuant to Section 202-2.4 of the current rule, emission statements must be submitted by April 15th of each year. Emission statements were submitted on paper only from 1993 through 2010. Since 2011 (for calendar year 2010 emissions reporting), facilities have had the option of submitting emission statements via paper or electronically. In 2019 (for calendar year 2018 emissions reporting), 62 percent of facilities in New York subject to Title V of the CAA submitted their emission statement electronically.

The DEC's Division of Air Resources (DAR) must develop an estimate of the billable emissions from the prior year by June 1st of each year. For emissions statements that have not been processed as of June 1st, emissions are estimated based on the emissions reported in the last emissions statement submitted or a facility's potential-to-emit if no prior statement has been submitted. This estimate is factored into the annual "Operating Permit Program Fee Rule" (6 NYCRR Subpart 482-2) which must be posted in the Environmental Notice Bulletin and filed with the Department of State by July 1st of each year¹ or 30 days after the state budget is passed, whichever is later.

DEC issues invoices for fee bills to facilities subject to Title V of the CAA on or about September 1st of each year. In order to meet that deadline, all emission statements must be processed by August 1st of each year to allow sufficient time to conduct quality assurance audits and prepare invoices.

This rulemaking will affect how facilities submit emission statements to DEC beginning in 2022 for the 2021 reporting period. DEC has revised the regulation to require that emission statements be submitted electronically. The compliance schedule and exceptions to the electronic reporting requirement are outlined below.

Electronic Reporting Schedule

The new electronic reporting requirement will apply to facilities issued a new or renewed Title V permit on or after January 1, 2021. The first reporting year in which the electronic reporting requirement will apply is the year of permit issuance. For example, a facility issued a new or renewed Title V permit during calendar year 2023 must submit emission statements electronically beginning in 2024 (for calendar year 2023 emissions reporting). All emission statements submitted in 2026 (for calendar year 2025 emissions reporting) and thereafter must be submitted electronically except under certain situations (see below).

The due dates for submitting an annual emission statement will be based on the number of processes listed in a Title V permit as follows:

1. March 15th of each year for facilities with 3 or fewer processes listed in a Title V permit;
2. March 31st of each year for facilities with 4 to 6 processes listed in a Title V permit;
3. April 15th of each year for facilities with 7 to 12 processes listed in a Title V permit; or
4. April 30th of each year for facilities with 13 or more processes listed in a Title V permit.

This schedule was established based upon a review of the number of processes listed in Title V permits as of February 28, 2019. The data generated during that review was divided into quartiles. It was assumed that, in general, the level of effort required to prepare an emission statement is directly proportional to the number of processes for which emissions are reported.

Facilities subject to electronic reporting may submit an emission statement via courier (e.g., United States Postal Service) under the following situations:

1. a facility cannot designate data (e.g., process-throughputs) considered confidential business information using the electronic reporting interface; or
2. a facility receives permission from the DEC due to a failure of the electronic interface or other related problems.

In cases where one of the above exemptions apply, the emission statement due date will continue to be based upon the above-referenced schedule.

Benefits

It is anticipated that after the first electronic submittal the process for submitting emission statements should be simpler with a lower overall cost. The first electronic submittal may take more time to complete than a paper copy depending on the complexity of the processes at a facility (e.g., some industrial processes emit dozens of pollutants). DEC has looked into steps to minimize this initial burden (e.g., DEC could pre-populate pollutants at the process level).

From the second year on, the list of pollutants for each process will be saved in the electronic reporting system. As a result, facilities would need only to enter process throughput and emissions data along with any facility process changes that occurred during the reporting year. DEC anticipates this will reduce the level of effort required to prepare and submit subsequent electronic emission statements.

DEC issued a policy document (DAR-11) on August 19, 2009 that describes the three roles facility staff (or consultants) may have in preparing, reviewing and submitting emissions statements electronically (see: <http://www.dec.ny.gov/chemical/55796.html>). The three roles are:

1. Responsible Official – The term 'Responsible Official' is defined at 6 NYCRR 201-2(b)(28) as a company officer, elected official or other person who has the authority to legally bind an entity which operates a facility subject to Part 201. A Responsible Official may enter data on the website and may submit a report to the DEC.
2. Report Editor – may enter data on the website but may not submit a report to the DEC.
3. Report Reviewer – has read-only access to the electronic website. A Report Reviewer may review data entered on the website, but may not revise the data.

The revised rule will be beneficial to DEC for a number of reasons including the following. First, electronic submittal and uploads to DEC's emissions database reduces the level of effort necessary to manually input data into DEC's emissions inventory database. Second, the level of accuracy of the data uploaded into the emissions database would be greater because the manual input of data will be minimized. Third, the annual fee bill estimate would be more accurate because a higher percentage of statements would be processed prior to June 1st. Fourth, all the statements could be processed by the August 1st deadline in order to initiate the process of preparing invoices for the Title V fee bills. Finally, electronic storage of emission statements will simplify file management.

COSTS

It is estimated that the average cost to prepare and submit emission statements on paper is \$900 per facility or six hours per facility.² For the average facility, utilizing the current electronic reporting system for the

first-time costs approximately \$1,200 (eight hours per facility), but these costs are expected to decrease to \$450 (three hours per facility) for each time thereafter. It is expected that uploading data electronically will be much easier after the initial submission because subsequent emissions data can be uploaded via DEC-provided templates (Excel files). The simple payback period is estimated at 1.8 years.

The review and processing of paper emissions statements cost DEC approximately \$480 (approximately six hours) per facility.³ The review of a similar report, submitted electronically, costs approximately \$160 (approximately two hours per facility). Therefore, the annual savings for DEC are anticipated to be \$43,200 per year (\$320 times 135 facilities that currently submit paper copies of their emission statements).

LOCAL GOVERNMENT MANDATES

The rule revision, does not impose any program, service, duty, or responsibility on any county, city, town, village, school district, fire district or other special district. Some government entities operate Title V facilities and some of them already submit their emission statements electronically.

PAPERWORK

The rule revision changes the format in which emission statements are submitted from paper to electronic.

After the first emission statement is submitted electronically, the process of preparing an electronic emission statement should be simpler than it was for paper submittals. The process of certifying an emission statement will be more complex because the responsible official for a facility must apply for and use an electronic signature.

DUPLICATION

The rule does not duplicate, overlap or conflict with any federal or state legal requirement.

ALTERNATIVES

1. No Action: The current process for submitting and processing emission statements would remain in place. DAR staff would try to encourage more facilities to submit electronically, but, without a regulatory requirement, it is not expected that the number of electronic filings would increase significantly.

2. Require Electronic Submittal of Emission Statements by April 15th beginning in 2022: There are two concerns under this scenario. First, there are approximately 135 facilities that would need to be enrolled into the electronic reporting system which constitutes a significant workload for DEC. As a result, DEC spread this workload over five (5) years in order to allow for a smooth transition to electronic reporting of emission statements. Second, staggered reporting dates, as set forth in the revised rule, will minimize traffic on the server at any given time. If there is a single compliance date, server overloading could occur which would become a burden to the regulated community and DEC.

FEDERAL STANDARDS

The rule does not exceed any minimum standards of the federal government for the submission of annual emission reports.

COMPLIANCE SCHEDULE

Electronic submittal of emission statements will be included as an enforceable condition in new or renewed Title V permits issued after January 1, 2021. For each Title V facility, the first reporting year the electronic submittal mandate will apply will be the reporting year in which the permit was issued or renewed. All emission statements submitted in 2026 (for calendar year 2025 emissions reporting) and thereafter must be submitted electronically.

The annual due dates for submitting an annual emission statement will be based on the number of processes listed in a Title V permit as follows:

1. March 15th of each year for facilities with 3 or fewer processes listed in a Title V permit;
2. March 31st of each year for facilities with 4 to 6 processes listed in a Title V permit;
3. April 15th of each year for facilities with 7 to 12 processes listed in a Title V permit; or
4. April 30th of each year for facilities with 13 or more processes listed in a Title V permit.

¹ See Environmental Conservation Law Section 72-0303.

² Assuming a labor cost of \$150 per hour. This is based on an informal survey of consultants that complete emission statements.

³ Assumptions: Grade 24 pay rate of \$97,448 per year and an overhead rate of 62.48 percent. Per: <https://www.osc.state.ny.us/agencies/guide/MyWebHelp/#VII/9/9.htm>.

Revised Regulatory Flexibility Analysis

The Department of Environmental Conservation (DEC) has revised Subpart 202-2 to require electronic submittal of annual Emission Statements beginning in 2022 (for calendar year 2021 emissions reporting) for facilities subject to Title V of the Clean Air Act (CAA). Emission statements were submitted on paper only from 1993 through 2010. Since 2011

(for calendar year 2010 emissions reporting), facilities have had the option of submitting emission statements via paper or electronically through DEC's Air Compliance and Emissions (ACE) Electronic Reporting Tool. It is expected that electronic reporting will be beneficial for both Title V facilities, in the long term, and DEC. These benefits include reduced costs, processing time, and improved accuracy and file management.

EFFECT OF THE RULE

This rule will apply to facilities subject to Title V permitting requirements. There are local governments (cities, towns and counties) and small businesses that own and operate Title V facilities that will have to submit their emission statements electronically instead of on paper. Facilities operated by local governments include wastewater treatment plants, municipal waste combustors, landfills and waste-to-energy facilities. Facilities owned and operated by small businesses include printing operations, small power plants, compressor stations and small manufacturing facilities.

COMPLIANCE REQUIREMENTS

This rulemaking will affect how facilities submit emission statements to DEC beginning in 2022 for the 2021 reporting period. The new electronic reporting requirement will apply to facilities issued a new or renewed Title V permit on or after January 1, 2021. The first reporting year in which the electronic reporting requirement will apply is the year of permit issuance. For example, a facility issued a new or renewed Title V permit during calendar year 2023 must submit emission statements electronically beginning in 2024 (for calendar year 2023 emissions reporting). All emission statements submitted in 2026 (for calendar year 2025 emissions reporting) and thereafter must be submitted electronically except under certain situations (see below).

The due dates for submitting an annual emission statement will be based on the number of processes listed in a Title V permit as follows:

1. March 15th of each year for facilities with 3 or fewer processes listed in a Title V permit;
2. March 31st of each year for facilities with 4 to 6 processes listed in a Title V permit;
3. April 15th of each year for facilities with 7 to 12 processes listed in a Title V permit; or
4. April 30th of each year for facilities with 13 or more processes listed in a Title V permit.

Facilities subject to electronic reporting may submit an emission statement via courier (e.g., United States Postal Service) under the following situations:

1. a facility cannot designate data (e.g., process-throughputs) that are considered confidential business information using the electronic reporting interface; or
2. a facility receives permission from the DEC due to a failure of the electronic interface or other related problems.

In cases where one of the above exemptions apply, the emission statement due date will still be based upon the above-referenced schedule.

PROFESSIONAL SERVICES

Many facilities hire consultants to prepare emission statements. These consultants, some of which are small businesses, will need to learn how to use the electronic reporting system. No adverse impacts to consultants are anticipated as a result of the revised rule. Small businesses and local governments are not required to hire consultants to prepare electronic emission statements to comply with this rule.

COMPLIANCE COSTS

It is estimated that the average cost to prepare and submit emission statements on paper is \$900 per facility or six hours per facility.¹ For the average facility, utilizing the current electronic reporting system for the first-time costs approximately \$1,200 (eight hours per facility), but these costs are expected decrease to \$450 (three hours per facility) for each time thereafter. It is expected that uploading data via the current electronic reporting system will be much easier after the initial submission because subsequent emissions data can be uploaded via templates (Excel files) provided by DEC. The simple payback period is estimated at 1.8 years.

The review and processing of paper emissions statements cost DEC approximately \$480 (approximately six hours) per facility.² The review of a similar report, submitted electronically, costs approximately \$160 (approximately two hours per facility). Therefore, the annual savings for DEC are anticipated to be \$43,200 per year (\$320 times 135 facilities that currently submit paper copies of their emission statements). In addition to these monetary savings for DEC and the regulated community, this revision will eliminate much of the handling and storage of paper files.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The technical and economic feasibility of submitting emission statements electronically are demonstrated by the electronic submission progression (see Table 1). Each year more facilities submit their emissions statements electronically while very few revert back to submitting statements on paper after submitting a statement electronically. This is an indication that those facilities that have submitted emissions statements

electronically prefer the electronic mode of reporting over submitting paper reports to DEC.

Table 1: SUBMISSION THRU ACE PROGRESSION

Year	Number Facilities Submitting	Number Facilities Submitting Electronically	Percent Facilities Submitting Electronically
2010	435	79	18
2011	430	121	28
2012	414	165	40
2013	401	171	43
2014	402	180	45
2015	390	192	49
2016	386	213	55
2017	375	218	58
2018	360	224	62

MINIMIZING ADVERSE IMPACT

There are three components incorporated into the proposed rule designed to reduce adverse impacts to facilities subject to the rule. First, applicability to the rule is staggered over a multi-year period to allow an orderly process for registering new users to the current electronic reporting system. Second, the due dates for submitting annual emission statements are staggered over the period of March 15th through April 30th of each year to reduce congestion on the server. Finally, exceptions to the electronic reporting requirement are included in the proposed rule based on feedback from stakeholders.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

DEC held stakeholder meetings via webinars in May 2018 and August 2019. Representatives from Title V facilities and consultants, including any small business and local governments affected, that prepare emission statements were invited to participate on the webinars.

CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in the revisions to Part 202-2. The revised regulation will not result in immediate violations or impositions of penalties for existing facilities. While revisions to Part 202-2 will become effective immediately after promulgation, to help reduce impacts on affected sources, the compliance period is phased in between 2022 and 2026.

INITIAL REVIEW

The initial review of this rule shall occur within the third year after this rule is adopted.

¹ Assuming a labor cost of \$150 per hour. This is based on an informal survey of consultants that complete emission statements.

² Assumptions: Grade 24 pay rate of \$97,448 per year and an overhead rate of 62.48 percent. Per: <https://www.osc.state.ny.us/agencies/guide/MyWebHelp/#VII/9/9.htm>.

Revised Rural Area Flexibility Analysis

INTRODUCTION

The Department of Environmental Conservation (DEC) has revised Subpart 202-2 to require electronic submission of annual Emission Statements beginning in 2022 (for calendar year 2021 emissions reporting) for facilities subject to Title V of the Clean Air Act (CAA). Electronic reporting has been available for Title V facilities since 2011 (for calendar year 2010 emissions reporting). It is expected that electronic reporting will be beneficial for both Title V facilities, in the long term, and DEC. These benefits include reduced costs, processing time, and improved accuracy and file management.

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED

This rule will affect Title V facilities located in rural areas throughout New York State.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

Section 182(a)(3)(B) of the CAA required states to revise State Implementation Plans by November 15, 1990 to require the owners or operators of stationary sources to submit emission statements on an annual basis beginning in 1993. The requirements for emission statements are set forth in EPA's Air Emissions Reporting Requirements rule (AERR, see 40 CFR 51). In order to implement the emissions statement requirements referenced above, DEC adopted 6 NYCRR Subpart 202-2, "Emission Statements" on July 15, 1994. Subpart 202-2 was subsequently revised on April 29, 2005.

Emission statements were submitted on paper only from 1993 through 2010. Since 2011 (for calendar year 2010 emissions reporting), facilities have had the option of submitting emission statements via paper or electronically through DEC's Air Compliance and Emissions (ACE) Electronic Reporting Tool.

This rulemaking will affect how facilities submit emission statements to DEC beginning in 2022 (for calendar year 2021 emissions reporting). The new electronic reporting requirement will apply to facilities issued a new or renewed Title V permit after January 1, 2021. The first reporting year in which the electronic reporting requirement will apply is the year of permit issuance. For example, a facility issued a new or renewed Title V permit during calendar year 2023 must submit emission statements electronically beginning in 2024 (for calendar year 2023 emissions reporting). All emission statements submitted in 2026 (for calendar year 2025 emissions reporting) and thereafter must be submitted electronically except under certain situations (see below).

The due dates for submitting an annual emission statement will be based on the number of processes listed in a Title V permit as follows:

1. March 15th of each year for facilities with 3 or fewer processes listed in a Title V permit;
2. March 31st of each year for facilities with 4 to 6 processes listed in a Title V permit;
3. April 15th of each year for facilities with 7 to 12 processes listed in a Title V permit; or
4. April 30th of each year for facilities with 13 or more processes listed in a Title V permit.

Facilities subject to electronic reporting may submit an emission statement via courier (e.g., United States Postal Service) under the following situations:

1. a facility cannot designate data (e.g., process-throughputs) that are considered confidential business information using the electronic reporting interface; or
2. a facility receives permission from the DEC due to a failure of the electronic interface or other related problems.

In cases where one of the above exemptions apply, the emission statement due date will still be based upon the above-referenced schedule.

COSTS

It is estimated that the average cost to prepare and submit emission statements on paper is \$900 per facility or six hours per facility.¹ For the average facility, utilizing the current electronic reporting system for the first-time costs approximately \$1,200 (eight hours per facility), but these costs are expected decrease to \$450 (three hours per facility) for each time thereafter. It is expected that uploading data via the current electronic reporting system will be much easier after the initial submission because subsequent emissions data can be uploaded via DEC-provided templates (Excel files). The simple payback period is estimated at 1.8 years.

The review and processing of paper emissions statements cost DEC approximately \$480 (approximately six hours) per facility.² The review of a similar report, submitted electronically, costs approximately \$160 (approximately two hours per facility). Therefore, the annual savings for DEC are anticipated to be \$43,200 per year (\$320 times 135 facilities that currently submit paper copies of their emission statements). In addition to these monetary savings for DEC and the regulated community, this revision would eliminate much of the handling and storage of paper files in this context.

MINIMIZING ADVERSE IMPACT

There are three components incorporated into the revised rule designed to reduce adverse impacts to facilities subject to the rule. First, applicability to the rule is staggered over a multi-year period to allow an orderly process for registering new users to the current electronic reporting system. Second, the due dates for submitting annual emission statements are staggered over the period of March 15th through April 30th of each year to reduce congestion on the server. Finally, exceptions to the electronic reporting requirement are included in the revised rule based on feedback from stakeholders.

RURAL AREA PARTICIPATION

All Title V facilities, including those located in rural areas, had the opportunity to participate in the rule making process by participating in stakeholder webinars held in May 2018 and August 2019 and providing feedback to DEC.

INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

¹ Assuming a labor cost of \$150 per hour. This is based on an informal survey of consultants that complete emission statements.

² Assumptions: Grade 24 pay rate of \$97,448 per year and an overhead rate of 62.48 percent. Per: <https://www.osc.state.ny.us/agencies/guide/MyWebHelp/#VII/9/9.htm>.

Revised Job Impact Statement**INTRODUCTION**

The Department of Environmental Conservation (DEC) has revised Subpart 202-2 to require electronic submissions of annual Emission Statements beginning in 2022 (for calendar year 2021 emissions reporting) for facilities subject to Title V of the Clean Air Act (CAA). Electronic reporting has been available for Title V facilities since 2010. It is expected that electronic reporting will be beneficial for both Title V facilities, in the long term, and DEC.

NATURE OF IMPACT

There are no expected negative impacts on jobs or employment opportunities from these revisions. The same staff that prepare paper copies of emission statements can prepare electronic reports.

CATEGORIES AND NUMBER OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED

There are several categories of employment opportunities affected, however no adverse impacts to those opportunities are anticipated. Among the categories affected are:

1. Consultants

Several facilities contract out emission statement development to consulting firms. These firms will still be able to create emissions statements in formats appropriate to submit through the DEC's electronic reporting system. There are some changes in format, but this is not expected to impact employment opportunities at consulting firms.

2. Facility Engineers, Environmental, and Health Professionals

In most cases facility personnel create annual emission statements. This rule will change the way facilities report their emissions, but no changes in employment opportunities are anticipated.

3. DEC staff

The level of effort required to process emission statements will be reduced as a result of this rule. This will allow staff to address other DEC priorities. No impacts on employment opportunities at DEC are anticipated.

REGIONS OF ADVERSE IMPACT

The rule revision will apply statewide. No adverse impacts to employment opportunities are anticipated in any region of the state.

MINIMIZING ADVERSE IMPACT

No measures have been taken to minimize any unnecessary adverse impact on existing jobs since no negative impacts are expected to occur from this rule revision.

SELF-EMPLOYMENT OPPORTUNITIES

No adverse impacts to self-employment opportunities are anticipated from this rule revision.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2023, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2025, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION**Medication Regimen Review**

I.D. No. PDD-35-20-00001-A

Filing No. 711

Filing Date: 2020-11-03

Effective Date: 2020-11-18

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 633.17 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Medication regimen review.

Purpose: Provides increased flexibility for providers.

Text or summary was published in the September 2, 2020 issue of the Register, I.D. No. PPD-35-20-00001-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Mary Beth Babcock, Office for People With Developmental Disabilities, 44 Holland Avenue, Albany, NY 12229, (518) 474-7700, email: rau.unit@opwdd.ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment and an E.I.S. is not needed.

Assessment of Public Comment

The agency received no public comment.

Department of Health

NOTICE OF ADOPTION**Empire Clinical Research Investigator Program (ECRIP)**

I.D. No. HLT-47-19-00009-A

Filing No. 709

Filing Date: 2020-11-02

Effective Date: 2020-11-18

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 86-1.46 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-m(5-a), (b)

Subject: Empire Clinical Research Investigator Program (ECRIP).

Purpose: To expand the types of and change the time frames for past research grants that qualify staff to supervise the ECRIP project.

Text or summary was published in the November 20, 2019 issue of the Register, I.D. No. HLT-47-19-00009-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of Program Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqa@health.ny.gov

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED**Recommendations of the DPS Staff Report to Improve Hudson Valley Water's Service**

I.D. No. PSC-46-20-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering the recommendations of a DPS Staff report regarding Hudson Valley Water Companies, Inc.'s provision of water service and the need for improvement.

Statutory authority: Public Service Law, sections 89-b, 89-c, 89-i and 89-j

Subject: Recommendations of the DPS Staff report to improve Hudson Valley Water's service.

Purpose: To determine if approving the DPS Staff's recommendations is in the public interest.

Public hearing(s) will be held at: 4:00 p.m., Jan. 19, 2021. The Public Hearing will be held online and by telephone. Details for access will be published via Notice at the DPS website (www.dps.ny.gov) under Case 20-W-0477.*

*On occasion, there are requests to reschedule or postpone hearing