

Regulatory Impact Statement Summary

6 NYCRR Part 496, Statewide Greenhouse Gas Emission Limits

On July 18, 2019 Governor Cuomo signed into law the Climate Leadership and Community Protection Act, Chapter 106 of the Laws of 2019 (CLCPA). Among other requirements, the CLCPA adds a new Article 75 to the Environmental Conservation Law (ECL), including ECL Section 75-0107. This section directs the Department of Environmental Conservation (the Department) to adopt regulations establishing statewide emission limits. Therefore, the Department is proposing 6 NYCRR Part 496, Statewide Greenhouse Gas Emission Limits (the “proposed rule” or “Part 496”). As called for in ECL Section 75-0107, the proposed rule will establish the two statewide greenhouse gas emission limits called for in the CLCPA: a limit for 2030 that is equal to 60% of 1990 greenhouse gas emission levels and a limit for 2050 that is equal to 15% of 1990 emission levels.¹ Part 496 will translate the statewide percentage emission reduction requirements, as set forth in the CLCPA, into tonnage limits based on carbon dioxide equivalents.

The statewide emission limits established by the proposed rule will be the foundation for multiple components of the CLCPA and are critically important for the successful implementation of the CLCPA. For example, the Scoping Plan to be developed by the Climate Action Council must outline recommendations regarding regulatory measures and other State actions to ensure attainment of the statewide greenhouse gas emission limits. Similarly, the statewide greenhouse gas emission limits established in Part 496 will serve as the baseline for the promulgation of future regulations by the Department under the CLCPA, which the CLCPA requires to ensure compliance with the statewide emission reduction limits. ECL § 75-0109.

¹ The CLCPA also establishes a net zero emission reduction goal, which while not part of the proposed rule will be addressed by the Climate Action Council as part of its Scoping Plan. ECL Section 75-0103(11).

1. Statutory Authority

The statutory authority to promulgate this rulemaking is derived from ECL Section 75-0107, as added by the CLCPA. This section of the ECL directs the Department to promulgate a regulation that establishes statewide greenhouse gas emission limits as specified percentages of estimated 1990 emissions, expressed in tons of carbon dioxide equivalents. The adoption of Part 496 will fulfill this statutory directive.

2. Legislative Objectives

The CLCPA, as provided in ECL Section 75-0107, directs the Department to establish a statewide greenhouse gas emissions limit for the years 2030 and 2050 equal to sixty (60) percent and fifteen (15) percent of 1990 emissions, respectively. The proposed rule seeks to implement this requirement by establishing an estimate of total statewide greenhouse gas emissions in 1990, or a baseline, and then establishing emission limits as a percent of that baseline. Both the 1990 baseline and the emission limits for 2030 and 2050 are expressed in millions of metric tons of carbon dioxide equivalent.

In determining the scope of the emission sources and gases to be included in the estimation of 1990 emissions, the Department followed the requirements in Section 75-0107 and other related provisions of the CLCPA. The Department generally used protocols established by the Intergovernmental Panel on Climate Change (IPCC), which is a scientific body convened to support the United Nations Framework Convention on Climate Change (UNFCCC). To the extent the CLCPA establishes requirements that differ from the IPCC protocol, the Department followed the CLCPA provisions. Overall, the Department's objective in developing the proposed rule was to estimate 1990 emission levels using the best and most reliable information available.

In addition to this proposed rule, which is based on an estimate of 1990 emission levels, the CLCPA requires the Department to issue an annual statewide greenhouse emissions report. ECL § 75-0105. The

Department will continue to incorporate appropriate new information regarding all relevant sources as part of the annual emissions reports.

The CLCPA directs the Department to set greenhouse gases on a common scale using the carbon dioxide equivalence metric (CO₂e) and the 20-year Global Warming Potential (GWP20) of each gas, which the Department derived from the IPCC Fifth Assessment Report (AR5).² In addition, the CLCPA establishes that the statewide emission limit, and therein the emission reduction requirements of the CLCPA, include certain emission sources that are located outside of the State borders. ECL § 75-0101(13) defines statewide greenhouse gas emissions as including emissions associated with imported electricity and fossil fuels. The proposed rule is consistent with these statutory objectives.

Finally, the CLCPA's 100 percent emission reduction goal,³ or a goal of attaining net zero emissions, is not part of the Legislature's direction to the Department for promulgating the statewide emission limits.⁴ Hence, the proposed rule includes anthropogenic emissions, but not removals of these emissions, such as through carbon sequestration and storage in plants. A more thorough assessment of removals and net emissions from land use in New York will be included in the annual emissions reporting required by the CLCPA. The proposed rule establishes regulatory limits based on a percentage of gross 1990 emissions as opposed to net emissions, as required by the CLCPA.

3. Needs and Benefits

² IPCC. 2013. Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., et al. eds] Cambridge University Press. 1585pp.

³ CLCPA §1.4 states that "it shall therefore be the goal of the state of New York to reduce greenhouse gas emissions from all anthropogenic sources 100% over 1990 levels by the year 2050." See also ECL 75-0103(11).

⁴ e.g., ECL §75-0107(1) and ECL §75-0103(11) separates these components and directs the climate action council to prepare a scoping plan for meeting "the statewide greenhouse gas emission limits...and for the reduction of emissions beyond eighty-five percent, net zero emissions in all sectors of the economy."

The CLCPA includes multiple actions that reference the statewide greenhouse gas emission limits established by this rule and therefore will rely on the data and content herein. This includes, but is not limited to, the development of a scoping plan by the Climate Action Council, the issuance of an annual statewide greenhouse gas emissions report, the promulgation of regulations, and the publishing of an implementation report by the Department. ECL §§ 75-0103, 75-0105, 75-0109, and 75-0119. The CLCPA also requires that all State agencies, offices, authorities, and divisions consider the attainment of the statewide greenhouse gas emission limits established in ECL Article 75 in considering and issuing permits, licenses, and other administrative approvals and decisions. CLCPA § 7(2).

Description of Sectoral Methods and Results

The New York State Energy Research and Development Authority (NYSERDA) has provided a regularly-updated inventory of greenhouse gas emissions in the state that follows standard IPCC protocol.⁵ As discussed, the CLCPA established certain key requirements that differ from the IPCC protocol. Hence, the Department worked with NYSERDA in 2020 to evaluate the 1990 baseline and conduct new analyses as needed for this rulemaking. New analyses were not required in all cases, as the new requirements of the CLCPA do not completely differ from the methodology historically used by NYSERDA. As such, many components of the estimates provided here are the same or similar to the previous State inventory.

Analytic methods, data sources, and results are described for each of four major IPCC sectors⁶: Energy, Industrial Processes and Product Use (IPPU), Agriculture Forestry and Other Land Use (AFOLU), and Waste. Each section below represents a separate set of analyses and results that together form the 1990 baseline summarized in Table 1, which is used to establish the statewide greenhouse gas emission limits.

⁵ NYSERDA. 2019a. New York State Greenhouse Gas Inventory: 1990-2016.

⁶ IPCC. 2019. *op. cit.*

Table 1. Total Statewide Greenhouse Gas Emissions in 1990 by IPCC Sector and Gas, in GWP20. Totals may not sum due to independent rounding.

Sector	MMTCO ₂ e (AR5 - 20 year GWP)							Total
	CO ₂	CH ₄	N ₂ O	PFCs	HFCs	SF ₆	NF ₃	
Energy	259.96	71.76	1.32	-	-	4.00	-	337.04
IPPU	1.76	0.00	0.00	0.90	0.05	0.01	0.00	2.72
AFOLU	0.05	13.07	4.01	-	-	-	-	17.13
Waste	3.03	49.35	0.50	-	-	-	-	52.88
Total	264.80	134.19	5.83	0.90	0.05	4.01	0.00	409.78

1. Energy

The Energy sector includes five (5) main categories: (a) Fuel Combustion, (b) Fugitive Emissions, (c) Electricity Transmission, (d) Imported Fuels, and (e) Imported Electricity. The latter two categories are not included in IPCC protocol or other governmental greenhouse gas inventories, but as described above are two key distinct requirements of the CLCPA for this rulemaking. These two categories represent an estimate of what may be referred to as the lifecycle, fuel cycle, or out-of-state upstream emissions associated with in-state energy demand and consumption.

2. Industrial Processes and Product Use (IPPU)

The Industrial Process and Product Use (IPPU) sources assessed for the 1990 baseline are organized into five (5) categories: Mineral Industry, Chemical Industry, Metal Industry, Electronics Industry, and Product Uses.

3. Agriculture Forestry and Other Land Use (AFOLU)

Under the IPCC protocol, the Agriculture Forestry and Other Land Use sector includes emission sources and removals associated with land management in four (4) categories: Livestock, Land Use, Aggregated Sources,

and Other. As discussed, because the emission limit in the proposed rule is a gross rather than net limit, anthropogenic emissions are included in the proposed rulemaking, but not removals.

4. Waste

The Waste sector includes four (4) categories of emission sources: Solid Waste Disposal, Biological Treatment of Solid Waste, Waste Combustion, and Wastewater.

Stakeholder Outreach

The Department conducted pre-proposal, stakeholder outreach starting the date on which the CLCPA went into effect, or January 1, 2020, through May 2020. This included two public webinars held on February 14 and 28, 2020 to discuss the scope and key considerations of this rulemaking as well as other presentations and meetings with various stakeholders, including members of the Climate Action Council, by request. The Department also consulted with other State agencies and authorities, including NYSERDA, the Department of Transportation, the Department of Public Service, and the Department of Agriculture and Markets. The Department reviewed the feedback received in this stakeholder outreach as part of further developing Part 496.

4. Costs

The proposed rule does not impose a compliance requirement on any entity, and therefore does not directly impose any costs on any regulated entities. As explained above, the proposed rule establishes a tonnage limit on statewide greenhouse gas emissions from across the New York economy, consistent with the statutory percentage reduction limits set forth in the CLCPA. Other regulatory and non-regulatory policies will be required to ensure that these emission limits are met, as contemplated in the CLCPA. As such, while this rule does not itself impose a cost on any entity, future actions by the Department and other State agencies to implement the CLCPA will

consider costs as necessary and appropriate. This includes as part of any Department rulemaking actions pursuant to the State Administrative Procedure Act.

5. Paperwork

The proposed rule does not itself impose any paperwork or reporting requirements. However, additional and separate policies may be adopted at a later date that are related to this rule. Any paperwork or reporting requirements will be assessed as part of any such future actions.

6. Local Government Mandates

The proposed rule will not create any mandates for local governments as compared to other entities.

7. Duplication

This proposal does not duplicate, overlap, or conflict with any other existing federal or State regulations or statutes. Instead, as described above, Part 496 places into regulation requirements of the CLCPA by translating the statewide emission reduction requirements into tonnage limits for 2030 and 2050.

8. Alternatives

The Department is required to adopt statewide greenhouse gas limits in regulation per the CLCPA as set forth in ECL Section 75-0107, so it is not viable to take a no-action alternative. Alternatives to the specific methodology for estimating 1990 greenhouse gas emission levels for particular sectors, categories, or subcategories were considered by the Department on a case-by-case basis.

9. Federal Standards

There are no enforced federal rules or other restrictions for the adoption of statewide limits on greenhouse gases, regardless of whether such statewide emission limit also includes certain out-of-state emissions associated with in-state consumption. Therefore, this proposal does not result in the imposition of requirements that exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule

The proposed rule will be effective immediately upon publication of the final rule in the State Register. However, there is no compliance schedule required by the establishment of the proposed rule because, as discussed above, the rule does not itself impose any compliance obligations on any entity. Finally, the 2030 and 2050 dates for the applicable statewide greenhouse gas emission limits in the rule are specifically set forth in the CLCPA.