

## NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of Climate, Air, & Energy, Deputy Commissioner  
625 Broadway, 14th Floor, Albany, New York 12233-1010  
P: (518) 402-2794 | F: (518) 402-9016  
[www.dec.ny.gov](http://www.dec.ny.gov)

MAR 23 2021

Mr. Walter Mugdan  
Acting Regional Administrator  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 26<sup>th</sup> Floor  
New York, NY 10007-1866

Dear Acting Administrator Mugdan:

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 227-1 and Part 200 as adopted on January 19, 2021.

The New York State Department of Environmental Conservation repealed and replaced 6 NYCRR Subpart 227-1, "Stationary Combustion Installations," to lower particulate matter emission limits for existing and new stationary combustion installations that either predate, or are not subject to, a federal New Source Performance Standard and/or National Emissions Standard for Hazardous Air Pollutants. The revisions to 6 NYCRR Subpart 227-1 also corrected minor typographical errors and updated the regulation to incorporate changes to the air permitting regulations that have occurred over the past 20 years. Attendant revisions were made to Part 200, "General Provisions," to incorporate by reference the applicable federal rule provisions.

A public review process was held for the proposed SIP revision. A "Notice of Proposed Rulemaking" that included information for a public hearing was published in the Environmental Notice Bulletin (ENB) and the New York State Register on September 4, 2019. A legislative public hearing on the proposed revisions to Subpart 227-1 and Part 200 as well as the proposed subsequent submission to EPA as a SIP revision was held on November 8, 2019.

The following documents are enclosed with this proposed SIP revision:

1. Express Terms for 6 NYCRR Subpart 227-1, " Stationary Combustion Installations" and Part 200, "General Provisions," as proposed on September 4, 2019;
2. Notice of proposed rulemaking, including public hearing information, as published in the ENB and New York State Register on September 4, 2019;
3. Newspaper proofs of publication for the proposed rulemaking;
4. Assessment of Public Comments for all comments received on the proposed rulemaking;



5. Certificate of Adoption dated January 19, 2021;
6. Express Terms for 6 NYCRR Subpart 227-1 and Part 200 as adopted on January 19, 2021; and
7. Notice of Adoption published in the ENB and New York State Register on February 10, 2021.

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

Sincerely,



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

Enclosures

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

**As Proposed on September 4, 2019**

Express Terms

6 NYCRR Subpart 227-1, Stationary Combustion Installations

Existing 6 NYCRR Subpart 227-1, Stationary Combustion Installations is repealed. A new Subpart 227-1, Stationary Combustion Installations is added as follows:

Section 227-1.1 Definitions. The definitions within Part 200, Part 201, and Subpart 227-2 of this Title apply to this Subpart.

Section 227-1.2 Applicability and Prohibitions.

(a) This Subpart applies to stationary combustion installations except for those stationary combustion installations that are subject to new source performance standards under 40 Code of Federal Regulation (CFR) 60 and/or national emissions standards for hazardous air pollutants under 40 CFR 63 (See Table 1, section 200.9 of this Title), where the particulate matter standards established in the above regulations are equal to or more stringent than the particulate matter emission standards established in this Subpart.

(b) No owner or operator shall construct, install, or modify, or cause to be constructed, installed, or modified, any hand fed stationary combustion installation designed to fire bituminous coal.

Section 227-1.3 Particulate emissions.

(a) Upon promulgation of this regulation, no owner or operator of an existing stationary combustion installation which fires oil or oil in combination with other liquid or gaseous fuels shall be allowed to emit particulate matter in excess of 0.10 pound per million Btu heat input. Within two years of the promulgation of this regulation, no owner or operator of an existing stationary combustion installation firing solid fuel shall be allowed to emit particulate matter in excess of 0.10 pound per million Btu heat input. Upon the commencement

of operation, no owner or operator of a new stationary combustion installation shall be allowed to emit particulate matter in excess of 0.10 pound per million Btu heat input. The above emission limits apply to stationary combustion installations with a maximum heat input capacity equal to or exceeding:

- (1) 1 million Btu per hour firing any amount of solid fuel; or
- (2) 50 million Btu per hour firing oil or oil in combination with other liquid or gaseous fuels.

(b) When two or more stationary combustion installations are connected to a common air cleaning device and/or stack, the total heat input of all the connected emission sources shall be the heat input for the purpose of determining the applicability of subdivision (a) of this Section, unless there is a limit in the facility's permit that prohibits operation of the connected emission sources below the specified heat inputs in subdivision (a) of this Section.

(c) All stationary combustion installations subject to the requirements of this subpart shall perform an annual tune-up of their equipment.

#### Section 227-1.4 Opacity.

(a) No owner or operator shall operate a stationary combustion installation which exhibits greater than 20 percent opacity (six-minute average), except for one six-minute period per hour of not more than 27 percent opacity.

(b) Compliance with the opacity standard may be determined by:

(1) conducting observations in accordance with 40 CFR 60 Appendix A Method 9 (See Table 1, section 200.9 of this Title);

(2) evaluating Continuous Opacity Monitoring System (COMS) records and reports as per Procedure 3 – Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources of 40 CFR Part 60 Appendix F, Procedure – 3 (See Table 1, section 200.9 of this Title); and/or

- (3) considering any other credible evidence.

Section 227-1.5 Compliance testing, monitoring, and recordkeeping.

(a) The owner or operator of a new solid fuel fired stationary combustion installation must conduct an initial compliance test within 180 days of the commencement of operation of the new stationary combustion installation to determine compliance with the applicable particulate matter emission limit as prescribed in this Subpart. The owner or operator of an existing solid fuel fired stationary combustion installation must conduct a compliance test within two years of the promulgation of this regulation. After the initial compliance test, all solid fuel fired stationary combustion installations must conduct periodic compliance tests at least once during the term of the permit. Prior to each test, the owner or operator of a solid fuel fired stationary combustion installation must meet the following criteria:

(1) submit a compliance test protocol to the department for approval at least 30 days prior to emission testing. The conditions of the testing, including the representative loads of operation the testing will be conducted at, and the locations of the sampling devices must be acceptable to the department; and

(2) follow the procedures set forth in 40 CFR 60, Appendix A Method 5 (See Table 1, section 200.9 of this Title), or any other method acceptable to the department and the administrator for determining compliance with the appropriate particulate matter emission limit in section 227-1.3 of this Subpart:

(3) submit a compliance test report containing the results of the emission test to the department for approval no later than 60 days after completion of the emission test.

(b) Monitoring requirements.

(1) Any owner or operator of a stationary combustion installation (excluding combustion turbines) or a group of stationary combustion installations with a total maximum heat input capacity exceeding 250 million Btu per hour shall install, operate, and properly maintain (in accordance with manufacturer's instructions), accurate COMS that satisfy the criteria in either 40 CFR 60 Appendix B (See Table 1, section 200.9 of this Title) or a department approved case-by-case method for continuously monitoring and recording

opacity. Stationary combustion installations required to install COMS shall operate the COMS during all periods of oil and/or solid fuel firing.

(2) Each owner or operator required to operate a COMS in accordance with paragraph (1) of this subdivision shall submit an accurate excess emissions and monitoring system performance report to the department for each calendar year quarter. All reports shall be certified by a responsible corporate official as true, accurate and complete and postmarked by the 30th day following the end of each calendar quarter. The quarterly excess emissions report shall be submitted in a form acceptable to the department and shall include the following minimum information:

- (i) the magnitude, date and time of each six-minute block average during which the average opacity of emissions exceeds 20 percent, except for one six-minute block average per hour not to exceed 27 percent;
- (ii) identification of the specific cause and corrective action taken for each period of excess emission;
- (iii) identification of all periods of COMS downtime, including the date, time and duration of each inoperable period, and the cause and corrective action for each COMS downtime period;
- (iv) the total time in which the COMS are required to record data during the reporting period;
- (v) the total number of exceedances and the duration of exceedances expressed as a percentage of the total time in which the COMS are required to record data; and
- (vi) such other things as the department may deem necessary, proper or desirable in order to enforce article 19 of the Environmental Conservation Law or the rules promulgated thereunder.

(3) Any owner or operator of a stationary combustion installation (excluding combustion turbines) or a group of stationary combustion installations firing oil or oil in combination with other liquid or gaseous fuels with a total maximum heat input capacity of at least 50 million Btu per hour shall keep vendor certified fuel

receipts which contain the sulfur content of the oil being fired as required in 6 NYCRR Subpart 225-1 of this Chapter.

(c) Recordkeeping.

(1) All records, department approved compliance testing protocols, and test results must be maintained on site or at an alternative location, as approved by the department, for a minimum of five years.

(2) Stationary combustion installations required to maintain a COMS must maintain a record of all measurements made by the COMS and the hours of COMS downtime.

(3) Facilities required to conduct annual tune-ups must maintain records of each annual tune-up for all subject stationary combustion installations at the facility.

Section 227-1.6 Severability. Each provision of this Subpart shall be deemed severable. In the event that any provision of this Subpart is held to be invalid the remainder of this Subpart shall continue in full force and effect.



**As Proposed on September 4, 2019**

6 NYCRR Part 200, General Provisions

Express Terms

(Existing sections 200.1 through 200.8 remain unchanged.)

Existing section 200.9, Table 1 is amended as follows:

[227-1.3(b)(1)]	[40 CFR Part 60, Appendix A (Updated July 1, 1996) Reference Method 9, pages 734-740]	[*]
<u>227-1.2(a)</u>	<u>40 CFR 60 and 40 CFR 63 (Updated July 1, 2017)</u>	<u>*</u>
<u>227-1.4(b)(1)</u>	<u>40 CFR 60, Appendix A (Updated July 1, 2017) Reference Method 9, pages 311-318</u>	<u>*</u>
<u>227-1.4(b)(2)</u>	<u>40 CFR 60, Appendix F, Procedure - 3 (Updated July 1, 2017)</u>	<u>*</u>
<u>227-1.5(a)(2)</u>	<u>40 CFR 60, Appendix A Method 5 (Updated July 1, 2017)</u>	<u>*</u>
<u>227-1.5(b)(1)</u>	<u>40 CFR 60, Appendix B (Updated July 1, 2017)</u>	<u>*</u>

(Existing section 200.10 through section 200.16 remains unchanged.)



# New DEC Hearings for ENB Issue 9/4/2019

## **Notice of Proposed Rulemaking**

**6 NYCRR Part 200, General Provisions**

**6 NYCRR Part 227-1 Stationary Combustion Installations**

**Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 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 New York State Department of Environmental Conservation (NYS DEC) is proposing to repeal and replace 6 NYCRR Subpart 227-1, "Stationary Combustion Installations" as well as attendant provisions under Part 200, "General Provisions" (collectively, Subpart 227-1). NYS DEC is revising Subpart 227-1 to lower PM emission limits for existing and new stationary combustion installations that either predate, or are not subject to, a federal new source performance standard (NSPS) and/or national emissions standard for hazardous air pollutants (NESHAP). These revisions will also correct minor typographical errors and update the regulation to incorporate changes to the air permitting regulations that have occurred over the past twenty years. In addition, NYS DEC is revising Part 200 to incorporate by reference the applicable federal rule provisions. As required by the Clean Air Act (CAA), NYS DEC will incorporate the revisions to Subpart 227-1 and the attendant revisions to Part 200 into New York's State Implementation Plan (SIP) and provide the revised SIP to United States Environmental Protection Agency (US EPA) for review and approval. The SIP is directed at maintaining the PM national ambient air quality standard (NAAQS) and fulfilling NYS DEC's obligations under the regional haze SIP submitted to the US EPA on March 15, 2010.

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

**Written comments on the proposed rule may be submitted until 5:00 p.m. November 13, 2019.**

## **For further information, contact:**

Mike Jennings

NYS DEC - Division of Air Resources

625 Broadway

Albany, NY 12233-3254

Phone (518) 402-8403

E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

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](mailto:air.regs@dec.ny.gov) **Written statements may be submitted until 5:00 p.m. November 13, 2019.**

Hearings for the proposed rule and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility:

**Date:** November 8, 2019

**Time:** 11:00 a.m.

**Location:** NYS DEC  
625 Broadway, Public Assembly Room 129A/B  
Albany, NY 12233

NYS DEC will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by 5:00 p.m. November 1, 2019 to Richard McAuley, NYS DEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

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**NEW YORK STATE**  
**REGISTER**

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**INSIDE THIS ISSUE:**

- Removal of Non-Medical Exemption from Vaccination Regulations for Child Day Care Programs
- Eligibility Criteria for Student Financial Aid Award Programs Under Article 14 of the Education Law
- Debarment of Contractors

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State agencies must specify in each notice which proposes a rule the last date on which they will accept public comment. Agencies must always accept public comment: for a minimum of 60 days following publication in the *Register* of a Notice of Proposed Rule Making, or a Notice of Emergency Adoption and Proposed Rule Making; and for 45 days after publication of a Notice of Revised Rule Making, or a Notice of Emergency Adoption and Revised Rule Making in the *Register*. When a public hearing is required by statute, the hearing cannot be held until 60 days after publication of the notice, and comments must be accepted for at least 5 days after the last required hearing. When the public comment period ends on a Saturday, Sunday or legal holiday, agencies must accept comment through the close of business on the next succeeding workday.

***For notices published in this issue:***

- the 60-day period expires on November 3, 2019
- the 45-day period expires on October 19, 2019
- the 30-day period expires on October 4, 2019

**ANDREW M. CUOMO  
GOVERNOR**

**ROSSANA ROSADO  
SECRETARY OF STATE**

**NEW YORK STATE DEPARTMENT OF STATE**

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manufacture and sale of vehicles sold in New York. The changes to these regulations may impact businesses involved in manufacturing, selling, or installing new AMCCs for on-road gasoline fueled passenger cars, light-duty trucks, and medium-duty vehicles.

The proposed changes are revisions to the current LEV standards. The new motor vehicle emission program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to rural areas as a result. The beneficial emission reductions from the program accrue to all areas of the state.

#### 2. Reporting, recordkeeping and other compliance requirements; and professional services:

There are no specific requirements in the proposed regulations which apply exclusively to rural areas. Reporting, recordkeeping and compliance requirements apply to AMCC installers, retailers, distributors, and manufacturers. Reporting and recordkeeping requirements mirror the California requirements, and are thus not expected to be burdensome. AMCC installers must maintain records for a minimum of 4 years onsite to demonstrate compliance. Professional services are not anticipated to be necessary to comply with the proposed rules.

#### 3. Costs:

The proposed revisions are expected to result in additional costs for New York State consumers. When the AMCC standards were initially adopted in November 2012, it was estimated that the average cost of a compliant AMCC would increase \$200 relative to a non-compliant federal certified AMCC. The Department reviewed publicly available AMCC retail prices and determined that the \$200 average incremental cost increase remained valid for this proposed rulemaking. Owners of low volume vehicles, or vehicles without a compliant AMCC option, may be limited to purchasing original equipment manufacturer (OEM) replacement catalytic converters. OEM converters cost significantly more than AMCC, in some cases well over \$1,000.

#### 4. Minimizing adverse impact:

The proposed changes apply Statewide. The Department has proposed a delayed effective date for the prohibition of non-compliant federal certified AMCC until January 1, 2021. The intent of the delayed effective date is to provide sufficient lead-time for AMCC manufacturers and affiliated businesses to certify, produce, and stock compliant AMCCs to service the New York market.

The Department also has a waiver process available for vehicles without a compliant AMCC or OEM replacement catalytic converter option in order to avoid scrapping an otherwise functioning vehicle. The waiver permits the installation of a suitable AMCC in cases where compliant replacement options no longer exist. The vehicle is still required to pass an annual emissions inspection.

#### 5. Rural area participation:

The Department plans on holding public hearings at various locations throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties can submit written comments.

#### **Job Impact Statement**

##### 1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9 and 6 NYCRR Subpart 218-7 to update New York's standards for new aftermarket catalytic converters (AMCC). The AMCC standards were initially adopted in November 2012 as part of the low emission vehicle (LEV) program, and incorporate California's AMCC standards by reference.

The proposed amendments to the regulations may adversely impact jobs and employment opportunities in New York State. New York State has had a LEV program in effect since model year 1993 for passenger cars and light-duty trucks, with the exception of model year 1995, and the Department is unaware of any significant adverse impact to jobs and employment opportunities as a result of previous revisions.

##### 2. Categories and numbers affected:

The proposed revisions may have an adverse impact on AMCC manufacturers, distributors, and retailers. There is currently little, or no, AMCC manufacturing in New York State. As a result, no significant job losses in this sector are expected within the State. Most, if not all, AMCC manufacturers will have to allocate resources to produce a greater quantity of California compliant AMCCs to supply the New York market along with associated recordkeeping, reporting, and warranty costs.

After the initial AMCC adoption, some AMCC manufacturers stated they would be forced to layoff employees due to decreased business. The Department is aware of allegations attributing business closures or loss of income to the current AMCC regulations. The Department has been unable to substantiate any alleged business closures directly resulting from the current AMCC regulations. AMCC manufacturers that currently do not produce compliant AMCCs will be required to obtain California

certification(s) for their product(s), negotiate cross-marketing agreements for compliant AMCCs, or exit the New York market.

There are a significant number of affiliated businesses such as distributors and retailers located in New York State which may be adversely impacted by the proposed revisions. The proposed revisions apply equally to all AMCC manufacturers and affiliated businesses delivering new AMCCs for sale in New York and is not expected to impose a competitive disadvantage. Cross-border sales and online sales of non-compliant AMCCs have been put forth as a significant threat to affiliated businesses within the State. The Department notes that cross-border sales have always existed to varying degrees and will likely continue. However, it should also be noted that out-of-state vehicles requiring the installation of an AMCC while in New York will be required to comply with the proposed regulation. Online retailers conducting transactions with New York customers will be held to the same standards as retailers located within the State to ensure a level playing field for all retailers. Overall, the adverse impact of cross-border sales and non-compliant AMCCs should be minimal. The Department is unaware of any affiliated business job losses which are directly attributable to the existing AMCC regulation.

##### 3. Regions of adverse impact:

None.

##### 4. Minimizing adverse impact:

The amendments attempt to minimize adverse impacts of the federal certified AMCC prohibition by delaying the effective date of the prohibition until January 1, 2021. The delayed effective date provides approximately 3 years lead-time, which is almost twice as much lead-time as provided during the initial AMCC adoption. The recordkeeping and reporting provisions will take effect 30 days after adoption. The revisions to Subpart 218-7.2 will apply to all 1993 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles. Online retailers conducting transactions with New York customers will be held to the same standards as retailers located within the State to ensure a level playing field for all retailers. AMCC manufacturers, distributors, and retailers will be allowed to warehouse and ship non-compliant AMCCs through New York State to supply surrounding states. The proposed revisions only prohibit the sale of non-compliant AMCCs within New York State.

##### 5. Self-employment opportunities:

None that the Department is aware of at this time.

## PROPOSED RULE MAKING HEARING(S) SCHEDULED

### Stationary Combustion Installations

#### I.D. No. ENV-36-19-00003-P

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

**Proposed Action:** Amendment of Part 200; repeal of Subpart 227-1; and addition of new Subpart 227-1 to 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, 19-0311, 71-2103 and 71-2105

**Subject:** Stationary Combustion Installations.

**Purpose:** Update permit references, rule citations, monitoring, recordkeeping, reporting requirements, and lower emission standards.

**Public hearing(s) will be held at:** 11:00 a.m., November 8, 2019 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129 A/B, Albany, NY.

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Text of proposed rule:** Existing sections 200.1 through 200.8 remain unchanged.

Existing section 200.9, Table 1 is amended as follows:

[227-1.3(b)(1)]	[40 CFR Part 60, Appendix A (Updated July 1, 1996) Reference Method 9, pages 734-740]	[*]
227-1.2(a)	40 CFR 60 and 40 CFR 63 (Updated July 1, 2017)	*
227-1.4(b)(1)	40 CFR 60, Appendix A (Updated July 1, 2017) Reference Method 9, pages 311-318	*

227-1.4(b)(2)	40 CFR 60, Appendix F, Procedure - 3 (Updated July 1, 2017)	*
227-1.5(a)(2)	40 CFR 60, Appendix A Method 5 (Updated July 1, 2017)	*
227-1.5(b)(1)	40 CFR 60, Appendix B (Updated July 1, 2017)	*

Existing section 200.10 through section 200.16 remains unchanged. Existing 6 NYCRR Subpart 227-1, Stationary Combustion Installations is repealed. A new Subpart 227-1, Stationary Combustion Installations is added as follows:

*Section 227-1.1 Definitions. The definitions within Part 200, Part 201, and Subpart 227-2 of this Title apply to this Subpart.*

*Section 227-1.2 Applicability and Prohibitions.*

(a) This Subpart applies to stationary combustion installations except for those stationary combustion installations that are subject to new source performance standards under 40 Code of Federal Regulation (CFR) 60 and/or national emissions standards for hazardous air pollutants under 40 CFR 63 (See Table 1, section 200.9 of this Title), where the particulate matter standards established in the above regulations are equal to or more stringent than the particulate matter emission standards established in this Subpart.

(b) No owner or operator shall construct, install, or modify, or cause to be constructed, installed, or modified, any hand fed stationary combustion installation designed to fire bituminous coal.

*Section 227-1.3 Particulate emissions.*

(a) Upon promulgation of this regulation, no owner or operator of an existing stationary combustion installation which fires oil or oil in combination with other liquid or gaseous fuels shall be allowed to emit particulate matter in excess of 0.10 pound per million Btu heat input. Within two years of the promulgation of this regulation, no owner or operator of an existing stationary combustion installation firing solid fuel shall be allowed to emit particulate matter in excess of 0.10 pound per million Btu heat input. Upon the commencement of operation, no owner or operator of a new stationary combustion installation shall be allowed to emit particulate matter in excess of 0.10 pound per million Btu heat input. The above emission limits apply to stationary combustion installations with a maximum heat input capacity equal to or exceeding:

- (1) 1 million Btu per hour firing any amount of solid fuel; or
- (2) 50 million Btu per hour firing oil or oil in combination with other liquid or gaseous fuels.

(b) When two or more stationary combustion installations are connected to a common air cleaning device and/or stack, the total heat input of all the connected emission sources shall be the heat input for the purpose of determining the applicability of subdivision (a) of this Section, unless there is a limit in the facility's permit that prohibits operation of the connected emission sources below the specified heat inputs in subdivision (a) of this Section.

(c) All stationary combustion installations subject to the requirements of this subpart shall perform an annual tune-up of their equipment.

*Section 227-1.4 Opacity.*

(a) No owner or operator shall operate a stationary combustion installation which exhibits greater than 20 percent opacity (six-minute average), except for one six-minute period per hour of not more than 27 percent opacity.

(b) Compliance with the opacity standard may be determined by:

- (1) conducting observations in accordance with 40 CFR 60 Appendix A Method 9 (See Table 1, section 200.9 of this Title);
- (2) evaluating Continuous Opacity Monitoring System (COMS) records and reports as per Procedure 3 – Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources of 40 CFR Part 60 Appendix F, Procedure – 3 (See Table 1, section 200.9 of this Title); and/or
- (3) considering any other credible evidence.

*Section 227-1.5 Compliance testing, monitoring, and recordkeeping.*

(a) The owner or operator of a new solid fuel fired stationary combustion installation must conduct an initial compliance test within 180 days of the commencement of operation of the new stationary combustion installation to determine compliance with the applicable particulate matter emission limit as prescribed in this Subpart. The owner or operator of an existing solid fuel fired stationary combustion installation must conduct a compliance test within two years of the promulgation of this regulation. After the initial compliance test, all solid fuel fired stationary combustion installations must conduct periodic compliance tests at least once during the term of the permit. Prior to each test, the owner or operator of a solid fuel fired stationary combustion installation must meet the following criteria:

- (1) submit a compliance test protocol to the department for approval

at least 30 days prior to emission testing. The conditions of the testing, including the representative loads of operation the testing will be conducted at, and the locations of the sampling devices must be acceptable to the department;

(2) follow the procedures set forth in 40 CFR 60, Appendix A Method 5 (See Table 1, section 200.9 of this Title), or any other method acceptable to the department and the administrator for determining compliance with the appropriate particulate matter emission limit in section 227-1.3 of this Subpart; and

(3) submit a compliance test report containing the results of the emission test to the department for approval no later than 60 days after completion of the emission test.

*(b) Monitoring requirements.*

(1) Any owner or operator of a stationary combustion installation (excluding combustion turbines) or a group of stationary combustion installations with a total maximum heat input capacity exceeding 250 million Btu per hour shall install, operate, and properly maintain (in accordance with manufacturer's instructions), accurate COMS that satisfy the criteria in either 40 CFR 60 Appendix B (See Table 1, section 200.9 of this Title) or a department approved case-by-case method for continuously monitoring and recording opacity. Stationary combustion installations required to install COMS shall operate the COMS during all periods of oil and/or solid fuel firing.

(2) Each owner or operator required to operate a COMS in accordance with paragraph (1) of this subdivision shall submit an accurate excess emissions and monitoring system performance report to the department for each calendar year quarter. All reports shall be certified by a responsible corporate official as true, accurate and complete and postmarked by the 30th day following the end of each calendar quarter. The quarterly excess emissions report shall be submitted in a form acceptable to the department and shall include the following minimum information:

(i) the magnitude, date and time of each six-minute block average during which the average opacity of emissions exceeds 20 percent, except for one six-minute block average per hour not to exceed 27 percent;

(ii) identification of the specific cause and corrective action taken for each period of excess emission;

(iii) identification of all periods of COMS downtime, including the date, time and duration of each inoperable period, and the cause and corrective action for each COMS downtime period;

(iv) the total time in which the COMS are required to record data during the reporting period;

(v) the total number of exceedances and the duration of exceedances expressed as a percentage of the total time in which the COMS are required to record data; and

(vi) such other things as the department may deem necessary, proper or desirable in order to enforce article 19 of the Environmental Conservation Law or the rules promulgated thereunder.

(3) Any owner or operator of a stationary combustion installation (excluding combustion turbines) or a group of stationary combustion installations firing oil or oil in combination with other liquid or gaseous fuels with a total maximum heat input capacity of at least 50 million Btu per hour shall keep vendor certified fuel receipts which contain the sulfur content of the oil being fired as required in 6 NYCRR Subpart 225-1 of this Chapter.

*(c) Recordkeeping.*

(1) All records, department approved compliance testing protocols, and test results must be maintained on site or at an alternative location, as approved by the department, for a minimum of five years.

(2) Stationary combustion installations required to maintain a COMS must maintain a record of all measurements made by the COMS and the hours of COMS downtime.

(3) Facilities required to conduct annual tune-ups must maintain records of each annual tune-up for all subject stationary combustion installations at the facility.

*Section 227-1.6 Severability.* Each provision of this Subpart shall be deemed severable. In the event that any provision of this Subpart is held to be invalid the remainder of this Subpart shall continue in full force and effect.

**Text of proposed rule and any required statements and analyses may be obtained from:** Mike Jennings, 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:** November 13, 2019.

**Additional matter required by statute:** Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration 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>):*

#### INTRODUCTION

The New York State Department of Environmental Conservation (Department) is proposing to repeal and replace 6 NYCRR Subpart 227-1, "Stationary Combustion Installations" as well as attendant provisions under Part 200, "General Provisions" (collectively, Subpart 227-1). Currently, Subpart 227-1 establishes emission limits for particulate matter (PM) on oil fuel (including oil which is fired in combination with other liquid and gaseous fuels), and solid fuel (any amount) fired stationary combustion installations. Subpart 227-1 also establishes an opacity limit for all stationary combustion installations.

The Department is revising Subpart 227-1 to lower PM emission limits for existing and new stationary combustion installations that either predate, or are not subject to, a federal new source performance standard (NSPS) and/or national emissions standard for hazardous air pollutants (NESHAP). These revisions will also correct minor typographical errors and update the regulation to incorporate changes to the air permitting regulations that have occurred over the past twenty years. In addition, the Department is revising Part 200 to incorporate by reference the applicable federal rule provisions.

As required by the Clean Air Act (CAA), the Department will incorporate the revisions to Subpart 227-1 and the attendant revisions to Part 200 into New York's State Implementation Plan (SIP) and provide the revised SIP to U.S. Environmental Protection Agency (EPA) for review and approval. The SIP is directed at maintaining the PM national ambient air quality standard (NAAQS) and fulfilling the Department's obligations under the regional haze SIP submitted to the EPA on March 15, 2010. These revisions are not a mandate on local governments. It applies to any entity that owns or operates a stationary combustion installation as set forth in the regulations.

#### STATUTORY AUTHORITY

The statutory authority for these revisions 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, 19-0303, 19-0302, 19-0305, 19-0311, 71-2103, and 71-2105.

Based on the above-referenced sections, the Department has very broad authority to regulate air pollution from portable or stationary sources, including the promulgation of 6 NYCRR Subpart 227-1 entitled "Stationary Combustion Installations".

#### LEGISLATIVE OBJECTIVES

Article 19 of the ECL was adopted for the purpose of safeguarding the air resources of New York State from pollution. To facilitate this purpose, the Legislature bestowed specific powers and duties on the Department including the power to formulate, adopt, promulgate, amend, and repeal regulations for preventing, controlling or prohibiting air pollution. This authority also specifically includes promulgating rules and regulations for preventing, controlling or prohibiting air pollution in such areas of the state as shall or may be affected by air pollution, and provisions establishing areas of the state and prescribing for such areas (1) the degree of air pollution or air contamination that may be permitted therein, and (2) the extent to which air contaminants may be emitted to the air by any air contamination source. In addition, this authority also includes the preparation of a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution recognizing various requirements for different areas of the state.

The legislative objectives underlying the statutes are directed toward protection of the environment and public health. The proposed rulemaking will further the state's goals by reducing air pollution, specifically PM emissions, a criteria pollutant and a precursor to PM-2.5 which in turn is a precursor to visibility-impairing haze from the majority of oil firing stationary sources.

#### NEEDS AND BENEFITS

There are many environmental benefits inherent in the reductions of PM that do not explicitly relate to visibility improvement. These reductions will lead to advances in health protection as well. In addition to experiencing improved visibility, forested areas such as the Adirondack Park will benefit from reduced PM acid deposition impacts. These environmental impacts could also be expected to translate into economic benefits from increased public use of a cleaner and visibly healthier park.

Elevated PM levels are of concern for the New York City metropolitan area, which has been designated, until recently, as non-attainment for the annual and 24-hour PM-2.5 NAAQS. PM consists of microscopic solid or liquid particles, and is the major cause of the regional haze issue. PM can be emitted directly from stationary sources, or comprised of nitrate and sulfate particles formed through reactions involving NO<sub>x</sub> and SO<sub>2</sub> in the atmosphere. These particles are small enough to be inhaled into the lungs and can even enter the bloodstream. Ongoing scientific studies show that particulate inhalation, similarly to ozone, leads to health problems such as

coughing, difficulty breathing, aggravated asthma, and a higher likeliness for other respiratory disorders. Increased PM exposure may even cause premature death in those with existing heart or lung disease.

The revisions to Subpart 227-1 are intended to reduce the emission of PM that are the precursors of PM-2.5 below the present levels. Regulatory efforts such as the NSPS and NESHAP programs, past NYS and federal fuel PM emission limits for stationary and mobile sources, and efforts like the Clean Air Interstate Rule have had a significant effect on air quality and health. The proposed PM limits in this rule are expected to further reduce monitored values of PM-2.5, and to enable and maintain attainment of the NAAQS. The proposed PM emission limits will reduce actual PM emissions throughout NYS by two to five tons per day.

#### Stakeholder Meetings:

The Department held stakeholder meetings on July 26th through July 28th, 2017 in Albany, NY, New York City, NY and Avon, NY, respectively. The Department sent a fact sheet out to interested parties including the environmental justice community. Several of the interested parties attended each of these meetings where they asked questions and provided comments on the draft regulatory language.

#### COSTS

##### Costs to Regulated Parties and Consumers:

For oil fuel fired stationary combustion installation control costs, there is a direct correlation between the sulfur content of fuel oil and PM emissions. The USEPA's 5th Edition AP-42 Final Section for External Combustion Sources (AP-42) emission factors for residual oil contain a sulfur-in-fuel component. Since the 2013 rule revision of Subpart 225-1 lowered the sulfur-in-fuel requirements for fuel oil (both residual and distillate oils) the emission factor derived from AP-42 would be lower than the Subpart 227-1 revised prescribed limit of 0.1 pounds per million Btu PM emission limit for oil fired stationary combustion installations.

The AP-42 distillate oil PM emission factors are also lower than the prescribed Subpart 227-1 PM emission limits. Based on these factors the Department does not believe that there will be a need to install PM emission controls on oil fired stationary combustion installations as a result of these proposed revisions to Subpart 227-1. Therefore, the Department's proposed PM emission limit for oil fired stationary combustion installations will not cause any new control costs to be incurred by the sources subject to the proposed regulation.

For solid fuel fired stationary combustion installation control costs, there are several control technologies that may be used to control PM emissions from solid fuel stationary combustion installations. The following table<sup>1</sup> lists the control types and costs for installing PM controls on solid stationary combustion installations of 10 mmBtu/hr or smaller heat input:

Control Type	Removal Effectiveness (%)	Installation Costs (\$)	Annual Operations/ Maintenance Costs (\$)
Cyclone	50	7,000 - 10,000	< 1,000
Multi-Clone	75	10,000 – 16,000	< 1,000
Core Separator	60	100,000	Unknown
ESP	90	60,000 – 175,000	1,000 – 3,000 + electricity costs
Fabric Filter	98	80,000 – 135,000	10,000

For solid fuel fired stationary combustion installations greater than 10 mmBtu/hr heat input the cost figures can be conservatively increased one time for every 10 mmBtu/hr increase in heat input. Therefore, the cost figure would double for a 20 mmBtu/hr heat input stationary combustion installation, while tripling for a 30 mmBtu/hr heat input combustion installation. The life span of these control devices has been conservatively estimated to be 20 years.

Both oil and solid fuel fired stationary combustion installations will be required to perform annual tune-ups. Solid fuel fired stationary combustion installations will be required to conduct emissions compliance testing at least once during the term of their permit. Annual tune-ups cost between \$1,000.00 and \$5,000.00 per tune-up depending on the size of the source. Compliance tests cost between \$5,000.00 and \$10,000.00 per test depending on the size of the source and complexity of the test set-up based on source configuration.

#### Costs to State and Local Governments:

New York State and local governments may incur increased control and compliance testing costs associated with this proposed regulation. There will also minimal new recordkeeping and annual tune-up requirements imposed on local governments as a result of this proposed rule-making.

Based on the Department's permitting data, there are a total of 56 Title V permits, 104 state facility permits, and 760 registrations at New York State and local government facilities. Approximately 210 of these facilities contain stationary combustion installations where the requirements of Subpart 227-1 are applicable. The vast majority of the 210 affected facilities contain oil fired stationary combustion installations (approximately 180 facilities). Therefore, over 85 percent of the affected New York State and local government facilities will incur minimal costs to comply with the proposed rulemaking.

#### Costs to the Regulating Agency:

The Department will face some initial administrative costs associated with the application review and permitting of the new PM limits. Minimal additional monitoring, recordkeeping, and reporting requirements are being proposed under this rule-making. Therefore, minimal additional costs will be incurred by the regulating agency based on these factors.

#### LOCAL GOVERNMENT MANDATES

This is not a mandate on local governments. Local governments have no additional compliance obligations as compared to other subject entities. Also, no additional monitoring, recordkeeping, reporting, or other requirements will be imposed on local governments under this rulemaking.

#### PAPERWORK

The proposed changes to Subpart 227-1 will create no additional paperwork for the facilities subject to the requirements of this rule.

#### DUPLICATION

The proposed revisions to Subpart 227-1 do not duplicate, overlap, or conflict with any other State or federal requirements.

#### ALTERNATIVES

The Department evaluated the following alternatives:

(1) Take no action: This alternative could prevent New York State from complying with its obligations under the CAA. If the Department does not implement this regulation, the state would not be able to meet its obligations to maintain attainment with the PM-2.5 standard, nor would it reduce the regional haze impacts in the northeast. The reduction in PM emission limits will directly result in reductions of PM, PM-10, and PM-2.5. Therefore, the "Take no action" alternative has been rejected.

(2) Partial revision of the current regulation: The Department could revise Subpart 227-1 to only correct the typographical errors and update the permitting language contained in the regulation. However, the Subpart 227-1 PM emission limits were last revised in 1971 and are over 45 years old, and do not lend favorably to the state's air quality goals that were discussed earlier. These limitations are based on combustion and control technologies that are 50 years old. Therefore, based on the vast improvements in both combustion and control technologies the "partial revision" alternative has been rejected.

#### FEDERAL STANDARDS

The proposed revisions to Subpart 227-1 do not exceed any minimum federal standards.

#### COMPLIANCE SCHEDULE

The Department anticipates promulgating the revisions to Subpart 227-1 in 2018. The compliance date for existing solid fuel fired stationary combustion installations, including the installation of any required controls and the completion of compliance testing, is two years from the effective date of the revisions. For existing stationary combustion installations which fire oil or oil in combination with other liquid or gaseous fuels, compliance is required on the effective date of the regulation. The compliance date for new stationary combustion installations will be upon the commencement of operation.

<sup>1</sup> The information contained in this table comes from the July 2010 NYSERDA report – Comparative Emissions Characterization of a Small-Scale Wood Chip-Fired Boiler and an Oil-Fired Boiler.

#### Regulatory Flexibility Analysis

##### EFFECT OF RULE

The Department proposes to revise Subpart 227-1, "Stationary Combustion Installations" as well as attendant provisions under Part 200, "General Provisions" (collectively, Subpart 227-1). The proposed rulemaking will apply statewide. Small businesses are those that are independently owned, located within New York State (NYS), and that employ 100 or fewer persons. The proposed revisions to the Subpart 227-1 requirements flow from the state's obligations under the federal Clean Air Act. Therefore, the proposed revisions do not constitute a mandate on local governments. The Subpart 227-1 requirements apply equally to every facility that contains a stationary combustion installation in New York State. The proposed revisions will not affect small businesses or local governments differently from any other source subject to this rule.

##### COMPLIANCE REQUIREMENTS

The proposed rule will lower particulate matter (PM) emission limits, correct typographical errors, and update the regulation to incorporate changes to the air permitting regulations. Minimal additional monitoring,

recordkeeping, and reporting requirements are being proposed under this rule-making.

#### PROFESSIONAL SERVICES

The proposed rule will lower PM limits. No changes will be made in the monitoring, recordkeeping, or reporting requirements in the current version of Subpart 227-1. Facilities subject to this rule are simply required to comply with the new lower PM emission limits. Based on the requirement to meet lower PM emission limits the Department expects that some small businesses and/or local governments will need to hire additional professional services to comply with the provisions of the proposed rule.

#### COMPLIANCE COSTS

Solid fuel fired (any amount) stationary combustion installations subject to the Subpart 227-1 provisions may incur increased control costs associated with this proposed regulation. Depending on the size of the affected emission source and type of control required to meet the prescribed limit of the proposed regulation the costs incurred may vary greatly. The annualized cost control range, which includes installation, operations, maintenance (including annual tune-ups), and monitoring costs is based on a 20-year control life and has been calculated to be between \$1,250.00 and \$20,500.00 per individual emission source.

There are no projected control costs associated with oil fired (this includes oil fired in combination with other liquid and gaseous fuels) stationary combustion installations. There will be minimal new costs associated with compliance testing (once during the term of the permit or registration), recordkeeping, and annual tune-ups that are required under the proposed regulation. The annualized cost for these sources has been calculated to be between \$1,250.00 and \$5,500.00 per individual emission source.

Based on the Department's permitting data, there are a total of 56 Title V permits, 104 state facility permits, and 760 registrations at New York State and local government facilities. Approximately 210 of these facilities contain stationary combustion installations where the requirements of Subpart 227-1 are applicable. The vast majority of the 210 affected facilities contain oil fired stationary combustion installations (approximately 180 facilities). Therefore, over 85 percent of the affected New York State and local government facilities will incur minimal costs to comply with the proposed rulemaking.

#### MINIMIZING ADVERSE IMPACT

The Department does not expect any particular adverse impacts on small businesses and local governments throughout New York State. Subpart 227-1 is a statewide regulation. Its requirements are the same for all facilities. The Department does not anticipate small businesses or local governments to be impacted differently than other sources subject to the proposed revisions to Subpart 227-1.

#### SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The Department held stakeholder meetings (including environmental justice outreach) on July 26th through July 28th, 2017 in Albany, NY, New York City, NY and Avon, NY, respectively. The Department sent a fact sheet out to interested parties, including the environmental justice community. Several of the interested parties attended each of these meetings where they asked questions and provided comments on the draft regulatory language. The meetings were held to give representatives from the affected small business and local government representatives an opportunity to meet with Department staff and discuss various issues during the rulemaking process. The Department will also hold public hearings and seek comments on Subpart 227-1 throughout New York State and will notify small business and local government representatives as part of this proposed rulemaking.

#### ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The Department has determined that the control technologies available for affected emission sources are both economically and technologically feasible.

#### CURE PERIOD OR AMELIORATIVE ACTION

The Department is not including a cure period in this rulemaking. The purpose of this regulation is to provide timely emissions reductions, delaying enforcement of the regulation adversely affects such emissions reductions.

#### Rural Area Flexibility Analysis

##### TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

The proposed rule (Subpart 227-1) is not expected to have a substantial adverse impact on rural areas in New York State (NYS). Rural areas are defined as rural counties in New York State that have populations of less than 200,000 people, towns in non-rural counties where the population densities are less than 150 people per square mile, and villages within those towns. The proposed rulemaking will apply statewide and thus all affected stationary combustion installations throughout the state will be equally affected.

#### REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

The proposed rule will lower particulate matter (PM) emission limits, correct typographical errors, and update the regulation to incorporate changes to the air permitting regulations. Minimal additional recordkeeping and reporting requirements are being proposed under this rule-making.

#### COSTS

Solid fuel fired (any amount) stationary combustion installations subject to the Subpart 227-1 provisions may incur increased control costs associated with this proposed regulation. Depending on the size of the affected emission source and type of control required to meet the prescribed limit of the proposed regulation the costs incurred may vary greatly. The annualized cost control range, which includes installation, operations, maintenance (including annual tune-ups), and monitoring costs is based on a 20-year control life, and has been calculated to be between \$1,250.00 and \$20,500.00 per individual emission source.

There are no projected control costs associated with oil fired (this includes oil fired in combination with other liquid and gaseous fuels) stationary combustion installations. There will be minimal new costs associated with compliance testing (once during the term of the permit or registration), recordkeeping, and annual tune-ups that are required under the proposed regulation. The annualized cost for these sources has been calculated to be between \$1,250.00 and \$5,500.00 per individual emission source.

#### MINIMIZING ADVERSE IMPACT

The Department does not expect any adverse impacts on rural areas of the state. There will be positive environmental impacts from the regulation in rural areas. Rural areas should witness improved visibility with an associated decrease in airborne PM.

Subpart 227-1 is a statewide regulation. Its requirements are the same for all affected facilities, and rural areas are impacted no differently than other areas in New York State.

#### RURAL AREA PARTICIPATION

The Department held stakeholder meetings on July 26th through July 28th, 2017 in Albany, NY, New York City, NY and Avon, NY, respectively. The Department sent a fact sheet out to interested parties, including the environmental justice community. Several of the interested parties attended each of these meetings where they asked questions and provided comments on the draft regulatory language. These meetings included the rural-area stakeholders and as well as industry representatives. The Department will also hold public hearings and seek comments on Subpart 227-1 in the upstate and other rural areas as part of this proposed rulemaking.

#### Job Impact Statement

##### NATURE OF IMPACT

The promulgation of Subpart 227-1 is not anticipated to have any long-term effects on the number of current jobs or future employment opportunities throughout New York State (NYS).

##### CATEGORIES AND NUMBERS AFFECTED

The reductions in visibility-impairing pollutants resulting from the implementation of Subpart 227-1 could result in a positive impact on the tourism industry, particularly for the Adirondack and Catskill Parks. Aside from the mitigation of haze in these areas and across New York State, improvements in acid deposition will be seen, keeping trees and waterways in good condition, thus allowing state parks to remain healthy and attractive places to visit. Increased tourism could create additional job opportunities throughout the state.

##### REGIONS OF ADVERSE IMPACT

The proposed Subpart 227-1 is a statewide regulation. This regulation is not expected to have an adverse impact on jobs or employment opportunities in New York State. It does not impact any region or area in the state disproportionately in terms of jobs or employment opportunities.

##### MINIMIZING ADVERSE IMPACT

The Department does not expect any adverse impacts on jobs in New York State based on the proposed changes to Subpart 227-1. Subpart 227-1 is a statewide regulation. Its requirements are the same for all facilities and will not impact job opportunities in the state.

##### SELF-EMPLOYMENT OPPORTUNITIES

There are no anticipated adverse impacts towards self-employment opportunities associated with the proposed Subpart 227-1 regulation.

## PROPOSED RULE MAKING HEARING(S) SCHEDULED

### Distributed Generation Sources Located in New York City, Long Island, Westchester and Rockland Counties

I.D. No. ENV-36-19-00014-P

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

**Proposed Action:** Amendment of Part 200; repeal of Part 222; and addition of new Part 222 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105

**Subject:** Distributed generation sources located in New York City, Long Island, Westchester and Rockland counties.

**Purpose:** Establish emission control requirements for sources used in demand response programs or as price-responsive generation sources.

**Public hearing(s) will be held at:** 11:00 a.m., November 12, 2019 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A/B, Albany, NY; 2:00 p.m., November 20, 2019 at Department of Transportation, One Hunter's Point Plaza, 47-40 21st St., Rm. 834, Long Island City, NY.

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Text of proposed rule:** Section 200.9, Table 1, is amended to read as follows:

[California Code of Regulations, Title 13, Section 2700 (10-1-2013)]	***
California Code of Regulations, Title 13, Section 2701 (10-1-2013)	***
California Code of Regulations, Title 13, Section 2702 (10-1-2013)	***
California Code of Regulations, Title 13, Section 2703 (10-1-2013)	***
California Code of Regulations, Title 13, Section 2704 (10-1-2013)	***
California Code of Regulations, Title 13, Section 2705 (10-1-2013)	***
[222.6] California Code of Regulations, Title 13, Section 2706 (10-1-2013)	***
222.5 California Code of Regulations, Title 13, Section 2707 (10-1-2013)	***
California Code of Regulations, Title 13, Section 2708 (10-1-2013)	***
California Code of Regulations, Title 13, Section 2709 (10-1-2013)	***
California Code of Regulations, Title 13, Section 2710 (10-1-2013)	***
California Code of Regulations, Title 13, Section 2711 (10-1-2013)	***]
40 CFR 60, Appendix A (Updated July 1, 2013), Method 7E, pages 289-305	*
[40 CFR 60, Appendix A (Updated July 1, 2013), Method 5, pages 169-195	]*]

Existing 6 NYCRR Part 222 is repealed. A new Part 222 is added to read as follows:

#### Part 222, Distributed Generation Sources

##### Section 222.1 Applicability.

*This Part applies to owners and operators of distributed generation sources classified as economic dispatch sources located in the New York City metropolitan area with a maximum mechanical output rating of 200 horsepower or greater where the potential to emit oxides of nitrogen at a facility is less than 25 tons per year.*

##### Section 222.2 Definitions.

(a) *The definitions of Part 200 and Subpart 201-2 of this Title apply to this Part unless they are inconsistent with the definitions in subdivision (b) of this Section.*

(b) *The following definitions also apply to this Part:*

(1) *'Compression ignition'.* A type of stationary internal combustion engine that is not a spark ignition engine.

(2) *'Demand response program'.* The Emergency Demand Response Program or Special Case Resources demand response programs sponsored by the New York Independent System Operator or similarly designed programs sponsored by distribution utilities and approved by the Public Service Commission.

(3) *'Demand response source'.* A distributed generation source enrolled in a demand response program.



# **NEW YORK POST**

**State of New York**  
COUNTY OF NEW YORK

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*Rubie Gonsalez*

being duly sworn,

says that he/she is the principal Clerk of the Publisher of the

## **New York Post**

a daily newspaper of general circulation printed and published in the English language, in the County of New York, State of New York; that advertisement hereto annexed has been regularly published in the said "New York Post" once,

on the 4th of September, 2019

Sworn to before me on this 4 day of September, 2019

*[Signature]*

**Notary Public**

RICHARD C SAVIN  
NOTARY PUBLIC - STATE OF NEW YORK  
No. 01SA0904152  
Qualified in Dutchess County  
My Commission Expires May 27, 2022

**NOTICE OF PUBLIC HEARING**  
**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Notice is hereby given that the New York State Department of Environmental Conservation (NYSDEC) will hold a legislative Public Hearing on three separate proposals:

1: Pursuant to Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103, 71-2105 of the Environmental Conservation Law (ECL) and Section 177 of the federal Clean Air Act (42 USC 7507), notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed amendments of 6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines, and 6 NYCRR Part 200, General Provisions. The Department is proposing to amend Part 218 to incorporate revisions to aftermarket catalytic converter (AMCC) standards incorporated in the low emission vehicle (LEV) program, and to update various provisions incorporated by reference in Part 200. Part 218 will also be submitted to EPA as a revision to the State Implementation Plan (SIP) for New York State (NYS).

2: Pursuant to Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105 notice is hereby given that the NYS Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed new rule 6 NYCRR Subpart 225-2, Fuel Composition and Use - Waste Oil as a Fuel and 6 NYCRR Part 200, General Provisions.

The Department proposes to repeal Existing 6 NYCRR Subpart 225-2 Fuel Composition and Use - Waste Fuel (Existing Subpart 225-2) and replace it with Proposed 6 NYCRR Subpart 225-2, Fuel Composition and Use - Waste Oil as a Fuel (Proposed Subpart 225-2). Proposed Subpart 225-2 will regulate the burning of waste oils in combustion, incineration, and process sources throughout New York State and establishes applicability criteria, composition limits, and permitting requirements for liquid and semi-liquid waste oils, establishes monitoring, recordkeeping, and reporting requirements for facilities that are determined eligible to burn waste oil, and allows for the burning of waste oils in space heaters at automotive maintenance/service facilities. The Department is adding the definition for "residual oil" to 6 NYCRR Part 200 (Part 200). Proposed Subpart 225-2 will be included as a component of the State Implementation Plan (SIP) for New York State (NYS), as required by the Clean Air Act.

3: Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 71-2103, and 71-2105 of the Environmental Conservation Law, notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearing on the proposed repeal and replace of 6 NYCRR Subpart 227-1, "Stationary Combustion Installations" as well as attendant provisions under Part 200, "General Provisions" (collectively, Subpart 227-1). As required by the Clean Air Act (CAA), the Department will incorporate the revisions to Subpart 227-1 and the attendant revisions to Part 200 into New York's State Implementation Plan (SIP) and provide the revised SIP to U.S. Environmental Protection Agency (EPA) for review and approval. The SIP is directed at maintaining the PM national ambient air quality standard (NAAQS) and fulfilling the Department's obligations under the regional haze SIP submitted to the EPA on March 15, 2010.

A hearing for the proposed rules and attendant revisions to existing rules described above will be held as follows and is scheduled in a place that is reasonably accessible to persons with impaired mobility:

Date	Time	Location
November 8, 2019	11:00 am	NYSDEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233

The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by November 1, 2019, to Richard McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, air.regs@dec.ny.gov.

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.

The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At each hearing, persons who wish to make a statement will be invited to speak. It is requested that oral statements also be submitted in writing. The Department will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing.

Information on Part 218 may be obtained from Jeff Marshall, NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3255, telephone, (518) 402-8292; email, air.regs@dec.ny.gov. Written statements may be submitted until 5 pm November 13, 2019.

Information on Subpart 225-2, may be obtained from Mike Jennings, NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8403; email, air.regs@dec.ny.gov. Written statements may be submitted until 5 pm November 13, 2019.

Information on Subpart 227-1, may be obtained from Mike Jennings, NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3254, telephone, (518) 402-8403; email, air.regs@dec.ny.gov. Written statements may be submitted until 5 pm November 13, 2019.

Requests for information and comments related to the SIP revisions may be obtained from Robert D. Bielawa, P.E., NYSDEC 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 pm November 13, 2019.

The proposed regulation may be obtained from any of the following Department offices:

- REGION 1** - NYSDEC Region One Headquarters, SUNY Stony Brook, 50 Circle Road, Stony Brook, NY 11790-3409  
Attention: Shana Snee
- REGION 2** - Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101; Attention: Sam Lieblich
- REGION 3** - 21 South Pult Corners Road, New Paltz, NY 12561, Attention: George Sweikert
- REGION 4** - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Ben Potter
- REGION 5** - Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coulant
- REGION 6** - Watertown State Office Bldg, 317 Washington St., Watertown, NY 13601, Attention: Bob Jacobs
- REGION 7** - 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Thomas Eller
- REGION 8** - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng
- REGION 9** - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

# NEWSDAY

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STATE OF NEW YORK)

Legal Notice No.

0021523951

:SS.:

COUNTY OF SUFFOLK)

Darryl Murphy of Newsday Media Group., Suffolk County, N.Y., being duly sworn, says that such person is, and at the time of publication of the annexed Notice was a duly authorized custodian of records of Newsday Media Group, the publisher of NEWSDAY, a newspaper published in the County of Suffolk, County of Nassau, County of Queens, and elsewhere in the State of New York and other places, and that the Notice of which the annexed is a true copy, was published in the following editions/counties of said newspaper on the following dates:

Wednesday September 04, 2019 Nassau, Suffolk and Queens

**SWORN** to before me this  
4 Day of September, 2019.



---

CHRISTOPHER LAWSON  
Notary Public - State of New York  
No. 01LA6348406  
Qualified in Suffolk County  
My Commission Expires September 26, 2020





# **TIMES UNION**

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**timesunion.com**

**Albany Times Union**  
News Plaza  
Box 15000  
Albany, New York 12212

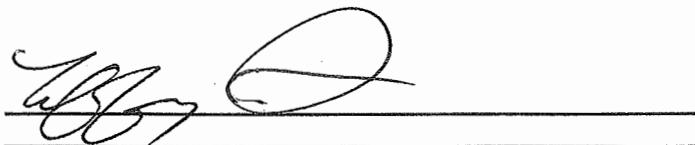
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MILLER ADVERTISING  
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NEW YORK, NY 10036

Account Number: 041821006  
Order Number: 0004072944  
Order Invoice Text: NYSDEC #2

T Tomes / R Bernard / T Duquette / P Sheehan / A Rubel of the city of Albany, being duly sworn, says that he/she is principal Clerk of THE TIMES UNION, a daily newspaper printed in the county of Albany, Town of Colonie, and Published in the County of Albany, Town of Colonie and the city of Albany, aforesaid and that notice of which a printed copy is annexed has been regularly published in the said ALBANY TIMES UNION on the following dates

09-04-2019



Sworn to before me, this 5 day of September 2019.



Notary Public  
Albany County  
MARYBETH SNYDER  
NOTARY PUBLIC, State of New York  
Qualified in Albany County  
No. 01SN5030510  
Commission Expires July 18, 2022



# THE BUFFALO NEWS

## -Affidavit-

Maureen Elardo of the City of Buffalo, New York, being duly sworn, deposes and says that he/she is Principal Clerk of THE BUFFALO NEWS INC., Publisher of THE BUFFALO NEWS, a newspaper published in said city, that the notice of which the annexed printed slip taken from said newspaper is a copy, was inserted and published therein 1 times, the first insertion being on 09/04/2019 and the last insertion being on 09/04/2019



Dates Ad Ran:

Buffalo News (P1) 09/04/19

Sworn to before me this 4<sup>th</sup> day of September 2019

  
Notary Public, Erie County, New York

DEBRA M. PALKOWSKI  
Notary Public - State of New York  
No. 01P84955693  
Qualified In Erie County  
My Commission Expires Sept. 5, 2021

# Your ad below

## NOTICE OF PUBLIC HEARING

### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Notice is hereby given that the New York State Department of Environmental Conservation (NYSDEC) will hold a legislative Public Hearing on three separate proposals:

1: Pursuant to Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0305, 19-101, 19-1103, 19-1105, 71-2103, 71-2105 of the Environmental Conservation Law (ECL) and Section 177 of the federal Clean Air Act (42 USC 7507), notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed amendments of 6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines; and 6 NYCRR Part 200, General Provisions. The Department is proposing to amend Part 218 to incorporate revisions to aftermarket catalytic converter (AMCC) standards incorporated in the low emission vehicle (LEV) program; and to update various provisions incorporated by reference in Part 200. Part 218 will also be submitted to EPA as a revision to the State Implementation Plan (SIP) for New York State (NYS).

2: Pursuant to Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105 notice is hereby given that the NYS Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed new rule 6 NYCRR Subpart 225-2, Fuel Composition and Use - Waste Oils as a Fuel and 6 NYCRR Part 200, General Provisions.

The Department proposes to repeal Existing 6 NYCRR Subpart 225-2, Fuel Composition and Use - Waste Fuel (Existing Subpart 225-2) and replace it with Proposed 6 NYCRR Subpart 225-2, Fuel Composition and Use - Waste Oil as a Fuel (Proposed Subpart 225-2). Proposed Subpart 225-2 will regulate the burning of waste oils in combustion, incineration, and process sources throughout New York State and establishes applicability criteria, composition limits, and permitting requirements for liquid and semi-liquid waste oils; establishes monitoring, recordkeeping, and reporting requirements for facilities that are determined eligible to burn waste oil, and allows for the burning of waste oils in space heaters at automotive maintenance/service facilities. The Department is adding the definition for "residual oil" to 6 NYCRR Part 200 (Part 200). Proposed Subpart 225-2 will be included as a component of the State Implementation Plan (SIP) for New York State (NYS), as required by the Clean Air Act.

3: Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103, and 71-2105 of the Environmental Conservation Law, notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearing on the proposed repeal and replace of 6 NYCRR Subpart 227-1, "Stationary Combustion Installations" as well as attendant provisions under Part 200, "General Provisions" (collectively, Subpart 227-1). As required by the Clean Air Act (CAA), the Department will incorporate the revisions to Subpart 227-1 and the attendant revisions to Part 200 into New York's State Implementation Plan (SIP) and provide the revised SIP to U.S. Environmental Protection Agency (EPA) for review and approval. The SIP is directed at maintaining the PM national ambient air quality standard (NAAQS) and fulfilling the Department's obligations under the regional haze SIP submitted to the EPA on March 15, 2010.

A hearing for the proposed rules and attendant revisions to existing rules described above will be held as follows and is scheduled in a place that is reasonably accessible to persons with impaired mobility:

Date	Time	Location
November 8, 2019	11:00 am	NYSDEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233

The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by November 1, 2019, to Richard McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov).

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.

The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At each hearing, persons who wish to make a statement will be invited to speak. It is requested that oral statements also be submitted in writing. The Department will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing.

Information on Part 218 may be obtained from Jeff Marshall, NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3255, telephone, (518) 402-8292; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm November 13, 2019.

Information on Subpart 225-2, may be obtained from Mike Jennings, NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8403; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm November 13, 2019.

Information on Subpart 227-1, may be obtained from Mike Jennings, NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3254, telephone, (518) 402-8403; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm November 13, 2019.

Requests for information and comment related to the SIP revisions may be obtained from Robert D. Bielawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm November 13, 2019.

The proposed regulation may be obtained from any of the following Department offices:

**REGION 1** - NYSDEC Region One Headquarters, SUNY Stony Brook, 50 Circle Road, Stony Brook, NY 11790-3409,

Attention: Shaun Snee

**REGION 2** - Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, Attention: Sam Lieblin

**REGION 3** - 21 South Putt Corners Road, New Paltz, NY 12561, Attention: George Swieker

**REGION 4** - 1130 North Westcott Rd, Schenectady, NY 12306, Attention: Ben Potter

**REGION 5** - Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coulant

**REGION 6** - Watertown State Office Bldg, 317 Washington St., Watertown, NY 13601, Attention: Bob Jacobs

**REGION 7** - 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Thomas Elter

**REGION 8** - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng

**REGION 9** - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

BA145715

# THE POST-STANDARD

## LEGAL AFFIDAVIT

INV#: 0009304770

**ADVANCE**  
MEDIA NEW YORK  
[syracuse.com](http://syracuse.com) | THE POST-STANDARD  
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Name: MILLER ADVERTISING AGENCY INC

Sales Rep: Pamela Gallagher

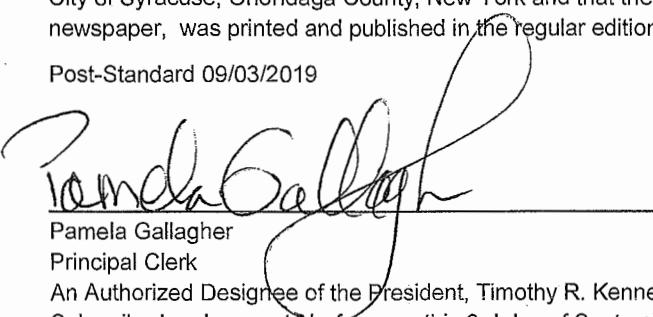
Account Number: 1001507

INV#: 0009304770

Date	Position	Description	P.O. Number	Ad Size
09/03/2019	Other Legals NY		R8260120	4 x 91 L

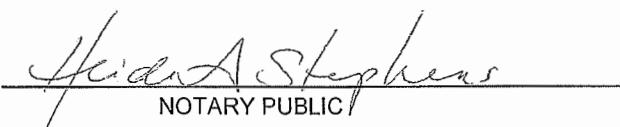
State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Post-Standard 09/03/2019

  
\_\_\_\_\_  
Pamela Gallagher

Principal Clerk

An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 3rd day of September  
2019

  
\_\_\_\_\_  
NOTARY PUBLIC  
FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT  
(315) 470-2051 OR [Legals@Syracuse.com](mailto:Legals@Syracuse.com)

**HEIDI A. STEPHENS**  
Notary Public - State of New York  
No. 01ST6290718  
Qualified in Onondaga County  
My Commission Expires: 10/7/2021

**NOTICE OF PUBLIC HEARING**  
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Attention: Shaun Snee

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**REGION 4** - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Ben Potter

**REGION 5** - Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coutant

**REGION 6** - Watertown State Office Bldg, 317 Washington St., Watertown, NY 13601, Attention: Bob Jacobs

**REGION 7** - 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Thomas Elter

**REGION 8** - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng

**REGION 9** - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

\*\*\* Proof of Publication \*\*\*

WARREN COUNTY AFFIDAVIT

STATE OF NEW YORK:

County of Warren, ss:

Kerri Ward being duly sworn,

says that (s)he is an authorized designee for Lee Enterprises, publishers of THE POST-STAR, a daily newspaper published in Glens Falls, Warren County, State of New York, and that the printed notice attached hereto was cut from the said POST-STAR, and that the said notice was published therein, namely

NOTICE OF PUBLIC HEARING

September 4, 2019

MILLER ADVERTISING-LEGAL

220 WEST 42ND STREET, 12TH FLOOR  
NEW YORK NY 10036

ORDER NUMBER 82469

Signed this 6th day of September, 2019

I. Smith

Sworn to before me this 6<sup>th</sup> day of September, 2019

J. Walsh

JOHN R. WALSH  
Notary Public - State of New York  
No. 01WA6390461  
Qualified in Saratoga County  
My Commission Expires April 15, 2023

Section: Legals

Category: 001 Legal Notices - Warren County

PUBLISHED ON: 09/04/2019

TOTAL AD COST: 121.03

FILED ON: 9/4/2019



## AFFIDAVIT OF PUBLICATION

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STATE OF NEW YORK  
COUNTY OF NEW YORK

Ambika Mohan being duly sworn hereby declares and says, that she is the Advertising Account Executive responsible for placing the attached advertisement for publication in the **Rochester Democrat & Chronicle** for Miller Advertising Agency, Inc; located in New York, NY, and that the **NYSDEC Notice of Public Hearing (re: Vehicle Emissions Standards)** advertisement, of which the annexed is a true copy, has been published in the said publication on the following issue date(s):

Sept. 4, 2019

Ambika Mohan

Ambika Mohan

Subscribed to and Sworn before me

This 30th day of September, 2019

Donna Perez  
Notary Public

Donna Perez  
Notary Public State Of New York  
No. 01PE6151365  
Qualified In New York County  
Commission Expires August, 14<sup>th</sup> - 2022



1 PROCEEDINGS: November 8, 2019  
2

3 STATE OF NEW YORK  
4 DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
\*\*\*\*\*

5 In the Matter  
6

7 - of -  
8

9 Proposed Amendments to Part 218 (Emission  
10 Standards for Motor Vehicles and Motor Vehicle Engines),  
11 Proposed Repeal of Part 225-2 and Substitution of Subpart  
12 225-2 (Fuel Consumption and Use - Waste Oils), and Repeal  
13 and Replacement of Part 227-1 (Stationary Combustion  
14 Installations) and Attendant Provisions Under Part 200  
15 of  
16 Title 6 of the Official Compilation of Codes, Rules and  
17 Regulations of the State of New York (6NYCRR)  
18 \*\*\*\*\*

19 11/8/2019  
20 11:00 a.m.  
21 DEC  
22 625 Broadway  
23 Conference Room  
24 Albany, New York

25 P R E S E N T:

Maria E. Villa,  
Department of Environmental Conservation  
Office of Hearing and Mediation Services  
Administrative Law Judge

Richard McAuley  
Department of Environmental Conservation  
Regulatory Coordinator

1

2 ALSO PRESENT:

3

Jeffrey Marshall  
Division of Air Resources  
Department of Environmental Conservation

5

Mike Jennings  
Division of Air Resources  
Department of Environmental Conservation

8

9 Antonio Santos, Director of Special Projects  
Manufacturers of Emissions Controls Association  
10 2200 Wilson Boulevard, Suite 310  
Arlington, VA 22201

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REPORTED BY: Suzanne T. Harrington, Shorthand Reporter

Proceedings November 8, 2019

1  
2                   **P-R-O-C-E-E-D-I-N-G-S**  
3

4                   ALJ VILLA: If there is anyone here who  
5                   wants to make a statement on the record, fill out a  
6                   card, give it to me, and we'll call you in the order  
7                   the card was received, which in this case there's only  
8                   one person ahead of you.

9                   So we're going to go on the record. I have  
10                  a statement to read and I'll also call upon two of the  
11                  folks from the Department here to give statements  
12                  about the proposed rules.

13                  This is an administrative public hearing  
14                  with a legislative format before the New York State  
15                  Department of Environmental Conservation in the matter  
16                  of Department staff's proposed amendment to Part 218  
17                  of the Official Compilation of Codes Rules and  
18                  Regulations of the State of New York or 6 NYCRR for  
19                  short.

20                  The proposed amendments would incorporate  
21                  revisions to the standards for new California  
22                  certified aftermarket catalytic converters. The  
23                  Department proposes to submit the amended Part 218 as  
24                  well as the revisions to Part 200 to the U.S.  
25                  Environmental Protection Agency as a revision to New  
                      York State's State Implementation Plan or SIP.

Proceedings November 8, 2019

1                   In addition, today we're taking public  
2 comments on the proposed repeal of existing Subpart  
3 225-2, to be replaced with Subpart 225-2. The  
4 proposed replacement will regulate the burning of  
5 waste oils, and there's more to it than that, but  
6 we'll leave that for our speakers so we're not  
7 repeating ourselves.

8                   Finally, the Department is proposed to  
9 repeal and replace Subpart 227-1 to lower particulate  
10 matter emission limits of existing and new stationary  
11 combustion installations that either predate or are  
12 not subject to a federal new source performance  
13 standard and/or national emissions standard for  
14 hazardous air pollutants. As part of that, the  
15 Department will also revise Part 200 to incorporate by  
16 reference applicable federal rule provisions and will  
17 incorporate those revisions into the SIP.

18                  The purpose of this hearing is to receive  
19 comments on these proposals. If you want to make a  
20 statement, as we indicated before we went on the  
21 record, please fill out a card and give it to me. So  
22 far I have only one card.

23                  I'm Maria Villa, I'm serving as a hearing  
24 officer for the Department. All persons,  
25 organizations, corporations or government agencies

Proceedings November 8, 2019

1           that may be affected by the proposed rule are invited  
2           to submit either written or oral statements. All  
3           statements taken today, either written or spoken, will  
4           be incorporated into the official record of this  
5           proceeding. Statements are not given under oath.  
6           There's no cross-examination.

7                         Written statements received during the  
8           public comment period and oral statements at this time  
9           will be given equal weight. Please submit any lengthy  
10          statements in writing. If you want, you can summarize  
11          those verbally. Written comments can also be  
12          submitted on or before 5:00 p.m. on Wednesday,  
13          November 13th, 2019.

14                         The contact person for further information  
15          is Mike Jennings of the DEC's Division of Air  
16          Resources, I have his contact information. And that  
17          also appears in the notice of today's hearing.  
18          Requests for information and comments related to the  
19          SIP can be obtained from Robert Bielawa, a  
20          professional engineer in the Division of Air  
21          Resources, and I have his contact information as well.  
22          That information also appears in the notice of the  
23          hearing. And if you want to send comments via e-mail,  
24          the address is air.regs@dec.ny.gov.

25                         Department staff has provided me with copies

Proceedings November 8, 2019

1           of the notices of the hearing sessions. Those were  
2           published in the September 4, 2019 edition of the  
3           Department's *Environmental Notice Bulletin* as well as  
4           the New York State Register on that same date. In  
5           addition, I have affidavits of publication of the  
6           Notice. Those were published in the September 4th,  
7           2019 edition of the *New York Post*, *Newsday*, the Albany  
8           *Times Union*, the *Buffalo News*, the Glens Falls *Post*  
9           *Star* and the Rochester *Democrat and Chronicle*.  
10          Notices were published in the September 3rd, 2019  
11          editions of the *Syracuse Post-Standard*. So at this  
12          point I'll call upon Mr. Marshall, and he'll be  
13          followed by Mr. Jennings to make a brief presentation  
14          regarding these proposals.

15           MR. MARSHALL: Hello, My name is Jeff  
16           Marshall. I'm a professional engineer for the New  
17           York State Department of Environmental Conservation,  
18           Division of Air Resources. The purpose of this  
19           legislative hearing is to solicit comments on the  
20           proposed revisions to 6 New York Codes, Rules and  
21           Regulations, Part 218, Emission Standards for Motor  
22           Vehicles and Motor Vehicle Engines; and attendant  
23           revisions to Part 200, Referenced Material.

24           Section 177 of the Clean Air Act provides  
25           that states may adopt the California new vehicle

Proceedings November 8, 2019

1           emission standards, provided that these standards are  
2           identical to California's. New York adopted the  
3           California low emission vehicle program in 1992 for  
4           passenger cars and light duty trucks. New York has  
5           revised the program periodically since 1992, with the  
6           most recent changes occurring in 2019 to incorporate  
7           clarifications to the deemed-to-comply provision.

8                 The Department is proposing to adopt  
9           amendments to the new aftermarket catalytic converter  
10          standards incorporated in Subpart 218-7 which were  
11          originally adopted in 2012. The proposed amendments  
12          prohibit the sale and installation of federally  
13          certified aftermarket catalytic converters on any  
14          vehicle in New York absent a waiver from the  
15          Department.

16                 The proposed amendments also include  
17          provisions pertaining to catalytic converter  
18          installation requirements, recordkeeping requirements  
19          for installers, manufacturers, distributors,  
20          wholesalers and retailers; and clarification of  
21          manufacturer reporting requirements.

22                 The proposed prohibition of federal  
23          aftermarket catalytic converters applies to all 1993  
24          and subsequent model year on-road gasoline fueled  
25          passenger cars, light-duty trucks and medium-duty

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1            vehicles delivered for sale in New York State starting  
2            January 1st, 2021. This rule will be effective 30  
3            days after adoption.

4                         Copies of the proposed Part 218 regulation  
5            and related support documents are available at the  
6            Department's website and from the Department's central  
7            and regional offices. Comments may be submitted to  
8            Jeff Marshall, NYSDEC, Division of Air Resources, 625  
9            Broadway, Albany, New York 12233-3255 or by e-mail at  
10          air.regs@dec.ny.gov until 5:00 p.m. on November 13th,  
11          2019. Thank you.

12                        MR. JENNINGS: Good morning. My name is  
13          Mike Jennings. I'm an environmental engineer in the  
14          Division of Air Resources in the Department of  
15          Environmental Conservation. The Department is  
16          proposing to adopt revisions to Subpart 225.2, Fuel  
17          Composition Use -- Waste Oils, and Part 200, General  
18          Provisions of Title 6 of the Compilation of Codes,  
19          Rules and Regulations of New York State.

20                        This public hearing is scheduled for the  
21          purpose of receiving statements and comments on the  
22          Department's proposal to adopt Subpart 225.29 and Part  
23          200. Proposed Subpart 225-2 will regulate the burning  
24          of waste oils in combustion, incineration, and process  
25          sources throughout New York State. Proposed Subpart

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1           225-2 will also establish applicability criteria,  
2           composition limits and permitting requirements for  
3           waste oils.

4                 It will establish monitoring, recordkeeping  
5           and reporting requirements for facilities that are  
6           determined eligible to burn waste oil; and allow for  
7           the burning of waste oils in space heaters at  
8           automotive and marine maintenance/services facilities.

9                 Also as part of this rulemaking, the  
10          Department will add the definition for residual oil to  
11          6 NYCRR Part 200. In addition, Part 200 which  
12          contains definitions related to air regulations will  
13          also be updated.

14                 Anyone who wishes to obtain information or  
15          submit comments related to Subpart 225-2 or Part 200  
16          may contact me, Mike Jennings, at NYSDEC Division of  
17          Air Resources, 625 Broadway, Albany, New York  
18          12233-3254. Telephone contact number is (518) 402-8403  
19          and the e-mail is [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written  
20          comments will be accepted through 5:00 p.m. Wednesday  
21          November 13th, 2019. Thank you for attending this  
22          hearing.

23                 ALJ VILLA: Thank you very much. As I  
24          indicated, I only have one card. If there is anyone  
25          who wants to speak and wants to fill out a card, just

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1       please do and bring it up to me. But at this point  
2       I'll call on Mr. Antonio Santos and --

3                    MR. JENNINGS: Do you want my second  
4       statement?

5                    ALJ VILLA: Oh, you have a second one?

6                    MR. JENNINGS: Yes, two regulations.

7                    ALJ VILLA: Sorry, hang on.

8                    MR. JENNINGS: You thought you were done  
9       with me.

10                  ALJ VILLA: Just a moment, Mr. Santos.

11                  MR. JENNINGS: Okay. This is 227-1, Subpart  
12       227-1, Stationary Combustion Installations. The  
13       Department is proposing to adopt revisions to Subpart  
14       227-1, Station Combustion Installations and Part 200,  
15       General Provisions of the Official Compilation of  
16       Codes, Rules and Regulations of the State of New York.

17                  Public hearing is scheduled for the purpose  
18       of receiving statements and comments on the  
19       Department's proposal to adopt the revisions to both  
20       Subpart 227-1 and Part 200. These revisions include  
21       the lowering of PM emission limits for existing and  
22       new stationary combustion installations that either  
23       predate or are not subject to a federal New Source  
24       Performance Standard, NSPS, or a National Emissions  
25       Standard For Hazardous Air Pollutants, NESHAP.

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1                   These revisions will also correct minor  
2 typographical errors and update the regulation to  
3 incorporate changes to the air permitting regulations  
4 that have occurred over the past twenty years and  
5 update references in the regulation itself.

6                   Anyone who wishes to obtain information or  
7 submit comments related to Subpart 227-1 or Part 200  
8 may contact me, Mike Jennings, at the same address,  
9 telephone number and e-mail that I had just given two  
10 seconds ago. Once again, the comments will be  
11 accepted until 5:00 p.m. on Wednesday the 13th. Thank  
12 you very much. I'm done now.

13                  ALJ VILLA: Thank you. Mr. Santos, why  
14 don't you come on up now. Thank you. Appreciate your  
15 patience.

16                  MR. SANTOS: Hi, my name is Antonio Santos.  
17 I'm the Director of Special Projects at the  
18 Manufacturers of Emission Controls Association in  
19 Washington D.C. MECA appreciates the opportunity to  
20 provide comments on the New York State Department of  
21 Environmental Conservation's proposed rulemaking to  
22 incorporate revisions to the standards for new  
23 California-certified aftermarket catalytic converters.  
24 The proposed amendments would prohibit the sale and  
25 installation of federal aftermarket converters in the

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1 state starting on January 1st, 2021.

2 MECA is a non-profit association of the  
3 World's leading manufacturers of emission control,  
4 combustion efficiency and greenhouse gas reduction  
5 technologies for mobile sources. Our members have  
6 over 45 years of experience and a proven track record  
7 in developing and manufacturing clean vehicle  
8 technologies, and they represent the majority of  
9 aftermarket converter manufacturers who have been  
10 supplying converters under the California ARB and the  
11 U.S. EPA aftermarket converter programs since the late  
12 1980s.

13 MECA has supported DEC's current aftermarket  
14 converter program for light-duty vehicles as first  
15 adopted in 2012 which requires California  
16 ARB-certified aftermarket converters for vehicles  
17 certified to California or 50-State emission  
18 standards, but allows U.S. EPA-certified aftermarket  
19 converters to be used on federal-certified vehicles.

20 MECA, however, recognizes the enforcement  
21 challenges that have been raised by DEC staff  
22 regarding the sale and installation of federal  
23 aftermarket converters in the state. As DEC moves to  
24 prohibit the sale of federal aftermarket converters in  
25 New York, MECA based on the experience gained through

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1 working with CARB, EPA and other states that have also  
2 adopted CARB's aftermarket converter requirements  
3 recommend that the DEC take into account the following  
4 considerations.

5 Consideration number one. The proposed  
6 prohibition of federal aftermarket converters would  
7 leave federal-certified vehicles in New York without  
8 an aftermarket converter repair alternative. These  
9 vehicles are typically older, lower in value and less  
10 likely to have access to OEM replacement parts,  
11 placing a hardship on their owners if a repair is  
12 needed.

13 Under the proposed amendments, aftermarket  
14 converter installers will be required to verify that  
15 the aftermarket converter being installed is approved  
16 by CARB and included on the vehicle application list  
17 for the specific make, model, model, year, engine  
18 displacement and engine family in question.

19 CARB has developed an online database to  
20 store and retrieve information on aftermarket  
21 converters that have been issued a California  
22 Executive Order.

23 For federal-certified vehicles, CARB has an  
24 existing process in place to identify an appropriate  
25 CARB converter for a federal vehicle on a case-by-case

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1 basis. However, this process can be cumbersome,  
2 especially if a state has a large number of federal  
3 vehicles. California has a very low population of  
4 federal vehicles due to their policy of limiting  
5 registration renewals to vehicles that comply with  
6 CARB requirements.

7 MECA recognizes that states outside of  
8 California, including Section 177 states, have  
9 relatively larger populations of federal vehicles.  
10 These states would benefit from a market solution for  
11 finding a CARB converter for a federal vehicle that  
12 does not rely on case-by-case decisions, as in  
13 California.

14 To that end, MECA recommends that DEC  
15 incorporate provisions in their aftermarket converter  
16 requirements by which many manufacturers can catalog  
17 and market CARB converters for federal applications  
18 under specific criteria, since CARB cannot include  
19 federal vehicles in their database.

20 Specifically, this language would say that  
21 DEC would consider test data used to obtain  
22 certification from CARB to be relevant even where the  
23 vehicle engine family was not originally included in  
24 the Executive Order, provided the vehicle application  
25 falls in an equivalent or less stringent emission tier

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1       level and has similar or less demanding physical  
2       characteristics. In other words, vehicle type,  
3       vehicle mass, engine placement and exhaust  
4       configuration as the original CARB certified vehicle.

5                    MECA can work with DEC to help further  
6        develop the criteria for this option for inclusion in  
7        DEC's aftermarket converter requirements. This  
8        approach is similar to the one that MECA has  
9        previously suggested that EPA incorporate in their  
10      proposed update to the federal enforcement policy  
11      regarding aftermarket catalytic converters. Such an  
12      approach could become a model for other states that  
13      are considering requiring CARB aftermarket converters.

14                   Consideration number two. As you know, DEC  
15      had originally planned to release the proposed  
16      rulemaking at the end of 2017, with a final rulemaking  
17      projected to be issued by mid-2018. This timeline  
18      would have provided stakeholders with a lead time of  
19      approximately two and a half years from the date of  
20      adoption of the final rulemaking to the date of  
21      implementation of the prohibition of federal  
22      aftermarket converters on January 1, 2021.

23                   However, the proposed rulemaking was not  
24      officially released until September 2019. Given this  
25      long delay, there is now the likelihood that the final

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1 rule will be released less than one year before the  
2 proposed requirements take effect.

3 MECA believes that a minimum lead time of  
4 two years is necessary to effectively transition the  
5 industry, given a change of this magnitude.

6 Manufacturers require this minimum lead time to ensure  
7 that new CARB-certified aftermarket parts are  
8 available and that federal-certified parts already in  
9 distribution are phased out of the market.

10 In addition, sufficient lead time is needed  
11 to adequately educate consumers, distributors and  
12 installers about the new requirements. Therefore,  
13 MECA requests that DEC change the effective date of  
14 the regulation to be a minimum of two years from the  
15 date of adoption of the final rulemaking to provide  
16 aftermarket converter manufacturers, distributors and  
17 retailers with adequate time to certify, produce and  
18 stock sufficient quantity of compliant aftermarket  
19 converters to serve the New York market.

20 Once implemented, enforcement of the new  
21 aftermarket converter requirements is essential to  
22 achieve the full emission benefits of the program and  
23 to maintain a level playing field in the market.

24 To facilitate enforcement, we urge DEC to  
25 work with the New York Department of Motor Vehicles to

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1 incorporate a visual inspection requirement under the  
2 state's light-duty vehicle inspection and maintenance  
3 program, as is being done by California's Smog Check  
4 program, to confirm that the proper converter is  
5 installed on each vehicle.

6                   Thank you again for the opportunity to  
7 provide comments. We believe our suggestions will  
8 help improve the effectiveness of DEC's aftermarket  
9 converter program and provide time for parts  
10 manufacturers to get the cleanest aftermarket  
11 converter technology into the market. We look forward  
12 to working with DEC on this important rulemaking.

13                   MECA will also provide written comments by  
14 the November 13th deadline. Thank you.

15                   ALJ VILLA: Thank you very much, Mr. Santos.  
16 At this point we're going to go off the record for  
17 about ten minutes in case anyone else shows up. But  
18 in the meantime, is there anyone who wants to speak  
19 who hasn't filled out a card?

20                   *(No response.)*

21                   ALJ VILLA: We'll go off the record until  
22 around 11:30, and at that time if there is no one  
23 still wanting to speak, then we'll adjourn the  
24 hearing. Thank you.

25                   *(Off the record.)*

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1                   ALJ VILLA: We're going to go back on the  
2 record. And while we were off the record, Mr.  
3 McCauley checked to see if there was anyone out at the  
4 front desk who might be waiting to speak. I don't  
5 think that there's anybody here who wanted to make a  
6 statement or comments, but if there is, please let me  
7 know now.

8                   *(No response.)*

9                   ALJ VILLA: And hearing no response, thank  
10 you all for coming. A reminder, the public comment  
11 period is going to close on November 13th, 2019.  
12 Comments can be mailed to the contacts in the notice  
13 or sent by e-mail, and the e-mail address is  
14 air.regs@dec.ny.gov. Thank you all for coming and  
15 we're adjourned.

16                   \* \* \*

17 (At which time, the proceedings in the above-entitled matter  
18                   were concluded at 11:28 a.m.)

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1 RE: DEC

2 AT: 625 Broadway  
Conference Room  
3 Albany, New York

4 DATE: November 8, 2019

5

6 C E R T I F I C A T I O N

7

8 I, Suzanne Harrington, a Shorthand  
9 Reporter and Notary Public in and for the State of New  
10 York, do hereby certify that the foregoing record taken by  
11 me at the time and place noted in the heading hereof is a  
12 true and accurate transcript of same, to the best of my  
13 ability and belief.

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Suzanne Harrington

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## Assessment of Public Comments

### 6 NYCRR Subpart 227-1, Stationary Combustion Installations

#### **General:**

Comment 1: The Commenter states that they were not able to find an estimate of the number of sites the proposed rule is likely to impact. (Commenter 1)

Response to comment 1: The Department of Environmental Conservation (Department) has issued permits or registrations to 51 facilities throughout the State that employ 76 wood fired emission sources. These emission sources range in size from 1.4 mmBtu/hr heat input to 855 mmBtu/hr heat input and burn wood chips, hogged wood fuel, and wood pellets. The following is a breakdown of permit types and number of sources:

Title V permits, 5 with 8 emission sources

State Facility permits, 15 with 31 emission sources

Registrations, 31 with 37 emission sources

In addition to the statewide permitting data provided in the Regulatory Impact Statement (RIS) and the Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFASBLG), the Department is adding the above emission source data to the RIS and RFASBLG.

Comment 2: The Commenter states that they were not able to find any estimates as to the anticipated amount of future installations (numbers of installations per year) that the proposed rulemaking would impact. (Commenter 1)

Response to comment 2. The Department is revising Subpart 227-1 to lower PM emission limits for existing and new stationary combustion installations that are not subject to an equivalent or more stringent federal new source performance standard (NSPS) and/or national emissions standard for hazardous air pollutants (NESHAP). The Department is not able to accurately predict or anticipate the number of future installations that may be impacted by this regulation until they apply for a permit or registration from the Department.

Comment 3: The Commenter states that it is not clear how long a permit is valid. An internet search appears to indicate a permit must be renewed every 5 years. For small, advanced biomass boilers with oxygen trim systems, the renewal of permits every 5 years is an undue burden. (Commenter 1)

Response to comment 3: Permit renewal periods are based on the type of permit that the applicant has been issued. Title V permits are issued for a period of five years. State facility permits and registrations are issued for ten-year periods. The permit issuance durations apply statewide and are cited in the following sections of 6 NYCRR Part 201:

Registrations – Section 201-4.2

State Facility permits – Section 201-5.3

Title V permits – Section 201-6.4

Comment 4: The Commenter cites a January 2019 study by the State of Vermont Air Quality Division – a state where there are a considerably higher number of institutional and industrial users of automated wood heat (AWH) relative to New York State – which analyzed the particulate matter emissions resultant from all wood combustion statewide in 2015. The study showed that only 4% of all PM related to wood combustion was

resultant from institutional and industrial sized AWH units (1 mmBtu/hr – 10 mmBtu/hr) emitting PM in the 0.1 to 0.5 pound per million Btu range; permissible under current NYS regulations. Therefore, the assertion in the Job Impact Statement that revisions to Section 227-1 will result in “the mitigation of haze in the Adirondack and Catskill Parks” leading to a “positive impact on the tourism industry” is far-fetched. Tailpipe emissions alone from increased tourism would far negate any gains being made on reduced PM from existing and newly installed AWH units. Furthermore, according to a recent New York State Energy Research and Development Authority (NYSERDA) report - New York State Wood Heat Report, ninety percent of the state’s PM 2.5 emissions is generated by residential wood heating. NYSERDA has an incentive program – albeit with limited participation since its inception – that is attempting to address this concern by encouraging replacement with more efficient combustion technology. (Commenter 3)

Response to comment 4: As the Commenter notes, most PM emissions from wood firing come from the residential sector. New wood heaters in the residential sector are regulated under New Source Performance Standard (NSPS) 40 CFR 60 Subpart QQQQ. Currently, there is no NSPS for commercial/industrial/institutional wood burning sources in the 1 to 10 mmBtu/hr size range. Under Subpart 227-1, the current PM standard of 0.6 lbs/mmBtu for these size sources was developed over 40 years ago. As a result, facilities that seek to replace existing wood burning sources have no incentive to purchase state-of-the-art equipment with controls. Therefore, as emissions of PM from residential sources decreases, the percentage of the emissions from the commercial/industrial/institutional will increase, if no new requirements are promulgated.

Comment 5: The Regulatory Flexibility Analysis states “The Department does not expect any particular adverse impacts on small business and local governments throughout New York State.” It appears that these claims, as stated in the proposed rule change are erroneous. In fact, 62 sawmills, 13 schools, seven pellet mills,

three industrial users, two commercial greenhouses, and two hospitals are currently using AWH in rural communities. (Commenter 3)

Response to comment 5: The Department acknowledged, in the Rural Area Flexibility Analysis, that there would be costs incurred by facilities subject to the proposed regulation. Compliance with the proposed regulation will require the installation of control equipment. The Department believes that compliance with this proposed regulation will not adversely impact small businesses and local governments in rural areas and will improve the air quality of these areas, as stated in the Needs and Benefits section of the Regulatory Impact Statement. Also, as noted above in the response to comment 1, the Department currently permits and registers 51 total facilities throughout the State that burn wood as a fuel. The Commenter states there are 89 facilities in rural areas of the State that burn wood as a fuel. While the Commenter suggests an additional 38 wood burning facilities, it does not appear that the Commenter's list includes every Title V facility that burns wood (5 of the identified 51 permitted facilities are Title V facilities). Nonetheless, by the Commenter's account, there are nearly twice as many facilities that burn wood as fuel which may have equipment that is subject to the applicability threshold of exiting Subpart 227-1. If the Commenter's estimates are correct, these additional facilities have not contacted the Department to obtain the required permits or registrations as to legally operate and may be in violation of the New York State air regulations. It is also possible that the additional facilities in the Commenter's list include wood burning sources that are below the size threshold and not subject to this rule.

Comment 6: The Commenter states that achieving compliance with proposed Subpart 227-1 would yield little to no environmental benefit and would cause undue expenses in exchange for minimal environment benefit. (Commenter 5)

Response to comment 6: The Department respectfully disagrees with the Commenter's statement. As set forth in the RIS, the Department believes that the proposed standards will significantly improve air quality both locally and regionally.

**Annual Tune-ups:**

Comment 7: The Commenters suggest that annual tune-ups should be the only requirement for boilers less than 2 mmBtu/hr. (Commenters 1, 2, and 4)

Response to comment 7: The current version of Subpart 227-1 regulates solid fuel fired boilers down to 1 mmBtu/hr heat input and requires those boilers to meet an emission standard. Consistent with the anti-backsliding provisions of the Clean Air Act, the Department is maintaining an emission standard for these size boilers in order to continually improve air quality throughout the State. Therefore, the Department will continue to propose a lower emissions standard as opposed to the suggestion of eliminating the emissions standard and only requiring an annual tune-up for emission sources less than 2 mmBtu/hr heat input.

Comment 8: The Commenter suggests that there should be an exemption from the annual tune-up requirement for units that are constantly monitored for efficiency and adjusted by a control room operator. This would be much more practical than an annual "tune-up". In a similar manner, for a boiler that is equipped with "auto-trim" equipment, an "annual tune-up" has no practical meaning. (Commenter 2)

Response to comment 8: The Department does not believe that there should be an exemption from the annual tune-up requirement. The Division of Air Resources has prepared guidance document DAR-5 to outline the procedures, record keeping, and reporting requirements associated with an annual tune-up. The annual tune-up

is based on annual maintenance prescribed by the manufacturer. Based on the Department's experience regulating this source type over the years, it has established that every boiler requires an annual inspection and periodic maintenance, regardless of how frequently those boilers are monitored or what additional components they may be equipped with. The annual tune-up requirements ensure that the manufacturer's recommended annual inspection and maintenance procedures are followed and performed.

Comment 9: The Commenter requests that emission sources less than 2 mmBtu/hr heat input be exempt from field testing of emissions. Emissions performance for small, dry wood chip or wood pellet boilers that exhibit passing test results in a laboratory will perform satisfactorily for life. (Commenter 4)

Response to comment 9: The Department does not agree. The comment indicates that emission sources of this size will emit at the same level throughout their operating life and, thus, performance testing should not be required. Emission sources include mechanical components that will inevitably wear out over time, causing the performance of this equipment to degrade throughout its lifespan. The degradation of equipment may lead to less efficient operation and increased emissions from the source, regardless of size. Therefore, periodic emissions testing not only demonstrates that the source is complying with the required emission standards, but also indicates how much a source's performance has degraded from the time it was originally installed.

### **Applicability:**

Comment 10: The Commenter points out that the proposed rule states that units subject to NSPS or NESHAP are exempt from this rulemaking. There are two definitions for exempt units under the NESHAP from Coal and Oil-Fired Steam Generating Units (40 CFR Part 63 Subpart UUUUU). The commenter requests the exemptions

for limited-use, oil-fired and for natural gas-fired units covered under the NESHAP be explicitly referenced in the express terms for this rulemaking. (Commenter 2)

Response to comment 10: The Department does not believe that exemptions for limited-use oil-fired and natural gas-fired units covered under the NESHAP need to be explicitly referenced in the express terms of this rulemaking. The intent of the exemption from Subpart 227-1 was to remove duplicate regulatory requirements. The Department determined that facilities which are already required to meet equivalent or more stringent particulate matter emission standards under an NSPS or NESHAP would no longer be subject to the requirements of Subpart 227-1. The Department is not, therefore, incorporating portions (including exemptions) of the federal NSPS or NESHAP rules into Subpart 227-1.

Comment 11: The Commenter states that under 40 CFR §75.14(c), the owner or operator of an affected unit that qualifies as gas-fired, as defined in 40 CFR §72.2 of this part, is exempt from the opacity monitoring requirements. (Commenter 2)

Response to comment 11: The Subpart 227-1 opacity standard applies to all stationary combustion installations, regardless of the type of fuel combusted. This opacity requirement has been in effect since the original regulation was promulgated on August 12, 1972.

Comment 12: The Commenter notes that there is a significant inconsistency between the RIS and the express terms of the rule. The second paragraph of the RIS, states that the proposed regulations will “lower PM emission limits for existing and new stationary combustion installations that either predate, or are not subject to, a federal NSPS and/or NESHAP.” However, Proposed Subpart 227-1 would lower PM emissions limits for all “stationary combustion installations except . . . those . . . that are subject to NSPS . . . and/or NESHAP . . . ,

where the particulate matter standards established in the above regulations are equal to or more stringent than the particulate matter emission standards established in proposed Subpart 227-1.” (Commenter 5)

Response to comment 12: As part of this rulemaking, the Department is eliminating the duplication of requirements in Subpart 227-1 from those in federal regulations. As stated in the express terms, any emission source at an affected facility that is subject to an NSPS or NESHAP which requires equivalent or more stringent emission standards than those proposed in Subpart 227-1, is no longer subject to the requirements of Subpart 227-1. The Department agrees that this qualifier was not carried over into the RIS, which will be revised to include the referenced qualifying language.

**Cost:**

Comment 13: The Commenters state that it seems excessively harsh and unreasonable for all existing wood-fired systems to meet the required emission limit within two years of adoption of the proposed rule. Many existing installations are in confined spaces that were not originally designed to accommodate bag filtration or electrostatic precipitation immediately adjacent to the boiler. These installations will involve expensive retrofits that will add cost well beyond the cost of the emission control device itself. Many of these systems were financed based on assumptions about capital cost and operating cost savings that provided attractive payback economics. These investments were not made with the expectation that they would later have to add emission controls that can exceed the original capital cost of the boiler system. In such cases, owners may be forced to revert to more expensive fuels like oil or propane. (Commenters 3 and 4)

Response to comment 13: Based on the comment above, the Department agrees that the proposed two-year compliance requirement should be revised to account for the retrofitting scenario discussed. The Department

understands that the lengthy review process which may include engineering review, bid submission/selection, installation, and shakedown of installed control equipment could extend a project beyond two years. Therefore, the Department has decided to extend the required compliance period from two years to four years for the retrofitting of controls for existing emission sources subject to the proposed revisions.

Comment 14: The Commenters state that the proposed regulations fail to acknowledge the impact it will have on rural regions of New York. The proposed regulations will cause facilities to convert from current fuel types to more expensive heating oil and propane. For wood manufacturing industries located in rural New York that utilize manufacturing residues to produce heat energy for their plants, this regulation will have a significant cost impact at a time when many are struggling to remain competitive in a global wood product marketplace.

(Commenters 1, 3, and 4)

Response to comment 14: The Department acknowledges that there is a compliance cost associated with the proposed emission standards required by Subpart 227-1. The Department outlines the costs of control equipment in the RIS. The Department did not provide cost estimates for switching from wood fuel to fossil fuels like oil or propane. The removal and installation costs of such an undertaking, as well as the installation of fuel storage tanks and fuel lines, would most likely cost more than the installation of controls on the existing source. The commenters suggest that fossil fuel would be more expensive than the wood fuel. If converting from wood to fossil fuel would cost a facility more than solely adding control equipment to meet the proposed emission standard, it would seem unlikely for this conversion to occur.

Comment 15: The Department has attempted to predict costs for certain upgrades to equipment, but the public deserves to know what the costs of impacts are compared to the costs of anticipated equipment upgrades and market impact. (Commenter 1)

Response to comment 15: The Department is required under the State Administrative Procedures Act (SAPA) to estimate potential cost impacts that may occur as a result of this rulemaking. The cost figures are based on available industry information for control equipment that may need to be installed to meet the proposed emission limit in Subpart 227-1. These cost figures are based on vendor data from a NYSERDA report<sup>1</sup> (as noted in the RIS). SAPA does not require the Department to anticipate or estimate market impacts.

Comment 16: The Commenters state that the installed electrostatic precipitator (ESP) cost range listed appears to be significantly lower than would be expected for most new wood heating systems in the size range of over 1 mmBtu/hr and under 10 mmBtu/hr input. They also state that the cost for installation of an ESP at an existing facility would be expected to be on the order of 50-100% higher than the range of costs shown in the table for wood heating installations over 1 mmBtu/hr and under 10 mmBtu/hr input. (Commenter 3 and 4)

Response to comment 16: The cost figures cited in the RIS are based on vendor data from the NYSERDA report<sup>1</sup>.

Comment 17: The Commenter states that for wood boiler installations over 1 mmBtu/hr and under 10 mmBtu/hr input, the cost range presented as the installed cost of a fabric filter at an existing facility may be significantly lower than actual costs depending on the facility, space available, flue gas temperatures, and other site specific factors. (Commenter 3)

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<sup>1</sup> This is a reference to the July 2010 NYSERDA report – Comparative Emissions Characterization of a Small-Scale Wood Chip-Fired Boiler and an Oil-Fired Boiler cited in the cost Section of the RIS.

Response to comment 17: Please note that the cost figures cited in the RIS are based on vendor data from the NYSERDA report<sup>1</sup>. It is impossible for the Department to accurately predict the cost necessary for each individual facility installation needed to comply with this proposed regulation. The Department understands that installation costs will likely vary on an individual facility basis, depending on several facility specific factors, and has estimated what it believes to be a reasonable range of costs for various scenarios, based on available information.

Comment 18: The Commenter states that achieving compliance with proposed Subpart 227-1 would impose significant costs. The commenter also states that they already have a multicyclone mechanical dust collector and a dual-throat venturi scrubber to limit particulate emissions from their wood waste boiler. To consistently achieve emissions of less than 0.1 pounds per million Btu, the commenter would have to further install an ESP. The Commenter estimates the costs to be higher than those cited in the Department's RIS. The commenter also states that they would incur significantly increased annual operating costs such as increased electricity usage.  
(Commenter 5)

Response to comment 18: The Department understands that there is a cost associated with complying with the proposed emission standards. The Department points out that the commenter produces a portion of its own electricity. Thus, the increased cost of electricity needed for an ESP, specifically for this facility, is much lower than power purchased from the grid. The Department is aware of one other boiler with a similar configuration in New York State. This boiler has controls installed that allow it to meet an emission standard below the new emission standard proposed in Subpart 227-1.

Comment 19: The Commenter states that if the compliance costs far exceed the value of their boiler, they will be forced to consider abandoning the boiler, which uses renewable energy as currently configured, in favor of exclusively relying on fossil fuels. (Commenter 5)

Response to comment 19: The Department realizes that each affected installation will need to individually evaluate the options available to them and determine the best course of action necessary to achieve compliance with the proposed emission standards. Ultimately, the facility owners and operators will make appropriate decisions to meet the needs of their operation. The intent of this rulemaking is not to force a shift from renewable energy to fossil fuel combustion. The Department does not believe that this shift will occur.

### **Emission Limits:**

Comment 20: The Commenter notes that proposed Section 227-1.3(a) sets particulate emission limits for two types of combustion installations: 1) units which fire oil; and, 2) units that fire “oil in combination with other liquid or gaseous fuels”. The commenter interprets this phrase to mean that the Department is establishing particulate emission limits for units that burn oil only and for units that co-fire oil and gas and is not establishing standards for units that combust natural gas only, even if that unit has the capability to burn oil at other times. (Commenter 2)

Response to comment 20: The intent of this regulation is to establish a particulate matter emission limit during periods of oil firing. When an emission source fires natural gas only, it is not subject to the particulate matter emission limit in Subpart 227-1. However, if the source fires oil as a back-up fuel, it is subject to the limit in Subpart 227-1.

Comment 21: The Commenter requests that the Department consider increasing the PM2.5 threshold to 0.2 lbs/mmBtu for new installations in regions of the State that are in attainment of the national ambient air quality standard (NAAQS) for PM2.5. (Commenter 4)

Response to comment 21: Please note that the proposed rule is intended to regulate particulate matter and not PM2.5. Also, there are currently no areas in New York State that are in non-attainment of the particulate matter NAAQS.

Comment 22: The Commenter requests that existing wood-fueled boiler systems subject to the proposed regulation be grandfathered, if they can demonstrate by emissions testing, within two years of the promulgation of this regulation, that they operate below the 0.2 lbs/mmBtu PM2.5 level. These systems are relatively few in number and almost entirely located in rural regions of the state. (Commenter 4)

Response to comment 22: The proposed rule regulates particulate matter and not PM 2.5. The Department will not be including "grandfathering" language into the proposed revisions. However, the Department has decided to increase the initial compliance period for existing emission sources subject to the proposed revision from two years to four years. Please see the response to Comment 13. The Department also points out that neighboring states like Massachusetts and Connecticut already have implemented a limit of 0.1 lb/mmBtu for small solid fuel fired boilers.

Comment 23: The Commenter states that emission control for existing and new boilers using wood/lumber manufacturing residues will be required to be a bag house, ESP, or other backend emission control beyond the level achievable with a cyclone or multi-clone. There may be a limited number of exceptions to this. (Commenter 3)

Response to comment 23: The Department understands that each facility will need to determine, on a case-by-case basis, how it will achieve compliance with the proposed emission standard. Depending on the facility's configuration, this may or may not require the addition of specific control devices.

Comment 24: The Commenter states that the Proposed Subpart 227-1 significantly lowers the particulate emissions limitation that currently applies to their wood waste boiler. The commenter also states that they must currently achieve a particulate emissions rate of no more than 0.3 pounds per million Btu under the existing Subpart 227-1. Under the proposed regulations, any stationary combustion installation (oil may also be burned during periods of natural gas curtailment) with a maximum heat input capacity greater than one million Btu per hour that fires solid fuel and that is not subject to a more stringent NSPS or NESHAP must achieve a particulate emissions rate of no more than 0.1 pounds per million Btu. This would represent a 66 percent decrease in the current particulate emissions limitation. (Commenter 5)

Response to comment 24: The Department agrees with the Commenter that the proposed emission standards would significantly decrease the allowable particulate matter emissions from wood fuel firing emission sources. As stated in the RIS, the revisions to Subpart 227-1 are intended to reduce the emission of PM that are the precursors of PM-2.5 below the present levels. Regulatory efforts such as the NSPS and NESHAP programs, past NYS and federal fuel PM emission limits for stationary and mobile sources, and efforts like the Clean Air Interstate Rule have had a significant beneficial effect on air quality and public health. The proposed PM limits in this rule are expected to further reduce monitored values of PM-2.5, and to help New York State maintain attainment of the NAAQS.

Comment 25: The Commenter states that they are subject to a NESHAP for particulate emissions which is not “more stringent” than Proposed Subpart 227-1. To the extent the Department meant to only subject otherwise-unregulated sources to the 0.1 lbs/mmBtu limit, the regulations should be revised to omit the final clause of Proposed Subpart 227-1.2(a). For the reasons that follow, the commenter strongly encourages the Department to do so. Proposed Subpart 227-1 is far more restrictive than the comparable NESHAP standard for hybrid suspension/grate biomass-fired boilers like the commenter's wood waste boiler. Currently, New York's particulate emissions limitation for stationary combustion installations of 0.3 lbs/mmBtu is already significantly lower than the equivalent federal standard with respect to the subcategory applicable to the commenter's wood waste boiler. (Commenter 5)

Response to comment 25: As stated in the response to Comment 12, the intent of this rulemaking is to exempt emission sources from proposed Subpart 227-1 that meet equivalent or more stringent emission standards. In this case, where proposed Subpart 227-1 is more stringent than the comparable NESHAP, the affected source will be required to meet the proposed emission standard provided in New York State's Subpart 227-1 regulation.

Comment 26: The Commenter states that its most recent stack tests show it is already operating well below the current 0.3 lbs/mmBtu limitation and is even achieving the proposed 0.1 lbs/mmBtu limitation most of the time. Nevertheless, to consistently achieve compliance with the proposed emissions limitation by an acceptable margin, the commenter would be required to install an ESP and incur all of the attendant costs. (Commenter 5)

Response to comment 26: The Department requires that affected sources demonstrate that they can consistently achieve emission rates below the proposed standards when operating. Based on the Department's review of previous test results, recent stack tests have shown that the facility has been able to achieve compliance with the

proposed 0.1 lb/mmBtu PM limit. The Department believes that the facility can consistently meet the proposed limit without requiring additional emission controls. However, if in the future, the equipment in place is unable to consistently meet the standard, the facility would need to re-evaluate its boiler operations to determine the best course of action to meet the standard. This includes, but is not limited to, adjusting the current boiler operating scenarios, adjusting the existing control devices, and/or the installation of additional control equipment. If additional controls are required, the Department understands that there are costs associated with installing, operating, and maintaining control equipment.

#### **Greenhouse Gases (GHGs):**

Comment 27: The Commenter states that the proposed rule will inhibit the adoption of low-carbon automated biomass thermal technologies at commercial and institutional facilities throughout rural forested regions in New York. Furthermore, facilities in rural areas already utilizing AWH technology will suffer from this regulation coupled with the projected implementation of the Climate Leadership & Community Protection Act – legislation that does not consider wood as a renewable fuel. Now is not the time to make heating with regionally produced, low carbon wood fuel more expensive in the name of small gains on particulate matter emissions that go above and beyond the current NAAQS. (Commenter 3)

Response to comment 27: As noted in the response to Comment 4, the majority of wood fired in rural areas of New York State occurs in residential wood burning sources. These sources are not subject to the proposed Subpart 227-1 regulation. Also, as stated in the response to Comment 14, the Department does not believe that it would be economically viable to convert back to fossil fuels instead of adding particulate matter controls to a facility's existing wood burning source(s). The Department neither opposes nor advocates the use of any specific type of fuel throughout New York State in order to comply with the proposed Subpart 227-1 regulation.

The Department's goal and mission is to protect the health and welfare of the citizens of the State without bias by adequately implementing lower emission standards from various sectors across the state.

Comment 28: The Commenter states that the proposed regulation will disproportionately and adversely affect rural areas (with no access to a natural gas pipeline) where #2 and #6 fuel oil, liquid natural gas, or propane are used by a large majority of community-scale and small commercial facilities (schools, hospitals, light manufacturing, etc.). (Commenter 3)

Response to comment 28: As the Commenter points out, many rural schools and hospitals may look to install wood burning heating systems. These types of facilities are generally located in the higher density areas of a rural community and have the highest impact on sensitive receptors like children and sick/infirm people. The Department has received complaints from citizens that live or work nearby and from parents of children that attended such schools. Complaints have included, but are not limited to, smoke emissions, wood burning odors, and difficulty breathing at several of these wood burning systems that were installed at schools in rural areas. After investigating some of these complaints, the Department determined that due to poor siting and design these incorrectly installed systems had the likelihood of causing an increased pollutant exposure to the nearby receptors (i.e. school children, employees, and nearby residents).

Comment 29: Wood residues currently used for energy will be landfilled, creating significant amounts of methane, a GHG that is roughly 30-times more potent than CO<sub>2</sub>. (Commenter 3)

Response to comment 29: The Department notes that there are other uses for wood residues besides direct burning or landfilling. The residues may be used for mulch or sent to wood pellet manufacturing facilities. The Department does realize that while methane is a more potent GHG than CO<sub>2</sub>, it takes many years for wood to decompose and convert to methane gas, while burning wood instantaneously creates CO<sub>2</sub> emissions. The

methane created in landfills can be recovered for other productive uses and may not necessarily be directly emitted into the atmosphere as air pollution.

**Stakeholder Notification:**

Comment 30: Two of the Commenters stated that they did not receive notification of stakeholder meeting for Subpart 227-1. (Commenters 1 and 4)

Response to comment 30: The Commenters are correct that the stakeholder letter was not directly sent to them. Given the unknown number of interested entities throughout the State, the Department includes the New York State Business Council (Business Council) on its stakeholder meeting letters. The Department relies on the Business Council to inform any members, that the Department may not have specifically included, of stakeholder meetings which may affect their operations.

Comment 31: The Commenter requests the Department prove that an actual attempt at outreach was made to industry. It is surprising that a rule reaching back to impact existing installations would have withstood initial comments. (Commenter 1)

Response to comment 31: Below is the list of organizations that the stakeholder meeting letter was sent to:

Independent Power Producers of New York, Inc., New York Power Authority, Partnership for Policy Integrity (PFPI), Earth Justice Northeast Regional Office, Sierra Club, Association of Towns, Business Council of New York State, Inc., Coalition Helping Organize a Cleaner Environment, American Lung Association, Natural

Resources Defense Council, New York Public Interest Research Group, Environmental Advocates of New York, Trinity Consultants, NYS Department of Budget

**Testing/Test Methods:**

Comment 32: The Commenter states that source testing is simply too expensive for these small systems. Boilers with advanced oxygen trim systems will not operate with failed trim systems. These boilers will also not perform with wood fuel outside of the required specifications. Advanced boilers will operate consistently over their lifetimes with very similar combustion characteristics. (Commenter 1)

Response to comment 32: Source testing is required either once every five years for Title V facilities or once every ten years for State facility and registered facility permits. The cost of a basic Method 5 test is approximately \$5,000.00 to \$10,000.00. This cost range was provided by the United States Environmental Protection Agency (EPA) and incorporates incidental expenses such as travel. Please also see the response to Comment 9 which discusses how source testing may indicate equipment degradation and potential emission increases over time.

Comment 33: The Commenter is concerned with the proposed rule amendment that all biomass boilers are tested with Method 5 or "any other method acceptable to the department and the administrator for determining the appropriate particulate matter emission limit..." Also, of concern is that other methods of testing that are yet undetermined will be open to subjective judgment. This creates expensive uncertainty and risk for anyone considering investing in a modern wood heat system subject to this regulation. (Commenter 4)

Response to comment 33: The Department does not believe that the proposed regulation creates any unnecessary expense or uncertainty and risk to an applicant that is considering investing in a modern wood heat system. If the applicant chooses to use an alternative method to determine compliance with the particulate matter limits of Subpart 227-1, that method must be approved by the Department. Once the Department has approved an alternative test method, any affected source owner may propose to use that test method going forward, without having to go through additional Department review. Please note that the use of an alternative method is the applicant's choice and not a requirement.

Comment 34: For small, advanced biomass boilers with oxygen trim systems, the renewal of a permit every five years with required stack testing is an undue burden. The tests are simply too expensive for these small systems. Boilers with advanced oxygen trim systems will not operate with failed trim systems. These boilers will also not perform with wood fuel outside of the required specifications. Advanced boilers will operate consistently over their lifetimes with very similar combustion characteristics. (Commenter 4)

Response to comment 34: The frequency of required emission testing is based on the type of air permit held by a facility. Title V facilities with an affected emission source would be required to test the source once every five years. Small facilities typically have either a registration or State facility permit and are only required to test once every ten years. Please see the response to Comment 3.

Comment 35: The Commenter states that the Department should, instead of waiting to certify/accept more test methods on a case-by-case basis, accept EPA Method 28 and/or EN303-5 tests performed in a laboratory prior to the sale of the boiler. Many boilers at the smaller end of the impacted range are regular production boilers. As with boilers that fall under Subpart QQQQ of the EPA NSPS for wood heaters, many of the boilers that are greater than 1 mm Btu/hr will already have reliable emissions testing available. It is likely that the laboratory

testing will also be more accurate. Furthermore, laboratory testing can stand for several units in each size category, thus reducing costs for compliance substantially. This will allow rural residents who are interested in wood fuel to purchase at much lower costs. (Commenter 4)

Response to comment 35: Proposed Subpart 227-1 regulates solid fuel fired stationary combustion installations greater than 1 mmBtu/hr heat input. This regulation does not apply to private residents who are interested in purchasing a wood burning heating system for use in their home. The regulations that the commenter cites are for small, residential wood-fired heating systems. These wood heating systems are much smaller than the 1 mmBtu/hr heat input requirements of proposed Subpart 227-1. Therefore, this test method and the regulations cited by the commenter are not relevant to this rulemaking, as they do not apply to the same sources that proposed Subpart 227-1 intends to regulate.

Commenter List:

1. Tarm Biomass
2. Environmental Energy Alliance of New York
3. Collin Miller
4. Empire State Forest Products Association & New York Bioenergy Association
5. Finch Paper/McNamee Lochner P.C.



## OFFICE OF THE COMMISSIONER

New York State Department of Environmental Conservation  
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P: (518) 402-8545 | F: (518) 402-8541  
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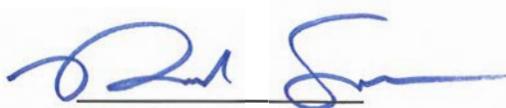
## STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

### CERTIFICATE OF ADOPTION

**AGENCY ACTION:** 6 NYCRR Subpart 227-1, Stationary Combustion Installations; and Part 200, General Provisions.

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, 19-0311, 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 Subpart 227-1, Stationary Combustion Installations and 6 NYCRR Part 200, General Provisions be adopted to read as on the attached original, and certify that this is the original thereof, as adopted by me on 1/19/21, 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 September 4, 2019 under Notice No. ENV-36-19-00003-P. I also further certify that prior notice of public hearing, scheduled for and held on November 8, 2019 in Albany, NY was published in the State Register on September 4, 2019 and DEC's Environmental Notice Bulletin on September 4, 2019 and in local newspapers in the State on September 4, 2019. No other publication of prior notice was required by statute.



Basil Seggos  
Commissioner  
Department of Environmental Conservation

DATED: 1/19/21

Albany, New York



Department of  
Environmental  
Conservation



Revised Express Terms

6 NYCRR Subpart 227-1, Stationary Combustion Installations

Existing 6 NYCRR Subpart 227-1, Stationary Combustion Installations is repealed. A new Subpart 227-1, Stationary Combustion Installations is added as follows:

Section 227-1.1 Definitions. The definitions within Part 200, Part 201, and Subpart 227-2 of this Title apply to this Subpart.

Section 227-1.2 Applicability and Prohibitions.

(a) This Subpart applies to stationary combustion installations except for those stationary combustion installations that are subject to new source performance standards under 40 Code of Federal Regulation (CFR) 60 and/or national emissions standards for hazardous air pollutants under 40 CFR 63, where the particulate matter standards established in the above regulations are equal to or more stringent than the particulate matter emission standards established in this Subpart.

(b) No owner or operator shall construct, install, or modify, or cause to be constructed, installed, or modified, any hand fed stationary combustion installation designed to fire bituminous coal.

Section 227-1.3 Particulate emissions.

(a) Upon promulgation of this regulation, no owner or operator of an existing stationary combustion installation which fires oil or oil in combination with other liquid or gaseous fuels shall be allowed to emit particulate matter in excess of 0.10 pound per million Btu heat input. Within four years of the promulgation of this regulation, no owner or operator of an existing stationary combustion installation firing solid fuel shall be allowed to emit particulate matter in excess of 0.10 pound per million Btu heat input. Upon the commencement

of operation, no owner or operator of a new stationary combustion installation shall be allowed to emit particulate matter in excess of 0.10 pound per million Btu heat input. The above emission limits apply to stationary combustion installations with a maximum heat input capacity equal to or exceeding:

- (1) 1 million Btu per hour firing any amount of solid fuel; or
- (2) 50 million Btu per hour firing oil or oil in combination with other liquid or gaseous fuels.

(b) When two or more stationary combustion installations are connected to a common air cleaning device and/or stack, the total heat input of all the connected emission sources shall be the heat input for the purpose of determining the applicability of subdivision (a) of this Section, unless there is a limit in the facility's permit that prohibits operation of the connected emission sources below the specified heat inputs in subdivision (a) of this Section.

(c) All stationary combustion installations subject to the requirements of this subpart shall perform an annual tune-up of their equipment.

#### Section 227-1.4 Opacity.

(a) No owner or operator shall operate a stationary combustion installation which exhibits greater than 20 percent opacity (six-minute average), except for one six-minute period per hour of not more than 27 percent opacity.

(b) Compliance with the opacity standard may be determined by:

(1) conducting observations in accordance with 40 CFR 60 Appendix A Method 9 (See Table 1, section 200.9 of this Title);

(2) evaluating Continuous Opacity Monitoring System (COMS) records and reports as per Procedure 3 – Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources of 40 CFR Part 60 Appendix F, Procedure – 3 (See Table 1, section 200.9 of this Title); and/or

- (3) considering any other credible evidence.

Section 227-1.5 Compliance testing, monitoring, and recordkeeping.

(a) The owner or operator of a new solid fuel fired stationary combustion installation must conduct an initial compliance test within 180 days of the commencement of operation of the new stationary combustion installation to determine compliance with the applicable particulate matter emission limit as prescribed in this Subpart. The owner or operator of an existing solid fuel fired stationary combustion installation must conduct a compliance test within four years of the promulgation of this regulation. After the initial compliance test, all solid fuel fired stationary combustion installations must conduct periodic compliance tests at least once during the term of the permit. Prior to each test, the owner or operator of a solid fuel fired stationary combustion installation must meet the following criteria:

(1) submit a compliance test protocol to the department for approval at least 30 days prior to emission testing. The conditions of the testing, including the representative loads of operation the testing will be conducted at, and the locations of the sampling devices must be acceptable to the department; and

(2) follow the procedures set forth in 40 CFR 60, Appendix A Method 5 (See Table 1, section 200.9 of this Title), or any other method acceptable to the department and the administrator for determining compliance with the appropriate particulate matter emission limit in section 227-1.3 of this Subpart:

(3) submit a compliance test report containing the results of the emission test to the department for approval no later than 60 days after completion of the emission test.

(b) Monitoring requirements.

(1) Any owner or operator of a stationary combustion installation (excluding combustion turbines) or a group of stationary combustion installations with a total maximum heat input capacity exceeding 250 million Btu per hour shall install, operate, and properly maintain (in accordance with manufacturer's instructions), accurate COMS that satisfy the criteria in either 40 CFR 60 Appendix B (See Table 1, section 200.9 of this Title) or a department approved case-by-case method for continuously monitoring and recording opacity. Stationary

combustion installations required to install COMS shall operate the COMS during all periods of oil and/or solid fuel firing.

(2) Each owner or operator required to operate a COMS in accordance with paragraph (1) of this subdivision shall submit an accurate excess emissions and monitoring system performance report to the department for each calendar year quarter. All reports shall be certified by a responsible corporate official as true, accurate and complete and postmarked by the 30th day following the end of each calendar quarter. The quarterly excess emissions report shall be submitted in a form acceptable to the department and shall include the following minimum information:

- (i) the magnitude, date and time of each six-minute block average during which the average opacity of emissions exceeds 20 percent, except for one six-minute block average per hour not to exceed 27 percent;
- (ii) identification of the specific cause and corrective action taken for each period of excess emission;
- (iii) identification of all periods of COMS downtime, including the date, time and duration of each inoperable period, and the cause and corrective action for each COMS downtime period;
- (iv) the total time in which the COMS are required to record data during the reporting period;
- (v) the total number of exceedances and the duration of exceedances expressed as a percentage of the total time in which the COMS are required to record data; and
- (vi) such other things as the department may deem necessary, proper or desirable in order to enforce article 19 of the Environmental Conservation Law or the rules promulgated thereunder.

(3) Any owner or operator of a stationary combustion installation (excluding combustion turbines) or a group of stationary combustion installations firing oil or oil in combination with other liquid or gaseous fuels with a total maximum heat input capacity of at least 50 million Btu per hour shall keep vendor certified fuel receipts

which contain the sulfur content of the oil being fired as required in 6 NYCRR Subpart 225-1 of this Chapter.

(c) Recordkeeping.

(1) All records, department approved compliance testing protocols, and test results must be maintained on site or at an alternative location, as approved by the department, for a minimum of five years.

(2) Stationary combustion installations required to maintain a COMS must maintain a record of all measurements made by the COMS and the hours of COMS downtime.

(3) Facilities required to conduct annual tune-ups must maintain records of each annual tune-up for all subject stationary combustion installations at the facility.

Section 227-1.6 Severability. Each provision of this Subpart shall be deemed severable. In the event that any provision of this Subpart is held to be invalid the remainder of this Subpart shall continue in full force and effect.



**As Adopted on January 21, 2021**

6 NYCRR Part 200, General Provisions

Revised Express Terms

(Existing sections 200.1 through 200.8 remain unchanged.)

Existing section 200.9, Table 1 is amended as follows:

[227-1.3(b)(1)]	[40 CFR Part 60, Appendix A (Updated July 1, 1996) Reference Method 9, pages 734-740]	[*]
<u>227-1.4(b)(1)</u>	<u>40 CFR 60, Appendix A (Updated July 1, 2017) Reference Method 9, pages 311-318</u>	<u>*</u>
<u>227-1.4(b)(2)</u>	<u>40 CFR 60, Appendix F, Procedure - 3 (Updated July 1, 2017)</u>	<u>*</u>
<u>227-1.5(a)(2)</u>	<u>40 CFR 60, Appendix A Method 5 (Updated July 1, 2017)</u>	<u>*</u>
<u>227-1.5(b)(1)</u>	<u>40 CFR 60, Appendix B (Updated July 1, 2017)</u>	<u>*</u>

(Existing section 200.10 through section 200.16 remains unchanged.)



# **ENB Statewide Notices 2/10/2021**

## **Notice of Adoption**

**6 NYCRR Part 200, General Provisions**

**6 NYCRR Part 227-1 Stationary Combustion Installations**

**Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 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:**

NYS DEC is repealing and replacing 6 NYCRR Subpart 227-1, "Stationary Combustion Installations" as well as making attendant provisions under Part 200, "General Provisions" (collectively, Subpart 227-1). NYS DEC is revising Subpart 227-1 to lower PM emission limits for existing and new stationary combustion installations that either predate, or are not subject to, a federal new source performance standard (NSPS) and/or national emissions standard for hazardous air pollutants (NESHAP). These revisions will also correct minor typographical errors and update the regulation to incorporate changes to the air permitting regulations that have occurred over the past twenty years. In addition, NYS DEC is revising Part 200 to incorporate by reference the applicable federal rule provisions. As required by the Clean Air Act (CAA), NYS DEC will incorporate the revisions to Subpart 227-1 and the attendant revisions to Part 200 into New York's State Implementation Plan (SIP) and provide the revised SIP to United States Environmental Protection Agency (US EPA) for review and approval. The SIP is directed at maintaining the PM national ambient air quality standard (NAAQS) and fulfilling NYS DEC's obligations under the regional haze SIP submitted to the US EPA on March 15, 2010.

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

**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](mailto:air.regs@dec.ny.gov)

**For further information regarding this regulation, contact:** Mike Jennings, NYS DEC - Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, Phone (518) 402-8403, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)



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**INSIDE THIS ISSUE:**

- Maintenance Reimbursement for Residential CSE Programs When a Student Has Been Absent from the Program for More Than 15 Days
- Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure
- Meeting Space in Transitional Adult Homes

**Notice of Availability of State and Federal Funds**

**Executive Orders**

**Opinions of the Attorney General**

**Court Notices**

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***For notices published in this issue:***

- the 60-day period expires on April 11, 2021
- the 45-day period expires on March 27, 2021
- the 30-day period expires on March 12, 2021

**ANDREW M. CUOMO  
GOVERNOR**

**ROSSANA ROSADO  
SECRETARY OF STATE**

**NEW YORK STATE DEPARTMENT OF STATE**

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Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuylerville County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

#### Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

Pursuant to statute, the regulations require county boards of elections to notify voters when it is determined that their affidavit ballot envelope is deficient and provide such voters with an opportunity to cure such deficiencies. First, the board must mail a notice to the voter. Additionally, the board must call and email the voter if such information is available on the voter's registration data. To the extent practicable, the board is to make at least three attempts, over at least two days, at different times of the day, to contact the voter by telephone.

Further, the regulation provides that voters whose ballots are not curable and are rejected are notified. The regulation also provides standards related to unsealed absentee ballot envelopes, signature matching, and instructions related to absentee ballots not requiring a cure.

#### Costs:

In 2018, 1,973 absentee ballots were determined invalid in rural counties. If all of these voters were given notice, it would have cost rural counties \$1,085.15 to mail voters a notice, using the current postage rate of 55 cents. The cost of printing the notice and envelopes is nominal.

#### Minimizing Adverse Impact:

As statute requires that voters be mailed a cure notice when it is determined that an absentee ballot is deficient, the Board of Elections has determined that there is no feasible mechanism to minimize any potential adverse impact.

#### Rural Area Participation:

The Board conducted a presentation via Zoom at the Election Commissioners' Association January conference on January 21, 2021, which detailed recent Election Law changes, including the absentee ballot cure process as required by this amendment and Chapter 141 of the Laws of 2020. The majority of local boards of elections commissioners were present at this conference. The Board will continue to accept input from local boards of elections regarding this amendment.

#### Job Impact Statement

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The proposed amendment provides a cure process for voters when an absentee ballot envelope is determined to be deficient. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

## Department of Environmental Conservation

### NOTICE OF ADOPTION

#### Stationary Combustion Installations

**I.D. No.** ENV-36-19-00003-A

**Filing No.** 77

**Filing Date:** 2021-01-26

**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:** Repeal of Subpart 227-1; addition of new Subpart 227-1 to 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, 19-0311, 71-2103 and 71-2105

**Subject:** Stationary Combustion Installations.

**Purpose:** Update permit references, rule citations, monitoring, recordkeeping, reporting requirements, and lower emission limits.

**Text of final rule:** Existing 6 NYCRR Subpart 227-1, Stationary Combustion Installations is repealed. A new Subpart 227-1, Stationary Combustion Installations is added as follows:

#### Section 227-1.1 Definitions.

*The definitions within Part 200, Part 201, and Subpart 227-2 of this Title apply to this Subpart.*

#### Section 227-1.2 Applicability and Prohibitions.

*(a) This Subpart applies to stationary combustion installations except for those stationary combustion installations that are subject to new source performance standards under 40 Code of Federal Regulation (CFR) 60 and/or national emissions standards for hazardous air pollutants under 40 CFR 63, where the particulate matter standards established in the above regulations are equal to or more stringent than the particulate matter emission standards established in this Subpart.*

*(b) No owner or operator shall construct, install, or modify, or cause to be constructed, installed, or modified, any hand fed stationary combustion installation designed to fire bituminous coal.*

#### Section 227-1.3 Particulate emissions.

*(a) Upon promulgation of this regulation, no owner or operator of an existing stationary combustion installation which fires oil or oil in combination with other liquid or gaseous fuels shall be allowed to emit particulate matter in excess of 0.10 pound per million Btu heat input. Within four years of the promulgation of this regulation, no owner or operator of an existing stationary combustion installation firing solid fuel shall be allowed to emit particulate matter in excess of 0.10 pound per million Btu heat input. Upon the commencement of operation, no owner or operator of a new stationary combustion installation shall be allowed to emit particulate matter in excess of 0.10 pound per million Btu heat input. The above emission limits apply to stationary combustion installations with a maximum heat input capacity equal to or exceeding:*

*(1) 1 million Btu per hour firing any amount of solid fuel; or*

*(2) 50 million Btu per hour firing oil or oil in combination with other liquid or gaseous fuels.*

*(b) When two or more stationary combustion installations are connected to a common air cleaning device and/or stack, the total heat input of all the connected emission sources shall be the heat input for the purpose of determining the applicability of subdivision (a) of this Section, unless there is a limit in the facility's permit that prohibits operation of the connected emission sources below the specified heat inputs in subdivision (a) of this Section.*

*(c) All stationary combustion installations subject to the requirements of this subpart shall perform an annual tune-up of their equipment.*

#### Section 227-1.4 Opacity.

*(a) No owner or operator shall operate a stationary combustion installation which exhibits greater than 20 percent opacity (six-minute average), except for one six-minute period per hour of not more than 27 percent opacity.*

*(b) Compliance with the opacity standard may be determined by:*

*(1) conducting observations in accordance with 40 CFR 60 Appendix A Method 9 (See Table 1, section 200.9 of this Title);*

*(2) evaluating Continuous Opacity Monitoring System (COMS) re-*

cords and reports as per Procedure 3 – Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources of 40 CFR Part 60 Appendix F, Procedure – 3 (See Table 1, section 200.9 of this Title); and/or

(3) considering any other credible evidence.

**Section 227-1.5 Compliance testing, monitoring, and recordkeeping.**

(a) The owner or operator of a new solid fuel fired stationary combustion installation must conduct an initial compliance test within 180 days of the commencement of operation of the new stationary combustion installation to determine compliance with the applicable particulate matter emission limit as prescribed in this Subpart. The owner or operator of an existing solid fuel fired stationary combustion installation must conduct a compliance test within four years of the promulgation of this regulation. After the initial compliance test, all solid fuel fired stationary combustion installations must conduct periodic compliance tests at least once during the term of the permit. Prior to each test, the owner or operator of a solid fuel fired stationary combustion installation must meet the following criteria:

(1) submit a compliance test protocol to the department for approval at least 30 days prior to emission testing. The conditions of the testing, including the representative loads of operation the testing will be conducted at, and the locations of the sampling devices must be acceptable to the department; and

(2) follow the procedures set forth in 40 CFR 60, Appendix A Method 5 (See Table 1, section 200.9 of this Title), or any other method acceptable to the department and the administrator for determining compliance with the appropriate particulate matter emission limit in section 227-1.3 of this Subpart:

(3) submit a compliance test report containing the results of the emission test to the department for approval no later than 60 days after completion of the emission test.

**(b) Monitoring requirements.**

(1) Any owner or operator of a stationary combustion installation (excluding combustion turbines) or a group of stationary combustion installations with a total maximum heat input capacity exceeding 250 million Btu per hour shall install, operate, and properly maintain (in accordance with manufacturer's instructions), accurate COMS that satisfy the criteria in either 40 CFR 60 Appendix B (See Table 1, section 200.9 of this Title) or a department approved case-by-case method for continuously monitoring and recording opacity. Stationary combustion installations required to install COMS shall operate the COMS during all periods of oil and/or solid fuel firing.

(2) Each owner or operator required to operate a COMS in accordance with paragraph (1) of this subdivision shall submit an accurate excess emissions and monitoring system performance report to the department for each calendar year quarter. All reports shall be certified by a responsible corporate official as true, accurate and complete and postmarked by the 30th day following the end of each calendar quarter. The quarterly excess emissions report shall be submitted in a form acceptable to the department and shall include the following minimum information:

(i) the magnitude, date and time of each six-minute block average during which the average opacity of emissions exceeds 20 percent, except for one six-minute block average per hour not to exceed 27 percent;

(ii) identification of the specific cause and corrective action taken for each period of excess emission;

(iii) identification of all periods of COMS downtime, including the date, time and duration of each inoperable period, and the cause and corrective action for each COMS downtime period;

(iv) the total time in which the COMS are required to record data during the reporting period;

(v) the total number of exceedances and the duration of exceedances expressed as a percentage of the total time in which the COMS are required to record data; and

(vi) such other things as the department may deem necessary, proper or desirable in order to enforce article 19 of the Environmental Conservation Law or the rules promulgated thereunder.

(3) Any owner or operator of a stationary combustion installation (excluding combustion turbines) or a group of stationary combustion installations firing oil or oil in combination with other liquid or gaseous fuels with a total maximum heat input capacity of at least 50 million Btu per hour shall keep vendor certified fuel receipts which contain the sulfur content of the oil being fired as required in 6 NYCRR Subpart 225-1 of this Chapter.

**(c) Recordkeeping.**

(1) All records, department approved compliance testing protocols, and test results must be maintained on site or at an alternative location, as approved by the department, for a minimum of five years.

(2) Stationary combustion installations required to maintain a COMS must maintain a record of all measurements made by the COMS and the hours of COMS downtime.

(3) Facilities required to conduct annual tune-ups must maintain records of each annual tune-up for all subject stationary combustion installations at the facility.

**Section 227-1.6 Severability.** Each provision of this Subpart shall be deemed severable. In the event that any provision of this Subpart is held to be invalid the remainder of this Subpart shall continue in full force and effect.

**Final rule as compared with last published rule:** Nonsubstantial changes were made in sections 200.9, 227-1.2(a), 227-1.3(a) and 227-1.5(a).

**Text of rule and any required statements and analyses may be obtained from:** Mike Jennings, NYSDEC, Division of Air Resources, 625 Broadway Albany, NY 12233-3254, (518) 402-8403, 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, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

**Summary of Revised Regulatory Impact Statement**

**INTRODUCTION**

The New York State Department of Environmental Conservation (Department) is proposing to repeal and replace 6 NYCRR Subpart 227-1, "Stationary Combustion Installations" as well as attendant provisions under Part 200, "General Provisions" (collectively, Subpart 227-1). Currently, Subpart 227-1 establishes emission limits for particulate matter (PM) on oil fuel (including oil which is fired in combination with other liquid and gaseous fuels), and solid fuel (any amount) fired stationary combustion installations. Subpart 227-1 also establishes an opacity limit for all stationary combustion installations.

The Department is revising Subpart 227-1 to lower PM emission limits for existing and new stationary combustion installations except for those sources subject to new source performance standards under 40 Code of Federal Regulation (CFR) 60 and/or national emissions standards for hazardous air pollutants under 40 CFR 63, where the particulate matter standards are equal to or more stringent than the particulate matter emission standards established in this Subpart. These revisions will also correct minor typographical errors and update the regulation to incorporate changes to the air permitting regulations that have occurred over the past twenty years. In addition, the Department is revising Part 200 to incorporate by reference the applicable federal rule provisions.

As required by the Clean Air Act (CAA), the Department will incorporate the revisions to Subpart 227-1 and the attendant revisions to Part 200 into New York's State Implementation Plan (SIP) and provide the revised SIP to U.S. Environmental Protection Agency (EPA) for review and approval. The SIP is directed at maintaining the PM national ambient air quality standard (NAAQS) and fulfilling the Department's obligations under the regional haze SIP submitted to the EPA on March 15, 2010. These revisions are not a mandate on local governments. It applies to any entity that owns or operates a stationary combustion installation as set forth in the regulations.

**STATUTORY AUTHORITY**

The statutory authority for these revisions 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, 19-0311, 71-2103, and 71-2105.

Based on the above-referenced sections, the Department has very broad authority to regulate air pollution from portable or stationary sources, including the promulgation of 6 NYCRR Subpart 227-1 entitled "Stationary Combustion Installations".

**LEGISLATIVE OBJECTIVES**

Article 19 of the ECL was adopted for the purpose of safeguarding the air resources of New York State from pollution. To facilitate this purpose, the Legislature bestowed specific powers and duties on the Department including the power to formulate, adopt, promulgate, amend, and repeal regulations for preventing, controlling or prohibiting air pollution. This authority also specifically includes promulgating rules and regulations for preventing, controlling or prohibiting air pollution in such areas of the state as shall or may be affected by air pollution, and provisions establishing areas of the state and prescribing for such areas (1) the degree of air pollution or air contamination that may be permitted therein, and (2) the extent to which air contaminants may be emitted to the air by any air contamination source. In addition, this authority also includes the preparation of a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution recognizing various requirements for different areas of the state.

The legislative objectives underlying the statutes are directed toward protection of the environment and public health. The proposed rulemaking will further the state's goals by reducing air pollution, specifically PM emissions, a criteria pollutant and a precursor to PM-2.5, which in turn is a precursor to visibility-impairing haze from the majority of oil firing stationary sources.

#### NEEDS AND BENEFITS

There are many environmental benefits inherent in the reductions of PM that do not explicitly relate to visibility improvement. These reductions will lead to advances in health protection as well. In addition to experiencing improved visibility, forested areas such as the Adirondack Park will benefit from reduced PM acid deposition impacts. These environmental impacts could also be expected to translate into economic benefits from increased public use of a cleaner and visibly healthier park.

Elevated PM levels are of concern for the New York City metropolitan area, which has been designated, until recently, as non-attainment for the annual and 24-hour PM-2.5 NAAQS. PM consists of microscopic solid or liquid particles and is the major cause of the regional haze issue. PM can be emitted directly from stationary sources or comprised of nitrate and sulfate particles formed through reactions involving NO<sub>x</sub> and SO<sub>2</sub> in the atmosphere. These particles are small enough to be inhaled into the lungs and can even enter the bloodstream. Ongoing scientific studies show that particulate inhalation, similarly to ozone, leads to health problems such as coughing, difficulty breathing, aggravated asthma, and a higher likelihood for other respiratory disorders. Increased PM exposure may even cause premature death in those with existing heart or lung disease.

The revisions to Subpart 227-1 are intended to reduce the emission of PM that are the precursors of PM-2.5 below the present levels. Regulatory efforts such as the NSPS and NESMAP programs, past NYS and federal fuel PM emission limits for stationary and mobile sources, and efforts like the Clean Air Interstate Rule have had a significant effect on air quality and health. The proposed PM limits in this rule are expected to further reduce monitored values of PM-2.5, and to enable and maintain attainment of the NAAQS. The proposed PM emission limits will reduce actual PM emissions throughout NYS by two to five tons per day.

#### Stakeholder Meetings:

The Department held stakeholder meetings on July 26th through July 28th, 2017 in Albany, NY, New York City, NY and Avon, NY, respectively. The Department sent a fact sheet out to interested parties including the environmental justice community. Several of the interested parties attended each of these meetings where they asked questions and provided comments on the draft regulatory language.

#### COSTS

##### Costs to Regulated Parties and Consumers:

For oil fuel fired stationary combustion installation control costs, there is a direct correlation between the sulfur content of fuel oil and PM emissions. The USEPA's 5th Edition AP-42 Final Section for External Combustion Sources (AP-42) emission factors for residual oil contain a sulfur-in-fuel component. Since the 2013 revision of Subpart 225-1 lowered the sulfur-in-fuel requirements for fuel oil (both residual and distillate oils), the emission factor derived from AP-42 would be lower than the Subpart 227-1 revised prescribed PM emission limit of 0.1 pounds per million Btu for oil fired stationary combustion installations.

The AP-42 distillate oil PM emission factors are also lower than the prescribed Subpart 227-1 PM emission limits. Based on these factors, the Department does not believe that there will be a need to install PM emission controls on oil fired stationary combustion installations as a result of these proposed revisions to Subpart 227-1. Therefore, the Department's proposed PM emission limit for oil fired stationary combustion installations will not cause any new control costs to be incurred by the sources subject to the proposed regulation.

For solid fuel fired stationary combustion installation control costs, there are several control technologies that may be used to control PM emissions from solid fuel stationary combustion installations. The following table lists the control types and costs for installing PM controls on solid stationary combustion installations of 10 mmBtu/hr or smaller heat input:

Control Type	Removal Effectiveness (%)	Installation Costs (\$)	Annual Operations/Maintenance Costs (\$)
Cyclone	50	7,000 - 10,000	< 1,000
Multi-Clone	75	10,000 – 16,000	< 1,000
Core Separator	60	100,000	Unknown
ESP	90	60,000 – 175,000	1,000 – 3,000 + electricity costs
Fabric Filter	98	80,000 – 135,000	10,000

For solid fuel fired stationary combustion installations greater than 10 mmBtu/hr heat input the cost figures can be conservatively increased one time for every 10 mmBtu/hr increase in heat input. Therefore, the cost

figure would double for a 20 mmBtu/hr heat input stationary combustion installation, while tripling for a 30 mmBtu/hr heat input combustion installation. The life span of these control devices has been conservatively estimated to be 20 years.

Both oil and solid fuel fired stationary combustion installations will be required to perform annual tune-ups. Solid fuel fired stationary combustion installations will be required to conduct emissions compliance testing at least once during the term of their permit. Annual tune-ups cost between \$1,000.00 and \$5,000.00 per tune-up, depending on the size of the source. Compliance tests cost between \$5,000.00 and \$10,000.00 per test, depending on the size of the source and complexity of the test set-up based on source configuration.

#### Costs to State and Local Governments:

New York State and local governments may incur increased control and compliance testing costs associated with this proposed regulation. There will also be minimal new recordkeeping and annual tune-up requirements imposed on local governments as a result of this proposed rule-making. Based on the Department's permitting data, there are a total of 56 Title V permits, 104 state facility permits, and 760 registrations at New York State and local government facilities. Approximately 210 of these facilities contain stationary combustion installations where the requirements of Subpart 227-1 are applicable. Of the 210 affected facilities 180 contain oil fired stationary combustion installations while there are 30 facilities that fire wood for fuel. Therefore, over 85 percent of the affected New York State and local government facilities will incur minimal costs to comply with the proposed rulemaking.

#### Costs to the Regulating Agency:

The Department will face some initial administrative costs associated with the application review and permitting of the new PM limits. Minimal additional monitoring, recordkeeping, and reporting requirements are being proposed under this rule-making. Therefore, minimal additional costs will be incurred by the regulating agency based on these factors.

#### LOCAL GOVERNMENT MANDATES

This is not a mandate on local governments. Local governments have no additional compliance obligations as compared to other subject entities. Also, no additional monitoring, recordkeeping, reporting, or other requirements will be imposed on local governments under this rulemaking.

#### PAPERWORK

The proposed changes to Subpart 227-1 will create no additional paperwork for the facilities subject to the requirements of this rule.

#### DUPLICATION

The proposed revisions to Subpart 227-1 do not duplicate, overlap, or conflict with any other State or federal requirements.

#### ALTERNATIVES

The Department evaluated the following alternatives:

(1) Take no action: This alternative could prevent New York State from complying with its obligations under the CAA. If the Department does not implement this regulation, the state would not be able to meet its obligations to maintain attainment with the PM-2.5 standard, nor would it reduce the regional haze impacts in the northeast. The reduction in PM emission limits will directly result in reductions of PM, PM-10, and PM-2.5. Therefore, the "Take no action" alternative has been rejected.

(2) Partial revision of the current regulation: The Department could revise Subpart 227-1 to only correct the typographical errors and update the permitting language contained in the regulation. However, the Subpart 227-1 PM emission limits were last revised in 1971 and are over 45 years old, and do not lend favorably to the state's air quality goals that were discussed earlier. These limitations are based on combustion and control technologies that are 50 years old. Therefore, based on the vast improvements in both combustion and control technologies the "partial revision" alternative has been rejected.

#### FEDERAL STANDARDS

The proposed revisions to Subpart 227-1 do not exceed any minimum federal standards.

#### COMPLIANCE SCHEDULE

The compliance date for existing solid fuel fired stationary combustion installations, including the installation of any required controls and the completion of compliance testing, is four years from the effective date of the revisions. For existing stationary combustion installations which fire oil or oil in combination with other liquid or gaseous fuels, compliance is required on the effective date of the regulation. The compliance date for new stationary combustion installations will be upon the commencement of operation.

#### Revised Regulatory Flexibility Analysis

##### EFFECT OF RULE

The Department proposes to revise Subpart 227-1, "Stationary Combustion Installations" as well as attendant provisions under Part 200, "General Provisions" (collectively, Subpart 227-1). The proposed rulemaking will apply statewide. Small businesses are those that are independently owned, located within New York State (NYS), and that employ 100 or fewer

persons. The proposed revisions to the Subpart 227-1 requirements flow from the state's obligations under the federal Clean Air Act. Therefore, the proposed revisions do not constitute a mandate on local governments. The Subpart 227-1 requirements apply equally to every facility that contains a stationary combustion installation in New York State. The proposed revisions will not affect small businesses or local governments differently from any other source subject to this rule.

#### COMPLIANCE REQUIREMENTS

The proposed rule will lower particulate matter (PM) emission limits, correct typographical errors, and update the regulation to incorporate changes to the air permitting regulations. Minimal additional monitoring, recordkeeping, and reporting requirements are being proposed under this rule-making.

#### PROFESSIONAL SERVICES

The proposed rule will lower PM limits. No changes will be made in the monitoring, recordkeeping, or reporting requirements in the current version of Subpart 227-1. Facilities subject to this rule are simply required to comply with the new lower PM emission limits. Based on the requirement to meet lower PM emission limits the Department expects that some small businesses and/or local governments will need to hire additional professional services to comply with the provisions of the proposed rule.

#### COSTS

Solid fuel fired (any amount) stationary combustion installations subject to the Subpart 227-1 provisions may incur increased control costs associated with this proposed regulation. Depending on the size of the affected emission source and type of control required to meet the prescribed limit of the proposed regulation the costs incurred may vary greatly. The annualized cost control range, which includes installation, operations, maintenance (including annual tune-ups), and monitoring costs is based on a 20-year control life and has been calculated to be between \$1,250.00 and \$20,500.00 per individual emission source.

There are no projected control costs associated with oil fired (this includes oil fired in combination with other liquid and gaseous fuels) stationary combustion installations. There will be minimal new costs associated with compliance testing (once during the term of the permit or registration), recordkeeping, and annual tune-ups that are required under the proposed regulation. The annualized cost for these sources has been calculated to be between \$1,250.00 and \$5,500.00 per individual emission source.

Based on the Department's permitting data, there are a total of 56 Title V permits, 104 state facility permits, and 760 registrations at New York State and local government facilities. Approximately 210 of these facilities contain stationary combustion installations where the requirements of Subpart 227-1 are applicable. The vast majority of the 210 affected facilities contain oil fired stationary combustion installations (approximately 180 facilities). The Department has issued permits or registrations to 51 facilities throughout the State that employ 76 wood fired emission sources. These emission sources range in size from 1.4 mmBtu/hr heat input to 855 mmBtu/hr heat input and burn wood chips, hogged wood fuel, and wood pellets. Of these 51 facilities 30 are owned by New York State or local governments. Therefore, over 85 percent of the affected New York State and local government facilities will incur minimal costs to comply with the proposed rulemaking.

#### MINIMIZING ADVERSE IMPACT

The Department does not expect any particular adverse impacts on small businesses and local governments throughout New York State. Subpart 227-1 is a statewide regulation. Its requirements are the same for all facilities. The Department does not anticipate small businesses or local governments to be impacted differently than other sources subject to the proposed revisions to Subpart 227-1.

#### SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The Department held stakeholder meetings (including environmental justice outreach) on July 26th through July 28th, 2017 in Albany, NY, New York City, NY and Avon, NY, respectively. The Department sent a fact sheet out to interested parties, including the environmental justice community. Several of the interested parties attended each of these meetings where they asked questions and provided comments on the draft regulatory language. The meetings were held to give representatives from the affected small business and local government representatives an opportunity to meet with Department staff and discuss various issues during the rulemaking process. The Department will also hold public hearings and seek comments on Subpart 227-1 throughout New York State and will notify small business and local government representatives as part of this proposed rulemaking.

#### ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The Department has determined that the control technologies available for affected emission sources are both economically and technologically feasible.

#### CURE PERIOD OR AMELIORATIVE ACTION

The Department is not including a cure period in this rulemaking. The purpose of this regulation is to provide timely emissions reductions, delaying enforcement of the regulation adversely affects such emissions reductions.

#### Revised Rural Area Flexibility Analysis

##### TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

The proposed rule (Subpart 227-1) is not expected to have a substantial adverse impact on rural areas in New York State (NYS). Rural areas are defined as rural counties in New York State that have populations of less than 200,000 people, towns in non-rural counties where the population densities are less than 150 people per square mile, and villages within those towns. The proposed rulemaking will apply statewide and thus all affected stationary combustion installations throughout the state will be equally affected.

##### REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

The proposed rule will lower particulate matter (PM) emission limits, correct typographical errors, and update the regulation to incorporate changes to the air permitting regulations. Minimal additional recordkeeping and reporting requirements are being proposed under this rule-making.

##### COSTS

Solid fuel fired (any amount) stationary combustion installations subject to the Subpart 227-1 provisions may incur increased control costs associated with this proposed regulation. Depending on the size of the affected emission source and type of control required to meet the prescribed limit of the proposed regulation the costs incurred may vary greatly. The annualized cost control range, which includes installation, operations, maintenance (including annual tune-ups), and monitoring costs is based on a 20-year control life, and has been calculated to be between \$1,250.00 and \$20,500.00 per individual emission source.

There are no projected control costs associated with oil fired (this includes oil fired in combination with other liquid and gaseous fuels) stationary combustion installations. There will be minimal new costs associated with compliance testing (once during the term of the permit or registration), recordkeeping, and annual tune-ups that are required under the proposed regulation. The annualized cost for these sources has been calculated to be between \$1,250.00 and \$5,500.00 per individual emission source.

#### MINIMIZING ADVERSE IMPACT

The Department does not expect any adverse impacts on rural areas of the state. There will be positive environmental impacts from the regulation in rural areas. Rural areas should witness improved visibility with an associated decrease in airborne PM.

Subpart 227-1 is a statewide regulation. Its requirements are the same for all affected facilities, and rural areas are impacted no differently than other areas in New York State.

#### RURAL AREA PARTICIPATION

The Department held stakeholder meetings on July 26th through July 28th, 2017 in Albany, NY, New York City, NY and Avon, NY, respectively. The Department sent a fact sheet out to interested parties, including the environmental justice community. Several of the interested parties attended each of these meetings where they asked questions and provided comments on the draft regulatory language. These meetings included the rural-area stakeholders as well as industry representatives. The Department will also hold public hearings and seek comments on Subpart 227-1 in the upstate and other rural areas as part of this proposed rulemaking.

#### Revised Job Impact Statement

The edits made to the Express Terms do not require any changes to the JIS.

#### Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 3rd year after the year in which this rule is being adopted.

#### Assessment of Public Comment

During the public comment period for the proposed revisions to 6 NYCRR Subpart 227-1, the Department received a total of five comment letters. The Department parsed the comments into the following categories and prepared responses for each comment. This document summarizes those comments.

##### General:

The Department received comments on the number of wood-burning facilities affected by the proposed regulation, clarity on permit renewals, emissions from residential sectors, adverse impacts, and expenses required to achieve environmental benefits. Based on these comments, the Department clarified both the Regulatory Impact Statement (RIS) and the Regulatory Flexibility Analysis for Small Businesses and Local Governments to include the number of wood-burning facilities affected by the proposed changes.

The revisions to Subpart 227-1 lower PM emission limits for existing and new stationary combustion installations that are not subject to an equivalent or more stringent federal new source performance standard (NSPS) and/or national emissions standard for hazardous air pollutants (NESHAP). Currently, there is no NSPS for commercial/industrial/institutional wood burning sources in the 1 to 10 mmBtu/hr size range. Under Subpart 227-1, the current PM standard of 0.6 lbs/mmBtu for these size sources was developed over 40 years ago. Facilities that seek to replace existing wood burning sources have no incentive to purchase state-of-the-art equipment with controls. Therefore, as emissions of PM from residential sources decreases, the percentage of the emissions from the commercial/industrial/institutional will increase, if no new requirements are promulgated.

#### Annual Tune-ups:

The Department received comments requesting that wood burning sources smaller than 2 mmBtu/hr heat input be exempt from field testing of emissions, be required to only meet the annual tune-up provisions, or be exempted entirely from the regulation.

The Department's response states that periodic emissions testing will demonstrate if a source is complying with the required emission standards, and also indicate how much a source's performance may have degraded from the time it was originally installed. The current version of the regulation requires wood burning sources one mmBtu/hr or greater to meet an emission limit. Based on the current applicability and requirements, the Department stated that it could not "back slide" and exempt these sources or remove emission limit requirements.

#### Applicability:

The Department received comments requesting clarification regarding rule applicability. The express terms state that sources subject to equivalent or more stringent federal requirement are not subject to the requirements of the proposed Subpart. Clarifying language was add to the RIS to address these comments.

In particular, the Department responded to a comment concerning opacity requirements for certain fuels. The Subpart 227-1 opacity standard applies to all stationary combustion installations, regardless of the type of fuel combusted. This requirement has been in effect since the original regulation was promulgated on August 12, 1972.

The Department also responded to a comment to explain that this rulemaking eliminates the duplication of requirements in Subpart 227-1 from those in federal regulations. Any emission source at an affected facility that is subject to an NSPS or NESHAP which requires equivalent or more stringent emission standards than those proposed in Subpart 227-1 is not subject to the requirements of Subpart 227-1.

#### Cost:

The Department received comments stating that the cost estimates cited in the RIS are not accurate. The Department responded that the cost figures cited in the RIS were based on vendor data from the NYSERDA report.

Also regarding costs, the Department stated that while there may be varying costs associated with this rulemaking, each affected installation will need to individually evaluate the options available to them and determine the best course of action necessary to achieve compliance with the proposed emission standards.

Several comments stated that some existing wood-fired systems could not meet the required emission limit within two years of adoption of the rule and requested that the Department extend the compliance period of the proposed regulation. Upon review, the Department agrees and has revised the express terms and RIS to reflect this. The compliance period was extended for an additional two years.

#### Emission Limits:

Two commenters requested that the Department consider increasing the proposed PM limit from 0.1 lbs/mmBtu to 0.2 lbs/mmBtu. Based on the NYSERDA report, the Department believes that the 0.1 pounds per mmBtu limit is reasonable, achievable and practical.

The Department also received comments stating that the proposed particulate matter limit was significantly lower than the current regulation's particulate matter limit and that control devices would need to be installed to meet the proposed limit. The Department agrees with the comments and has increased the proposed compliance period from two years to four years to allow an adequate amount of time for affected facilities to install any necessary control equipment.

#### Greenhouse Gases (GHGs):

The Department received a comment stating that the proposed regulation will disproportionately and adversely affect rural areas with small commercial facilities (schools, hospitals, light manufacturing, etc.). Thus, causing an increase in GHGs. The Department responded that these types of facilities are generally located in the higher density areas of a rural community and have the highest impact on sensitive receptors like children and sick/infirm people. The Department stated that it has received complaints regarding health impacts at several wood burning systems that were installed at schools in rural areas. The Department determined that

due to poor siting and design, these incorrectly installed systems were negatively impacting the health of the nearby receptors, such as school children.

The Department received a comment that the proposed regulation would cause the landfilling of wood normally burned for fuel, which would create significant amounts of methane, a GHG that is roughly 30-times more potent than CO<sub>2</sub>. The Department responded there are other uses for wood residues besides direct burning or landfilling, such as mulching or sending the product to wood pellet manufacturing facilities. While methane is a more potent GHG than carbon dioxide, it takes many years for wood to decompose and convert to methane gas, burning wood instantaneously creates carbon dioxide emissions, and methane created in landfills can be recovered for other productive uses.

#### Stakeholder Notification:

In response to stakeholder notification, the Department stated that due to the unknown number of impacted facilities throughout the State, stakeholder notifications were sent to several entities representing potentially impacted facilities, such as the New York State Business Council (Business Council) and other identified entities. The Department relies on these entities to inform their members of stakeholder meetings that may affect their operations. As required, all members of the public are notified and given the opportunity to comment during the rulemaking process.

#### Testing/Test Methods:

The Department received a comment stating that source testing is too expensive for small systems since boilers will not perform with wood fuel outside of the required specifications and advanced boilers will operate consistently over their lifetimes with very similar combustion characteristics.

The Department responded by stating that source testing is currently required either once every five years for Title V facilities or once every ten years for State facility and registered facility permits. The Department shared the cost range provided by the United States Environmental Protection Agency (EPA) which incorporates incidental expenses such as travel. The Department also cited the importance of source testing, which may indicate equipment degradation and potential emission increases over time.

In response to a request to use alternative testing methods, the Department stated that the rule allows a source to request a Department-approved alternative testing method. One Commenter requested that the Department accept EPA Method 28 and/or EN303-5 test methods because they could be used for several units in each size category, thus reducing costs for compliance and allowing rural residents to purchase wood fueled units at a much lower cost. The Department explained that the test methods cited by the commenter are not applicable to Subpart 227-1 sources since those methods apply to residential wood burning heating system smaller than the 1 mmBtu/hr minimum heat input, which are not regulated under this rule.

## NOTICE OF ADOPTION

### New Source Review Requirements for Proposed New Major Facilities and Major Modifications to Existing Facilities

**I.D. No.** ENV-06-20-00020-A

**Filing No.** 78

**Filing Date:** 2021-01-26

**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 Part 231 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:** New Source Review requirements for proposed new major facilities and major modifications to existing facilities.

**Purpose:** To conform to federal NSR rule requirements and related court rulings, correct typographical errors, and clarify rule language.

**Substance of final rule:** The Department of Environmental Conservation (Department) is proposing to amend Parts 200 and 231 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, entitled "General Provisions" and "New Source Review of New and Modified Facilities" respectively.

The Part 200 amendments will incorporate by reference updated versions of 40 Code of Federal Regulations (CFR) Part 51 Appendix W: Guideline on Air Quality Models of the EPA and the list of Global Warming Potentials found in 40 CFR Part 98 Table A-1.

