

Rule Making Activities

NYS Register/February 27, 2019

NOTICE OF ADOPTION

Addition of Certificate Titles Eligible for Grade Level Extensions, Limited Extensions, and a Statement of Continued Eligibility

I.D. No. EDU-44-18-00007-A  
Filing No. 125  
Filing Date: 2019-02-12  
Effective Date: 2019-02-27

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

Action taken: Amendment of sections 80-3.15 and 80-4.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 210, 215, 305, 3001, 3004 and 3009

Subject: Addition of Certificate Titles Eligible for Grade Level Extensions, Limited Extensions, and a Statement of Continued Eligibility.

Purpose: Creates limited extensions and continued eligibility in the core subject areas for teachers of students with disabilities.

Text or summary was published in the October 31, 2018 issue of the Register, I.D. No. EDU-44-18-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 473-2183, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

English Language Learner Grade Span Requirement

I.D. No. EDU-47-18-00010-A  
Filing No. 131  
Filing Date: 2019-02-12  
Effective Date: 2019-02-27

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

Action taken: Amendment of section 154-2.3(i) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 208, 315, 305, 2117, 2854(1)(b) and 3204

Subject: English Language Learner Grade Span Requirement.

Purpose: To provide a one-year renewable waiver to expand the allowable grade span for ENL and BE classes to three contiguous grades.

Text or summary was published in the November 21, 2018 issue of the Register, I.D. No. EDU-47-18-00010-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 473-2183, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Following the public comment period required under the State Administrative Procedure Act, the Department received the following comments:

1. COMMENT:

One commenter expressed the position that the regulation puts students at a disadvantage by grouping them in more than two continuous grades, on account of both developmental and instructional appropriateness. The commenter felt that the skills covered across three grade spans would be too broad to cover in a single classroom.

DEPARTMENT RESPONSE:

The Department agrees that it is critical to provide instruction that is both developmentally and instructionally appropriate. The Department has limited the waiver's availability to districts with low English Language Learner enrollment of thirty or less students district-wide. Districts seeking the waiver will be required to provide key demographic information such as the total number and percentage of ELLs in the district as well as in particular schools, and the number of available certified BE and English for speakers of other languages ("ESOL") teachers to serve them. Districts will also be required to submit a justification explaining how they will ensure that all ELLs receive appropriate support if a waiver is granted, as well as the efforts the district has made to comply with the two grade span requirement of section 154-2.3(i) given its current staffing.

The Department also issued an accompanying guidance document entitled "School District Justification to Expand the Maximum Allowable Grade Span to Three Contiguous Grades in 1-12 English as a New Language (ENL) or Bilingual Education (BE) Classes." Contained in this guidance are questions and answers regarding which districts qualify for the waiver, best practices and guidance regarding instructional grouping practices, and recommended solutions for common challenges. The Department is also available for technical assistance and support as districts implement this temporary waiver.

2. COMMENT:

Two commenters expressed support for the regulation, on account of benefits to smaller districts and schools. One commenter expressed that the regulation will help smaller schools which may not have sufficient resources to meet the two grade span requirement. The commenter further expressed that developmental differences may not be as great in higher grades and that differences in instructional needs can be accommodated by differentiation of lesson plans. Another commenter observed that in small districts, English as a New Language teachers often have to work in more than one school or even more than one district and across many grades, in which case it can be instructionally beneficial to group students based on proficiency across multiple grades.

DEPARTMENT RESPONSE:

It is not necessary for the Department to respond as these comments are in support of the proposed regulation.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Set Nitrogen Oxide (NOx) Emission Rate Limits for Simple Cycle and Regenerative Combustion Turbines

I.D. No. ENV-09-19-00015-P

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

Proposed Action: Addition of Subpart 227-3 to Title 6 NYCRR.

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

Subject: Set nitrogen oxide (NOx) emission rate limits for simple cycle and regenerative combustion turbines.

Purpose: Reduction of nitrogen oxide (NOx) emissions from simple cycle and regenerative combustion turbines.

Public hearing(s) will be held at: 11:00 a.m., May 6, 2019 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A/B, Albany, NY; 11:00 a.m., May 13, 2019 at SUNY Stony Brook, 50 Circle Rd., Rm. B02, Stony Brook, NY; 11:00 a.m., May 14, 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: The full text for this rule appears in the Appendix of this issue.

*Text of proposed rule and any required statements and analyses may be obtained from:* Ona Papageorgiou, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

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

*Public comment will be received until:* May 20, 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>):* The New York State Department of Environmental Conservation (DEC) is proposing 6 NYCRR Part 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emissions from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help to address Clean Air Act (CAA) requirements, ozone nonattainment and protect the health of New York State residents. This proposal is only applicable to simple cycle and regenerative combustion turbines. This is not a mandate on local governments. It applies to any entity that owns or operates a subject source.

**STATUTORY AUTHORITY**

The statutory authority for the promulgation of Subpart 227-3 is found in the New York State 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.

**LEGISLATIVE OBJECTIVES**

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure the protection of the public health and welfare, the natural resources of the State, physical property, and integrating industrial development with sound environmental practices.

**NEEDS AND BENEFITS**

In March of 2008, the United States Environmental Protection Agency (EPA) lowered the eight-hour ozone National Ambient Air Quality Standard (NAAQS) from 0.08 parts per million (ppm) to 0.075 ppm.<sup>1</sup> Subsequently, on October 1, 2015, the EPA signed a rule that lowered this standard to 0.070 ppm.<sup>2</sup> Ozone NAAQS attainment status is demonstrated by measurements recorded from a monitoring network set up across the United States.

EPA designated the New York-Northern New Jersey-Long Island metropolitan area (New York metropolitan area, or NYMA) as a "marginal" nonattainment area for the 2008 ozone NAAQS effective July 20, 2012. On November 14, 2018 EPA proposed to reclassify the NYMA to "serious" nonattainment.<sup>3</sup> The area was designated as "moderate" nonattainment for the 2015 ozone NAAQS.<sup>4</sup> NYMA monitors are currently reporting ozone concentrations of 0.083 ppm, well above the standard.

Simple cycle and regenerative combustion turbines (SCCTs) sometimes referred to as peaking units, run to meet electric load during periods of peak electricity demand. They typically run on hot summer days when there is a strong likelihood of high ozone readings. Many peaking units in New York have high NOx emission rates, are inefficient and are approaching 50 years of age. It is difficult to install after-market controls on most of these units because of their age and site limitations.

New York must fulfill its CAA "good neighbor" obligations which require states to include adequate measures in its state implementation plans (SIPs) prohibiting emissions of air pollutants "in amounts which will...contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to" a NAAQS. In addition, New York must meet the 2008 and 2015 ozone NAAQS, for which the New York-Northern New Jersey-Long Island, NY-NJ-CT area is in nonattainment.

Because high ozone days significantly impact human health in the NYMA and because older units significantly contribute on these days, DEC assessed the 99 high ozone days between 2011 and 2017. Analysis shown in Table 1.

	NOx (tons)	Heat Input (MMBtu)	Gross Load (MWh)
Pre-1986 SCCT*	1,849	7,193,633	580,109
Post-1986 SCCT*	73	6,908,887	1,040,831

\*Values are the sum of high ozone days 2011 - 2017

Table 1: NOx emissions from NY SCCTs.<sup>5</sup>

As demonstrated in Table 1, on high ozone days newer SCCTs produced 64 percent of the electricity generated from SCCTs while emitting only 4 percent of NOx emissions from these sources.<sup>6</sup>

If the older sources were replaced with newer sources, the total NOx emissions from those older sources on the 99 high ozone days assessed would drop from the reported 1,849 tons to between 40 and 60 tons depending on efficiency. This would result in an approximate 1,800-ton reduction of NOx emissions over those high ozone days. A reduction of 18 tons of NOx emissions on an ozone season day would represent a reduction of over 10 percent of NYMA NOx emissions from the electricity generation sector and an overall reduction of 3.5 percent from all sources.<sup>7</sup>

**Electric grid reliability:**

To adequately assess future reliability needs associated with this rule making is proposing that affected facilities submit compliance plans by March 2, 2020 so that the NYISO may include the compliance solutions selected by facilities in its 2020 Reliability Needs Assessment (RNA).

**Proposal:**

To address NOx emissions from SCCTs on high ozone days, DEC is proposing to develop a new regulation, Subpart 227-3, that will apply to SCCTs with a nameplate capacity of 15 megawatts or greater that bid into the NYISO wholesale market. This regulation will phase in lower emission limits for NOx during the ozone season and will limit the current averaging provision found in Subpart 227-2.<sup>8</sup> The sources subject to this proposal will continue to be subject to the requirements of Subpart 227-2 outside of the ozone season. This rulemaking proposes additional requirements for SCCTs during the ozone season allowing more flexibility outside of the ozone season. The requirements are expanded on in the following paragraphs.

**Control Requirements:**

The NOx emission limits for SCCTs will be phased in as shown in Tables 2 and 3 below. These limits may be met by averaging only SCCTs on a facility-wide basis.

By May 1, 2023

	NOx Emission Limit (ppmvd) <sup>9</sup>
All SCCTs	100

Table 2: NOx emission limits for SCCTs beginning 5/1/2023

By May 1, 2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 3: NOx emission limits for SCCTs beginning 5/1/2025

Also beginning May 1, 2023, SCCTs will only be able to average emissions with other SCCTs at the facility or, if the facility opts to utilize one of the offered compliance options, then those SCCTs may average with approved electricity storage or renewable energy resources during the ozone season.

**Compliance Options:**

Owners and operators may elect to meet the limits as proposed. To offer flexibility, this rule is proposing two additional compliance options:

1) Owners and operators may elect an ozone season stop where it is recorded in the operating permit that the source may not operate during the ozone season.

2) Owners and operators may elect to adhere to an output-based NOx daily emission rate that includes electric storage and renewable energy under common control with the SCCTs with which they are averaging.

**COSTS**

Older SCCTs are typically not conducive to the addition of retrofit control technology. DEC expects that most impacted facilities will choose to replace or shutdown the non-compliant older SCCTs. To estimate replacement costs DEC looked to information provided by the NYISO and Department of Energy's Energy Information Administration (EIA).

Table 4 presents costs developed by EIA and NYISO for full replacement of an SCCT.

Source	Overnight Cost (\$/kW)	Notes
EIA	\$1,054 - \$1,558 <sup>10</sup>	Range is specific for the Long Island and New York City area and includes conventional and advanced combustion turbines.
NYISO	\$1,314 - \$1,357 <sup>11</sup>	Range is specific for the Long Island and New York City area and represents replacement with a dual fuel peaking turbine.

Table 4: Estimated range of overnight costs for full replacement of an SCCT

Most SCCTs have a capacity factor of less than 5 percent, meaning that they are used less than 5 percent of the time. In addition, with the implementation of several New York State initiatives,<sup>12</sup> demand for these units should continue to decline so the entire SCCT fleet would likely not need to be replaced.

Owners and operators may opt to install after-market emission control devices such as water injection technology. While costs vary widely depending on location, operation and siting, it has been reported to DEC, anecdotally, that the cost of adding after-market water injection to these older sources is approximately \$2,000,000. Other sources report costs of \$10,000 - \$15,000 per megawatt,<sup>13</sup> however, this data does not include installation and other associated costs.

**Cost of Nonattainment:**

This proposal is part of a suite of New York State efforts to bring the NYMA into attainment for ozone, in order to protect human health. EPA projected a wide array of benefits that would be realized on a national level, excluding California, if ozone attainment is achieved.<sup>14</sup> The human cost of nonattainment to New York State residents is presented in Table 5.

**Attainment Provides Prevention of:**

Deaths from effects of ozone	13 - 22
Deaths from effects of PM <sub>2.5</sub>	31 - 70
Nonfatal heart attacks	4 - 36
Hospital admissions & emergency room visits	134
Acute bronchitis	48
Upper & lower respiratory symptoms	1,540
Exacerbated asthma	32,200
Missed work & school	26,320
Restricted activity days	86,800

Table 5: Summary of Total Number of Annual Ozone and PM-Related Premature Mortalities and Premature Morbidity: 2025 National Benefits (adapted from EPA, 2015 RIA, p. ES-16)

**LOCAL GOVERNMENT MANDATES**

The proposed regulation does not contain a mandate on local governments.

**PAPERWORK**

This proposal will require each affected facility to submit a compliance plan to DEC. The compliance plan will state how each facility plans to comply with the new requirements.

Those facilities required to meet new emission limits will be required to submit permit applications to modify its Title V permits to incorporate the newly applicable requirements by the May 1, 2023 compliance date.

Subject facilities that do not use a continuous emissions monitoring system (CEMS) will be required to perform an emissions test to assure compliance with the applicable NOx emission limits. Every subject facility will be required to submit test protocols and test reports to the Department for approval.

**DUPLICATION**

The proposed Subpart 227-3 does not duplicate or conflict with any other state or federal requirements.

**ALTERNATIVES**

DEC considered two alternatives in assessing this proposal, leave the emission rates as they are and just lowering emission rate requirements. The first option would leave New York open to CAA Section 126 petitions and if acted upon by EPA could require controls within three years. The second option does not allow for the compliance flexibility and reliability considerations included in the proposal that were developed during the stakeholder process.

**FEDERAL STANDARDS**

The proposed rule does not exceed any minimum federal standards.

**COMPLIANCE SCHEDULE**

March 2, 2020: All impacted sources must submit a compliance plan that must contain minimum data to demonstrate compliance will be achieved.

<sup>1</sup> 73 FR 16436 (March 27, 2008), codified at 40 CFR section 50.15. Attainment of the 2008 ozone NAAQS is determined when the fourth highest daily maximum 8-hour average ambient air quality ozone concentration, averaged over three year, is less than or equal to 0.075 ppm.

<sup>2</sup> 80 FR 65292 (October 26, 2015).

<sup>3</sup> 83 FR 56781 (November 14, 2018).

<sup>4</sup> 83 FR 25776 (June 4, 2018).

<sup>5</sup> EPA Air Markets Program Data. <https://ampd.epa.gov/ampd/>.

<sup>6</sup> Percentages calculated from EPA Air Markets Program Data for days which exceeded the ozone NAAQS. <https://ampd.epa.gov/ampd/>.

<sup>7</sup> “New York State implementation plan for the 2008 ozone national ambient air quality standards.” <http://www.dec.ny.gov/chemical/110727.html>.

<sup>8</sup> May 1 – October 31 of each year.

<sup>9</sup> Parts per million on a dry volume basis at fifteen percent oxygen.

<sup>10</sup> EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

<sup>11</sup> NYISO, Demand Curve Model – 2019-2020.xlsm. Retrieved (1/3/2019) from: <https://www.nyiso.com/search?time=last-year&sortField=score&resultsLayout=list&q=Demand%20Curve%20Model%202016>.

<sup>12</sup> Including energy efficiency and energy storage targets, Reforming the Energy Vision and the Clean Energy Standard.

<sup>13</sup> The data provided only includes capital cost. “Gas Turbine Combustion.” Lefebvre & Ballal. CRC Press, April 26, 2010.

<sup>14</sup> Regulatory Impact Analysis (RIA) for the 2015 ozone NAAQS.

**Regulatory Flexibility Analysis**

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Part 227-3, “Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines.” The primary goal of this proposal is to lower allowable NOx emission rates from simple cycle and regenerative combustion turbines (SCCTs) during the ozone season.

**EFFECT OF RULE**

DEC does not expect the requirements of this proposal to adversely impact employment opportunities with small businesses. Businesses and local governments subject to this proposed rule generate electricity that is injected into the electrical grid and those facilities are required to maintain generation compliant with reliability rules at the federal and state level. The facilities subject to the proposed rule are large businesses and corporations.

The proposed regulation does not contain a mandate on local governments. Local governments have no additional compliance obligations. There are two SCCTs that are owned by local governments that are listed in the table below. While these sources will be subject to the requirements of this proposal, they already comply with the lower NOx rates and so no changes will be required by the facilities. While the two sources will be required to submit compliance plans, as outlined below, their plan requirements are simplified because they already comply with the emissions limits.

Facility	Local Government
Freeport	Village of Freeport
SA Carlson	Town of Jamestown

Table 1: Local Governments Subject to the Proposed Rule COMPLIANCE REQUIREMENTS

On or before March 2, 2020: All impacted sources must submit a compliance plan that must, at minimum, contain:

- Nameplate capacity.
- Ownership.
- A list of each emission source that includes identifying numbers such as facility number, source number and name.
- A schedule outlining how the owner or operator will comply with the requirements set forth in the rule.
- Which emission sources will install controls and what those controls will be.
- Which emission sources will be replaced or repowered.

Effective May 1, 2023: The first phase of NOx emission limits will be implemented during the ozone season and SCCTs will be limited to averaging with other SCCTs, storage or renewable energy resources. The first phase of emission limits will be:

<b>By May 1, 2023</b>	<b>NOx Emission Limit</b> <b>(ppmvd<sup>1</sup>)</b>
<b>All simple cycle and regenerative combustion turbines</b>	<b>100</b>

Table 2: NOx emission limits for SCCTs beginning 5/1/2023 Effective May 1, 2025: The second and final phase of NOx emission limits will be implemented during the ozone season as follows:

Beginning May 1, 2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 3: NOx emission limits for SCCTs beginning 5/1/2025  
PROFESSIONAL SERVICES

It is not expected that small businesses or local governments are likely to need professional services to comply with this rule. If an affected source currently utilizes professional services, such as consulting engineers, to comply with 6 NYCRR Subpart 227-2, they may continue to use those services to comply with the requirements of this proposal.

COMPLIANCE COSTS

Compliance costs discussed below are expected to impact larger power generation businesses, not small businesses or local governments. Discussion on the compliance costs to large generation businesses follows.

DEC is proposing to require each source owner to develop a compliance plan to demonstrate how they intend to comply with the proposed rule. The SCCTs installed prior to 1986 are typically not conducive to the addition of retrofit control technology. Furthermore, forty-eight of these sources are located on barges that may not offer the space necessary for controls. As a result, DEC expects that most impacted SCCT owners will choose to replace or shutdown the non-compliant SCCTs. To estimate replacement costs DEC looked to information provided by the NYISO and Department of Energy (DOE), Energy Information Administration (EIA).

The EIA describes overnight costs for electricity generating facilities as including<sup>2</sup>:

- Civil and structural costs: allowance for site preparation, drainage, installation of underground utilities, structural steel supply, and construction of buildings on the site;
- Mechanical equipment supply and installation: major equipment, including but not limited to, boilers, flue gas desulfurization scrubbers, cooling towers, steam turbine generators, condensers, photovoltaic modules, combustion turbines, and other auxiliary equipment;
- Electrical and instrumentation and control: electrical transformers, switchgear, motor control centers, switchyards, distributed control systems, and other electrical commodities;
- Project indirect costs: engineering, distributable labor and materials, craft labor overtime and incentives, scaffolding costs, construction management start up and commissioning, and contingency fees; and
- Owners costs: development costs, preliminary feasibility and engineering studies, environmental studies and permitting, legal fees, insurance costs, property taxes during construction, and the electrical interconnection costs, including a tie-in to a nearby electrical transmission system.<sup>3</sup>

Table 4 presents the full overnight costs developed by EIA and NYISO for full replacement of an SCCT.

Source	Overnight Cost (\$/kW)	Notes
EIA	\$1,054 - \$1,558 <sup>4</sup>	Range is specific for the Long Island and New York City area and includes conventional and advanced combustion turbines.
NYISO	\$1,314 - \$1,357 <sup>5</sup>	Range is specific for the Long Island and New York City area and represents replacement with a dual fuel peaking turbine.

Table 4: Estimated range of overnight costs for full replacement of an SCCT

DEC believes that the entire capacity of generation will likely not need to be replaced. Most SCCTs have a capacity factor of less than 5 percent, meaning that they are used less than 5 percent of the time on an annual basis. In addition, with the implementation of several New York State initiatives, including the State’s recently announced energy efficiency and energy storage targets, Reforming the Energy Vision and the Clean Energy Standard, demand for these units should continue to decline. There are over 3,400 MW of SCCT capacity listed in the NYISO Gold Book<sup>6</sup> that are older, pre-1986 SCCTs.

Owners and operators may opt to install after-market emission control devices on sources that are unable to comply. Water injection technology is the after-market technology that a facility owner would likely consider for these older sources. The costs of adding after-market emission control devices varies widely depending on location, operation and land space availability. It has been reported to DEC, anecdotally, that the cost of adding after-market water injection to one of these older sources is ap-

proximately two million dollars. Other sources discuss a cost of \$10,000 - \$15,000 per megawatt,<sup>7</sup> and many of the sources that would be impacted are 15 to 20 megawatts each. However, this data does not include installation and other associated costs.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY

It is not expected that small businesses will need to comply with this proposed rule. As noted above, the two local governments subject to the emission limits already comply. This is not a mandate on small businesses or local government.

MINIMIZING ADVERSE IMPACTS

To minimize any adverse impacts DEC is proposing a phase-in of requirements as well as a reliability provision. The phase-in of requirements allows for power companies, with affected sources, to plan over a longer term. In addition, DEC is proposing several compliance options to offer compliance flexibility:

1) Owners and operators may elect an ozone season stop where it is recorded in their operating permit that the source may not operate during the ozone season.

2) Owners and operators may elect to adhere to an output-based NOx daily emission rate that includes electric storage and renewable energy under common control with the SCCTs with which they are averaging.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

DEC participated in several stakeholder meetings including those for impacted facilities and local environmental justice groups over a period of eighteen months. In addition, DEC posted a stakeholder outline on the DEC website to encourage stakeholder participation and comment.<sup>8</sup>

CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in Subpart 227-3. This proposal will not result in immediate violations or impositions of penalties for existing facilities. To help reduce immediate impacts on affected sources, Subpart 227-3 requires a compliance plan due on March 2, 2020 followed by reduced NOx emission limits phased-in first on May 1, 2023 and later on May 1, 2025. This will allow owners and operators of affected sources time to comply with the proposed Subpart 227-3.

INITIAL REVIEW

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

<sup>1</sup> Parts per million on a dry volume basis at fifteen percent oxygen.  
<sup>2</sup> Overnight costs include the costs for the physical power plant assuming it can be built overnight. As a result, interest on loans are not factored into the cost estimates.  
<sup>3</sup> EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.  
<sup>4</sup> EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.  
<sup>5</sup> NYISO, The New York Installed Capacity (ICAP) market Working Group. Available here: [http://www.nyiso.com/public/markets\\_operations/market\\_data/icap/index.jsp](http://www.nyiso.com/public/markets_operations/market_data/icap/index.jsp).  
<sup>6</sup> NYISO, 2017 Load and Capacity Data.  
<sup>7</sup> The data provided only includes capital cost. “Gas Turbine Combustion.” Lefebvre & Ballal. CRC Press, April 26, 2010.  
<sup>8</sup> <https://www.dec.ny.gov/chemical/113887.html>.

Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Part 227-3, “Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines.” The primary goal of this proposal is to lower allowable NOx emission rates from simple cycle and regenerative combustion turbines (SCCTs) during the ozone season.

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED

Only one facility located in a rural area is affected by this regulation – the Samuel A. Carlson Generating Station located in Jamestown, Chautauqua County.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

Reporting & Recordkeeping:

This proposal will require each affected facility to submit a compliance plan to DEC. The compliance plan will state how each facility plans to comply with the new requirements.

Those facilities required to meet new emission limits will be required to submit permit applications to modify their Title V permits to incorporate the newly applicable requirements by the May 1, 2023 compliance date. These changes can be incorporated into the renewal application for the facility’s Title V permit (Title V permits must be renewed at five-year

intervals). If there are no changes caused by the proposed Subpart 227-3 no permit action is required.

Subject facilities that do not use a continuous emissions monitoring system (CEMS) will be required to perform an emissions test to assure compliance with the applicable NOx emission limits. Every subject facility will be required to submit test protocols and test reports to DEC for approval.

An owner or operator that elects to use the Electric Storage and Renewable Energy Resources compliance option must submit annual electricity generation and NOx emissions data to DEC.

**Compliance Requirements:**

On or before March 2, 2020: All impacted sources must submit a compliance plan that must, at minimum, contain:

- Nameplate capacity.
- Ownership.
- A list of each emission source that includes identifying numbers such as facility number, source number and name.
- A schedule outlining how the owner or operator will comply with the requirements set forth in the rule.
- Which emission sources will install controls and what those controls will be.
- Which emission sources will be replaced or repowered.

Effective May 1, 2023: The first phase of NOx emission limits will be implemented during the ozone season and SCCTs will be limited to averaging with other SCCTs, storage or renewable energy resources. The first phase of emission limits will be:

By May 1, 2023

	NOx Emission Limit (ppmvd <sup>1</sup> )
All SCCTs	100

Table 1: NOx emission limits for SCCTs beginning 5/1/2023

Effective May 1, 2025: The second and final phase of NOx emission limits will be implemented during the ozone season as follows:

Beginning May 1, 2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 2: NOx emission limits for SCCTs beginning 5/1/2025

**Professional Services:**

If an affected source currently utilizes professional services, such as consulting engineers, to comply with 6 NYCRR Subpart 227-2, they may continue to use those services to comply with the requirements of this proposal.

**COSTS**

The Samuel A. Carlson Generating Station already complies with the NOx rates in the proposed rule. Therefore, no changes will be required by the facility. A compliance plan is still required by March 2, 2020. The costs of preparing the compliance plan should be minimal.

**MINIMIZING ADVERSE IMPACT**

Since the Samuel A. Carlson Generating Station already complies with the NOx rates in the proposed rule, there are no adverse impacts to that facility.

**RURAL AREA PARTICIPATION**

DEC participated in several stakeholder meetings including those for impacted facilities and local environmental justice groups over a period of eighteen months. In addition, DEC posted a stakeholder outline on the DEC website to encourage stakeholder participation and comment.<sup>2</sup>

**INITIAL REVIEW**

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

<sup>1</sup> Parts per million on a dry volume basis at fifteen percent oxygen.

<sup>2</sup> <https://www.dec.ny.gov/chemical/113887.html>.

**Job Impact Statement**

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Part 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emission rates from simple cycle and regenerative combustion turbines during the ozone season.

**NATURE OF IMPACT**

DEC does not expect the requirements of this proposal to adversely

impact employment opportunities at the affected sources. The affected sources generate electricity that is injected into the electrical grid and those facilities are required to maintain generation compliant with reliability rules at the federal and state level.

**CATEGORIES AND NUMBERS AFFECTED**

This proposal will affect facilities that use older simple cycle and regenerative combustion turbines (SCCTs) to generate electricity for the electrical grid. Newer SCCTs are expected to already meet the requirements set forth in this proposal. At least 18 facilities utilizing older SCCTs will be affected by this proposal.

**REGIONS OF ADVERSE IMPACT**

This is a statewide proposal, so all SCCTs will be subject to the requirements of a final rule. However, most SCCTs are located in New York City and on Long Island.

**MINIMIZING ADVERSE IMPACT**

The proposed rule contains several compliance options that owners and operators may utilize in order to comply with the proposed requirements. The first is to meet the limits as proposed. Owners and operators may also opt to shut down or not run non-compliant SCCTs during the ozone season. If an owner or operator elects to not run an SCCT during the ozone season, it must be recorded in the operating permit. Another compliance option offered in this proposal allows an owner or operator of an existing source to comply with applicable limits by meeting an average output-based emission limit (that includes renewables and storage) as a daily average emission rate. Under this option, the storage or renewable energy resource must be under common control with the SCCTs to be included in the averaging calculation.

These compliance options will allow existing SCCTs that cannot meet the proposed emission limits to operate for a few additional years while new SCCTs or other electricity generating resources are constructed. As a result, the Department does not anticipate adverse impacts to employment opportunities at a company subject to the rule.

**SELF EMPLOYMENT OPPORTUNITIES**

It is not expected that the proposed Subpart 227-3 will have a measurable impact on opportunities for self-employment.

**INITIAL REVIEW**

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

**REVISED RULE MAKING  
NO HEARING(S) SCHEDULED**

**BEACH Act Standards and Reclassification Rule**

**I.D. No.** ENV-12-18-00043-RP

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

**Proposed Action:** Amendment of Parts 700, 703 and 890 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, section 17-0301

**Subject:** BEACH Act Standards and Reclassification Rule.

**Purpose:** To comply with the Federal BEACH Act of 2000 (P.L. 106-284) and protect coastal recreation waters for recreation.

**Text of revised rule:**

Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 700, entitled "Definitions, Samples and Tests," is amended as follows.

Subdivision (a) of Section 700.1 is amended by adding the following definitions:

(73) *Coastal recreation waters mean the Great Lakes and marine coastal waters (including coastal estuaries) that are designated under section 303(c) of the federal Clean Water Act by the State for use for swimming, bathing, surfing, or similar water contact activities. Coastal recreation waters do not include inland waters or waters upstream of the mouth of a river or stream having an unimpeded natural connection with the Great Lakes or open marine waters.*

(74) *Primary contact recreation season means the time period of the year beginning May 1 and ending October 31 or as determined by the Department on a case-specific basis in order to protect the best usages of the waters.*

Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 703, entitled "Surface Water and Groundwater Quality Standards and Groundwater Effluent Limitations," is amended as follows:

Section 703.4 is amended as follows:

§ 703.4 Water quality standards for coliforms, *enterococci*, and *E. coli*.

Total and fecal coliform, *enterococci*, and *E. coli* standards for specific classes are provided in this section.

(a) Total coliforms (number per 100 [ml] mL (colony-forming units or most probable number)).