

PART 231**NEW SOURCE REVIEW FOR NEW AND MODIFIED FACILITIES**

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305; Federal Clean Air Act, §§ 160-169, 171-193 [42 U.S.C. 7470-7479; 7501-7515])

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Historical Note

Part (§§ 231.1-231.13) renum. Part 388, Title 9, filed Sept. 1971; new (§§ 231.1-231.9) filed July 24, 1979; repealed, new (§§ 231.1-231.10) filed July 10, 1984; Part (*New Source Review in Nonattainment Areas and Ozone Transport Regions*, §§ 231.1-231.10) renum. Subpart 231-1, filed Sept. 15, 1994; amd. filed Jan. 20, 2009 eff. 30 days after filing. Amended Part title.

SUBPART 231-1**REQUIREMENTS FOR EMISSION SOURCES SUBJECT TO THE REGULATION PRIOR TO NOVEMBER 15, 1992**

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Historical Note

Subpart (§§ 231-1.1—231-1.10) added by renum. Part 231, filed Sept. 15, 1994 eff. 30 days after filing.

§ 231-1.1 Definitions.

- (a) For the purpose of this Subpart, the general definitions of Part 200 of this Title apply.
- (b) For the purpose of this Subpart, the following definitions also apply:
 - (1) *Actual emission reduction.* The actual decrease in the rate of emissions of an air contaminant from an emission source in tons per year. This value is generally an average rate at

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which the source actually emitted the contaminant during the two years preceding the reduction, and is representative of normal source operation based on actual operating hours, production rates and material input. A different averaging time period may be acceptable if it can be shown to be more representative of normal operation than the two-year period preceding the reductions.

(2) *Air contamination source project.* This may consist of either a proposed:

(i) new air contamination source;

(ii) modification; or

(iii) two or more proposed new air contamination sources which are interdependent as process or production steps for a common product or similar products.

(3) *Annual actual emissions.* The annual emissions, including fugitive emissions, of an air contaminant from a facility after control equipment has been applied and based on continuous operation at maximum capacity. Annual actual emissions may be limited by permit conditions regarding operating time or production rate.

(4) *De minimis emission limits.* Threshold increase in annual actual emissions from an air contamination source project below which the provisions of this Subpart do not apply. The *de minimis* emission limits are presented in section 231-1.9 of this Subpart.

(5) *Emission offsets.* Emissions reductions which are obtained to provide reasonable progress toward attainment of ambient air quality standards in exchange for approval of an application for a permit to construct for a new air contamination source project in a nonattainment area.

(6) *Major facility.* A facility whose annual actual emissions for either particulates, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds equal or exceed 100 tons per year.

(7) *Major lead facility.* A facility whose annual actual emissions of lead equal or exceed five tons per year.

(8) *Resource recovery facility.* Any facility at which refuse is combusted for the purpose of recovering heat for use in producing steam and/or electricity. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to qualify as a resource recovery facility.

Historical Note

Sec. added by renum. and amd. 231.1, filed Sept. 15, 1994 eff. 30 days after filing.

§ 231-1.2 Applicability.

(a) The provisions of this Subpart are applicable to all air contamination source projects which meet the following conditions:

(1) the complete application for a permit to construct the air contamination source project is submitted after August 9, 1984 and is determined complete by the department in accordance with Part 621 of this Title before November 15, 1992;

(2) the facility at which the air contamination source project is proposed is located in an area designated as a nonattainment area when the application for the project is determined complete for the same air contaminant that the proposed air contamination source project would emit (for ozone nonattainment areas, this applies to projects that emit volatile organic compounds); and

(3) the annual actual emissions from the air contamination source project proposed at an existing major facility exceed the *de minimis* emission limits shown in section 231-1.9 of this Subpart; or

(4) the facility at which the air contamination source project is proposed is not a major facility, but the annual actual emissions from the proposed air contamination source project equal or exceed 100 tons per year of either particulates, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds.

(b) The provisions of this Subpart are applicable to all air contamination source projects with annual actual emissions exceeding the *de minimis* emission limit for lead shown in section 231-1.9 of this Subpart, proposed at major lead facilities if the complete application for a permit to construct the air contamination source project is submitted after August 9, 1984 and the major lead facility is located in an area designated as nonattainment with ambient air quality standards for lead.

(c) Emission reductions at the same facility as the proposed air contamination source project may be considered to calculate the net increase in emissions which must exceed the *de minimis* emission limit for the project to be subject to this Subpart. Determination of the net emissions increase is subject to the following:

- (1) To be considered, emission reductions must be of the same contaminant(s) to be emitted by the proposed air contamination source project.
- (2) To be considered, emission reductions must have occurred within five years prior to the date of submittal of a complete application for a permit to construct the air contamination source project.
- (3) An emission reduction which is considered in a net emission increase determination cannot be used again either to negate subsequent emission increases or as an emission offset, and must not have been used for demonstrating attainment with ambient air quality standards or reasonable further progress in a federally approved implementation plan.
- (4) An emission reduction must have approximately the same qualitative significance for public health and welfare as that attributed to the air contaminant whose emissions are increased.
- (5) Only potential emission increases and actual emission decreases are to be included in a net emissions increase determination.
- (6) The net emissions increase calculated by considering actual emission reductions as well as proposed increases must also include past increases, as of five years prior to the date of submittal of a complete application for a permit to construct the air contamination source project, which did not exceed the *de minimis* emission limits when they were proposed.
- (7) Any emission reductions used in a net emissions increase determination will be described in the conditions of approval on the permit to construct.

Historical Note

Sec. added by renum. and amd. 231.2, filed Sept. 15, 1994 eff. 30 days after filing.

§ 231-1.3 Prohibitions.

(a) No person will initiate construction of any air contamination source project to which this Subpart applies until the provisions of this Subpart have been met and a permit or permits to construct have been issued in accordance with Part 201 of this Title.

(b) The commissioner will not issue a permit to construct for any air contamination source project subject to this Subpart unless the applicant certifies that all major facilities located in New York State and under the applicant's ownership or control (or under the ownership or control of any entity which controls, is controlled by, or has common control with the applicant) are:

- (1) in compliance with all applicable air pollution control regulations; or
- (2) are meeting the terms of any administrative order or court decree.

(c) At such time that a particular facility becomes a major facility, or the annual actual emissions from an air contamination source project exceed the *de minimis* emission limits shown in section 231-1.9 of this Subpart, solely because of a relaxation in any enforceable limitation, established after August 9, 1984, on the capacity of the facility or air contamination source project to emit an air contaminant, the requirements of this Subpart will apply and an application for a permit to construct must be submitted to the department pursuant to Part 621—Uniform Procedures of this Title.

Historical Note

Sec. added by renum. and amd. 231.3, filed Sept. 15, 1994 eff. 30 days after filing.

§ 231-1.4 Lowest achievable emission rate.

(a) The emissions from any air contamination source project subject to this Subpart must meet the lowest achievable emission rate as defined in Part 200 of this Title.

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(b) Any source owner subject to this Subpart must submit information to establish that the lowest achievable emission rate will be applied when an application is submitted for a permit to construct.

Historical Note

Sec. added by renum. and amd. 231.4, filed Sept. 15, 1994 eff. 30 days after filing.

§ 231-1.5 Emission offsets.

(a) An applicant for a permit to construct for an air contamination source project subject to this Subpart must provide emission offsets as part of the application. Emission offsets are required for any air contaminant for which the area is designated as a nonattainment area if the net increase in annual actual emissions of that contaminant exceeds the *de minimis* emission limits shown in section 231-1.9 of this Subpart.

(b) Emission offsets must be of the same contaminant. That is, only particulates can be used as offsets for new particulate emissions, only sulfur dioxide can be used as offsets for new sulfur dioxide emissions, and so on.

(c) Emission offsets must exceed the net increase in annual actual emissions from the air contamination source project.

(d) Only emission reductions which occurred within five years prior to the date of submittal of a complete application may be used as emission offsets.

(e) Emission offsets must be sufficient to provide a net air quality benefit when offsets of particulates, sulfur dioxide, carbon monoxide and/or nitrogen oxides are required. A net air quality benefit is achieved when the air quality impact of the applicable air contamination source project does not exceed the significant impacts shown in section 231-1.10 of this Subpart.

(f) Emission offsets must be real, permanent, and enforceable to the satisfaction of the commissioner.

(g) If the applicable air contamination source project is proposed in a nonattainment area for ozone, emission offsets of volatile organic compounds are required. These may be from any location within the same or a contiguous ozone nonattainment area in New York State.

(h) Only reductions which lower actual emissions from an air contamination source beyond levels prescribed by applicable emission standards may be used as emission offsets.

Historical Note

Sec. added by renum. and amd. 231.5, filed Sept. 15, 1994 eff. 30 days after filing.

§ 231-1.6 Air quality impact evaluation.

(a) An application for a permit to construct for an air contamination source project applicable to this Subpart must include an air quality impact evaluation.

(b) If the air contamination source project includes proposed emissions of particulates, sulfur dioxide, carbon monoxide and/or nitrogen oxides which exceed the *de minimis* emission limits shown in section 231-1.9 of this Subpart, the air quality impact evaluation must show that the combined impact of the proposed new emissions and the emission offsets will not exceed the significant impacts shown in section 231-1.10 of this Subpart.

(c) The applicant for a permit to construct an air contamination source project applicable to this Subpart must conduct the air quality impact evaluation, and prepare a report in accordance with procedures acceptable to the commissioner.

Historical Note

Sec. added by renum. and amd. 231.6, filed Sept. 15, 1994 eff. 30 days after filing.

§ 231-1.7 Public participation.

Local government and public participation will be in accordance with procedures established in Part 621—Uniform Procedures of this Title.

Historical Note

Sec. added by renum. 231.7, filed Sept. 15, 1994 eff. 30 days after filing.

§ 231-1.8 Exemptions.

Emission offsets are not required as a condition of approval of a permit to construct for the following air contamination source projects which are otherwise applicable to this Subpart.

(a) conversion of an existing stationary combustion installation to the use of coal which has been required to discontinue use of petroleum and natural gas as its primary energy source pursuant to a Federal prohibition order or which is required to convert to coal by reason of a Federal order; or

(b) resource recovery facilities.

Historical Note

Sec. added by renum. and amd. 231.8, filed Sept. 15, 1994 eff. 30 days after filing.

§ 231-1.9 Table 1.*De minimis* emission limits.

<i>Air contaminant</i>	<i>De minimis emission limit (tons per year)</i>
Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
Particulates	25
Volatile organic compounds (for ozone nonattainment areas)	40
Lead	.6
Asbestos	0.007
Beryllium	0.0004
Mercury	0.1
Vinyl chloride	1
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide	10
Total reduced sulfur	10
Reduced sulfur compounds	10

Historical Note

Sec. added by renum. and amd. 231.9, filed Sept. 15, 1994 eff. 30 days after filing.

§ 231-1.10 Table 2.

Significant impacts for nonattainment areas.

<i>Air contaminant</i>	<i>PPM</i>	<i>Significant impact Weight/Volume¹</i>
Sulfur dioxide		
Annual	0.0004	1.0 µg/m ³
24-hour	0.0019	5.0 µg/m ³
3-hour	0.009	25.0 µg/m ³
Particulates		
Annual	—	1.0 µg/m ³
24-hour	—	5.0 µg/m ³
Nitrogen oxides		
Annual	0.0005	1.0 µg/m ³
Carbon monoxide		
8-hour	0.45	0.5 mg/m ³
1-hour	1.8	2.0 mg/m ³

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¹Weight/volume values are referenced to 25°C and 760 mm mercury.

Historical Note

Sec. added by renum. and amd. 231.10, filed Sept. 15, 1994 eff. 30 days after filing.

SUBPART 231-2**REQUIREMENTS FOR EMISSION UNITS SUBJECT TO THE REGULATION
ON OR AFTER NOVEMBER 15, 1992 AND PRIOR TO THE EFFECTIVE
DATE OF SUBPARTS 231-3 THROUGH 231-13**

Sec.	
231-2.1	Definitions.
231-2.2	Applicability.
231-2.3	Prohibitions.
231-2.4	Permit requirements.
231-2.5	Lowest achievable emission rate, LAER.
231-2.6	Emission reduction credits (ERCs).
231-2.7	Netting.
231-2.8	Internal offsets, severe ozone nonattainment area only.
231-2.9	Emission offsets.
231-2.10	Public participation.
231-2.11	Table 1—Significant impacts for nonattainment areas.
231-2.12	Table 2—Ozone nonattainment area and transport region classification for volatile organic compounds (VOC) and nitrogen oxides (NO _x).
231-2.13	Table 3—Nonattainment area classification for particulate matter less than 10 microns in size (PM-10) and carbon monoxide (CO).

Historical Note

Subpart (§§ 231-2.1—231-2.16) filed Sept. 15, 1994; amds. filed: April 3, 2000; Jan. 20, 2009
eff. 30 days after filing. Amended Subpart title.

§ 231-2.1 Definitions.

(a) For the purpose of this Subpart, the general definitions of Parts 200 and 201 of this Title apply unless defined otherwise in this Subpart.

(b) For the purpose of this Subpart, the following definitions also apply:

(1) *Baseline period*. A period of time used as a reference point in quantifying a creditable emission increase, ERC, or project emission potential.

(i) A baseline period is determined as follows:

(a) for a creditable emission increase which has physically occurred, two consecutive years immediately preceding the date of occurrence of the emission increase or a time period as provided in subparagraph (ii) of this paragraph;

(b) for an ERC which has physically occurred, two consecutive years immediately preceding the date of occurrence of the emission reduction or a time period as provided in subparagraph (ii) of this paragraph;

(c) for a creditable emission increase or an ERC which is scheduled to occur in the future, two consecutive years immediately preceding the date of receipt by the department of a permit application for a proposed source project which proposes to use the creditable emission increase or ERC or a time period as provided in subparagraph (ii) of this paragraph; and

(d) for a proposed source project, two consecutive years immediately preceding the date of receipt by the department of a permit application for the proposed source project or a time period as provided in subparagraph (ii) of this paragraph.

(ii) Some other two consecutive years which are shown, and which the department accepts as being, more representative of normal source operation based on actual operating hours, production rates and material input. These two consecutive years must be within five years immediately preceding the date identified in clause (i)(a), (b), (c), or (d) of this paragraph, as applicable.

(iii) If less than two consecutive years of operation exist within the five years identified in subparagraph (ii) of this paragraph, this period of operation shall be used as the baseline period.

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(2) *Calendar year.* A period of one year beginning January 1st, and ending midnight December 31st.

(3) *Clean coal technology.* Any technology, which was not in widespread use as of November 15, 1990, applied at the precombustion, combustion, or post combustion stage at a new or existing electric utility steam generating facility which will achieve significant reductions in NO_x emissions associated with utilization of coal in the generation of electricity, or process steam.

(4) *Clean coal technology demonstration project.* A project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency.

(5) *Begin actual construction.* Begin actual construction shall mean in general, initiation of physical on-site construction activities which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(6) *Commence construction.* Commence construction shall mean that the owner or operator has all necessary preconstruction approvals or permits and either has:

- (i) begun, or caused to begin, a continuous program of actual on-site construction, to be completed within a reasonable time; or
- (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction to be completed within a reasonable time.

(7) *Commence operation.* Commence operation shall mean:

- (i) the date that a proposed source project or proposed major facility first increases emissions of any nonattainment contaminant to which this Subpart applies; or
- (ii) the date after an appropriate shakedown period, for a proposed source project or proposed major facility which is a functional replacement for another emission source(s) or unit(s) (for example, a cogeneration plant replacing an existing boiler house) and which proposes to use ERCs generated from the replaced sources or units to the maximum extent possible. This shakedown period shall not exceed 180 days and shall be specified in a permit for the replacement source or unit.

(8) *Complete permit application.* Complete permit application means a permit application which is complete in accordance with the provision of Part 621 of this Title.

(9) *Contemporaneous.* Contemporaneous time periods are:

- (i) in the severe ozone nonattainment area, for emissions of VOC or NO_x only, the five consecutive calendar year period which ends with the calendar year that the proposed source project is scheduled to commence operation, as stated by the applicant in a permit application; and
- (ii) for emissions of VOC or NO_x in all other ozone nonattainment areas and attainment portions of the ozone transport region, and for emissions of PM-10 or CO in their respective nonattainment areas, the period which begins five years prior to the scheduled commence construction date, and ends with the scheduled commence operation date, each such date for a proposed source project being as stated by the applicant in a permit application.

(10) *Creditable emission increase.* Any increase in emissions of a nonattainment contaminant in tons per year from an emission unit at an existing facility, other than such an increase from a proposed source project, which:

- (i) results from a physical change in, or a change in the method of operation of, an emission unit; and
- (ii) is quantified as the difference, except as provided in subparagraph (iii) of this paragraph, between prior actual annual emissions or prior allowable annual emissions, whichever is less, and the subsequent maximum annual potential; and

(iii) for an electric utility steam generating unit, is quantified as the difference between prior actual annual emissions or prior allowable annual emissions, whichever is less, and the subsequent representative actual annual emissions.

(11) *Curtailement*. An enforceable permit condition formally restricting operation of an emission unit at an existing facility which results in an emission reduction and reflects a partial reduction in hours of operation or capacity utilization.

(12) *Electric utility steam generating unit*. Any emission unit (exclusive of a new emission unit or replacement of an existing emission unit) constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts of electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity.

(13) *Emission offset*. ERCs which:

(i) equal or exceed the project emission potential or facility emission potential of a proposed source project or proposed major facility, respectively, to which the reductions must be applied; and

(ii) meet the requirements of section 231-2.9 of this Subpart.

(14) *Emission reduction credit, ERC*. Any decrease in emissions of a nonattainment contaminant in tons per year, occurring on or after November 15, 1990:

(i) which is surplus, quantifiable, permanent, and enforceable; and

(ii) which results from a physical change in, or a change in the method of operation of an emission unit subject to Part 201 of this Title; and

(a) is quantified as the difference between prior actual annual emissions or prior allowable annual emissions, whichever is less, and the subsequent maximum annual potential; and

(b) is certified in accordance with the provisions of section 231-2.6 of this Subpart; or

(iii) which results from a physical change in, or a change in the method of operation of an air contamination source not subject to Part 201 of this Title, and is certified in accordance with the provisions of section 231-2.6 of this Subpart.

(15) *Emission unit shutdown*. The permanent removal from service of an emission unit, as reflected by an enforceable permit condition formally prohibiting the emission unit from further operation, provided that it does not result in a facility shutdown.

(16) *Enforceable*. All permit limitations and conditions or other legally binding emission limitations which are enforceable by both the department and the administrator of the United States Environmental Protection Agency. Directly measurable limitations on the allowable capacity of equipment, requirements for installation, operation, and maintenance of air pollution control equipment, limits on hours of operation, and restrictions on amounts of materials combusted, stored, or produced may be considered as enforceable. General limitations on facility emission potential or maximum annual potential, such as yearly limits, by themselves are not enforceable by the administrator.

(17) *Facility emission potential*. The maximum potential in tons per year of a facility to emit a nonattainment contaminant expressed as the sum of:

(i) the maximum annual potential, on a contaminant specific basis, of each emission unit at the facility; and

(ii) fugitive emissions to the extent they are quantifiable, of the corresponding nonattainment contaminant for any facility which belongs to one of the 28 source categories listed in section 231-2.2(c) of this Subpart, but not including secondary emissions. However, once a facility is determined to be major and is subject to this Subpart, fugitive emissions must be included in the total emissions from the facility for subsequent permitting purposes (such as air quality analyses, offsets, etc.), regardless of whether the facility belongs to one of the 28 source categories listed in section 231-2.2(c) of this Subpart.

(18) *Facility shutdown*. The permanent removal from service of all emission units at a facility, as reflected by enforceable permit conditions formally prohibiting the emission units from further operation.

(19) *Future reductions.* Reductions which are scheduled to occur subsequent to the issuance/modification of the permit for the proposed source project or proposed major facility using these reductions.

(20) *Internal offset.* ERCs of VOC or NO_x, in the severe ozone nonattainment area only, from emission units within the same existing major facility as a proposed source project, which physically occur on or after November 15, 1990. Such reductions shall meet the requirements of section 231-2.8 of this Subpart.

(21) *Major facility.* A facility with a facility emission potential of a nonattainment contaminant which equals or exceeds the corresponding major facility size threshold in section 231-2.12 or 231-2.13 of this Subpart.

(22) *Maximum annual potential.* The maximum annual capacity in tons per year of an emission unit to emit a nonattainment contaminant. Maximum annual potential shall:

(i) be determined after control equipment has been applied using the maximum enforceable permissible emission rate; and

(ii) be based on continuous operation for 8,760 hours per year at maximum capability under the emission unit's physical and operational design, unless limited by enforceable permit conditions; and

(iii) not include either secondary emissions or fugitive emissions.

(23) *Net emission increase.* The aggregate increase in emissions of a nonattainment contaminant in tons per year at an existing major facility resulting from the sum of:

(i) the project emission potential of a proposed source project at the facility; and

(ii) every creditable emission increase at the facility which is contemporaneous with the proposed source project and for which an emission offset was not obtained or, in the severe ozone nonattainment area, for which an internal offset was not obtained; and

(iii) any ERC at the facility, or portion thereof, selected by the applicant which is contemporaneous with the proposed source project and which was not previously used as part of an emission offset or an internal offset.

(24) *Nonattainment contaminant.* A contaminant emitted by an emission unit located or proposed to be located in an area designated in Part 200 of this Title as nonattainment for that contaminant. Because all of New York State is within the ozone transport region, VOC and NO_x are treated as nonattainment contaminants statewide.

(25) *Offset ratio.* The ratio of a required ERC, on a nonattainment contaminant specific basis, to the project emission potential or the facility emission potential of a proposed source project or proposed major facility, respectively. Offset ratios are listed in sections 231-2.12 and 231-2.13 of this Subpart.

(26) *Past reductions.* Reductions which have physically occurred on or after November 15, 1990.

(27) *Permanent.* Permanent relative to an ERC from an emission unit means that the reduction is irreversible through the life of the emission unit.

(28) *Permit action.* Permit action means:

(i) for any emission unit subject to Part 201 of this Title, a determination of complete permit application for issuance or modification of an enforceable permit representing that emission unit;

(ii) for any major electric generating facility subject to article X of the Public Service Law, or any major steam electric generating facility subject to article VIII of the Public Service Law, the setting of a date for a hearing by the chairperson of a New York State board on electric generation siting and the environment for such a facility.

(29) *Pollution control project.* Any project undertaken at an existing emission unit which, as its primary purpose, reduces emissions of any nonattainment contaminant from such unit. Such projects do not include the replacement of an existing emission source or unit with a newer or different source or unit, or the reconstruction of an existing emission source or unit, and are limited to any of the following:

- (i) flue gas recirculation, low NOx burners, selective catalytic reduction or selective non-catalytic reduction for NOx;
 - (ii) thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, scrubbers, flares, carbon adsorbers, or projects involving combustion of landfill gas using boilers, gas turbines, internal combustion engines, cleaning/gas treatment facilities or combinations of these for VOC;
 - (iii) electrostatic precipitators, baghouses, high efficiency multi clones, or scrubbers for PM-10;
 - (iv) projects undertaken to accommodate switching to an inherently less polluting fuel, including but not limited to, natural gas or coal reburning, or the cofiring of natural gas and other inherently less polluting fuels, for the purpose of controlling emissions, and including any activity that is necessary to accommodate switching to an inherently less polluting fuel;
 - (v) pollution prevention projects which the department has determined to be environmentally beneficial. *Pollution prevention* means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the emissions of any nonattainment contaminant (including fugitive emissions) prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment or disposal; and
 - (vi) installation of a technology for reducing emissions of any nonattainment contaminant, which is not listed in subparagraphs (i) through (v) of this paragraph but meets the following:
 - (a) its effectiveness in reducing emissions has been demonstrated in practice; and
 - (b) it is determined by the department to be environmentally beneficial.
- (30) *Prior actual annual emissions.* The average rate in tons per year at which an emission unit actually emitted a nonattainment contaminant during the baseline period, exclusive of any periods of noncompliance. During noncompliance periods, the permissible emissions for the emission unit shall be used in computing the average rate. Computation of prior actual annual emissions shall:
- (i) for an emission unit at any facility subject to Subpart 202-2 of this Title, be based on the emission statements for the facility, to the extent that the statements provide sufficient information specific to the emission unit; or
 - (ii) for an emission unit at a facility not subject to Subpart 202-2 of this Title, or where an emission statement does not provide sufficient information specific to the emission unit, be based on the criteria set forth in sections 202-2.3 and 202-2.4 of this Title. Use of the above criteria for an emission unit at a facility not otherwise subject to Subpart 202-2 of this Title shall not make the facility subject to Subpart 202-2 of this Title.
- (31) *Prior allowable annual emissions.* The maximum rate in tons per year, during the baseline period, at which an emission unit would have emitted a nonattainment contaminant at the most stringent applicable State or Federal emission limitation established in a regulation or a federally enforceable permit condition.
- (32) *Project emission potential.* (i) Except for an electric utility steam generating unit, project emission potential of a proposed source project shall consider only proposed increases in emissions of a nonattainment contaminant and shall equal the sum of the following:
- (a) for new emission units, the maximum annual potential of each such emission unit; and
 - (b) for existing emission units, the difference between prior actual annual emissions or prior allowable annual emissions, whichever is less, and the subsequent maximum annual potential of each such emission unit.
- (ii) For an electric utility steam generating unit, the project emission potential following a physical or operational change shall equal the difference between prior actual annual emissions or prior allowable annual emissions, whichever is less, and representative actual annual emissions of the unit. Such computation shall be allowed provided the source owner or operator maintains and submits data demonstrating to the department's satisfaction that the actual annual emissions of the unit does not exceed its representative actual annual emissions. Such

date must be submitted on an annual basis for a period of five years from the date the unit resumes regular operation. A longer period, not to exceed 10 years, may be required if the department determines such period to be more representative of normal emission unit post-change operations.

(iii) Project emission potential does not include secondary emissions.

(iv) At an existing major facility, fugitive emissions are not included in determining whether the project emission potential exceeds the significant source project threshold in section 231-2.12 or 231-2.13 of this Subpart unless the facility belongs to one of the 28 source categories listed in section 231-2.2(c) of this Subpart.

(v) At an existing major facility, regardless of whether the facility belongs to one of the 28 source categories listed in section 231-2.2(c) of this Subpart, once the project emission potential of a proposed source project is determined to exceed the significant source project threshold in section 231-2.12 or 231-2.13 of this Subpart without including fugitive emissions, the project emission potential must include fugitive emissions, to the extent they are quantifiable, for subsequent permitting purposes (such as air quality analyses, offsets, etc.).

(33) *Quantifiable*. In terms of emission reductions, quantifiable means that a reliable basis must exist for calculating the amount and the rate of the reduction, along with a description of the characteristics of the reduction. The same method should be used to quantify emissions before and after the reduction.

(34) *Reasonable further progress*. Annual incremental reductions in emissions of a nonattainment contaminant required by applicable regulations and implementation plans to ensure timely attainment of the corresponding national ambient air quality standard.

(35) *Repowering*. Replacement of an existing coal fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal fired turbines, integrated gasification fuel cells, or as determined by the administrator of the EPA, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Repowering shall also include any oil and/or gas fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991 by the United States Department of Energy.

(36) *Representative actual annual emissions*. The average rate, in tons per year, at which an electric utility steam generating unit is projected to emit a nonattainment contaminant for the two year period after a physical change or a change in the method of operation of the unit considering the effect any such change will have on increasing or decreasing the hourly emission rate and on projected capacity utilization. A different consecutive two-year period within 10 years after that change may be used, if the applicant demonstrates to the department's satisfaction that such period is more representative of normal source operations. In evaluating projections of future emissions, the department shall:

(i) consider all relevant information, including but not limited to, historical operational data, the applicant's own representations, filings with the Department of Public Service, State Energy Board, or Federal authorities, and compliance plans under title IV of the Clean Air Act Amendments of 1990 (see Table 1, section 200.9 of this Title); and

(ii) exclude, in calculating any increase in emissions that results from the change, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(37) *Secondary emissions*. Emissions of a nonattainment contaminant which occur as a result of the construction or operation of a proposed source project or proposed major facility, not including emissions from the proposed source project or proposed major facility itself. Secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the proposed source project or proposed major facility which causes the secondary emissions.

Secondary emissions include nonattainment contaminant emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the proposed source project or proposed major facility. Secondary emissions do not include any emissions which come directly from a mobile source subject to any regulation under this Title, such as emissions from a motor vehicle or a train. Secondary emissions shall not be considered in an applicability determination for a proposed source project or proposed major facility.

(38) *Significant net emission increase.* A net emission increase at an existing major facility:

(i) of VOC or NO_x, in the severe ozone nonattainment area only, which exceeds 25 tons per year (see significant net emission increase threshold in section 231-2.12 of this Subpart); or

(ii) of VOC or NO_x, in all other ozone nonattainment areas and attainment portions of the ozone transport region, or of PM-10 or CO in their respective nonattainment areas, which equals or exceeds the corresponding significant net emission increase threshold in section 231-2.12 or 231-2.13 of this Subpart.

(39) *Significant source project.* A proposed source project at an existing major facility with:

(i) a project emission potential of VOC or NO_x, in the severe ozone nonattainment area only, which equals or exceeds 2.5 tons per year (see significant source project threshold in section 231-2.12 of this Subpart); or

(ii) a project emission potential of VOC or NO_x in all other ozone nonattainment areas and attainment portions of the ozone transport region, or a project emission potential of PM-10 or CO in their respective nonattainment areas, which equals or exceeds the corresponding significant source project threshold in section 231-2.12 or 231-2.13 of this Subpart.

(40) *Source project.* Any of the following proposed projects at an existing facility which results in an increase in emissions of a nonattainment contaminant but does not include any emission reductions:

(i) a new emission unit (replacement of an emission unit with similar equipment is addressed under subparagraph [ii] of this paragraph); or

(ii) a physical change in, or change in the method of operation of, an emission unit which results in an increase in the maximum annual potential of the emission unit; or

(iii) multiples or combinations of the above which are related actions and are included in, dependent on, or undertaken as a result of any long range plan of which each such emission unit is a part.

(41) *Source reduction.* Any practice, other than facility shutdown, emission unit shutdown, curtailment, or over control of emissions beyond an applicable limit, which reduces emissions of a nonattainment contaminant. Examples of source reduction would be reformulation of inks, paints, coatings, etc., which result in reductions beyond levels required by the most stringent applicable State or Federal emission limitation, or replacement at the same location, or contiguous locations, of a unit with another unit which emits less to perform the same task, or replacement or repair of valves, fittings, or other equipment to reduce fugitive emissions.

(42) *Surplus.* A reduction in emissions beyond levels prescribed by the most stringent applicable State or Federal emission limitation which is required by the CAAA.

(43) *Temporary clean coal technology demonstration project.* A clean coal technology demonstration project that is operated for a period of five years or less, and which complies with all requirements of the State Implementation Plan (SIP) and this Chapter, and any others necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

Historical Note

Sec. filed Sept. 15, 1994; amds. filed: Sept. 22, 1998; April 3, 2000 eff. 30 days after filing.

§ 231-2.2 Applicability.

The subdivisions of this section are to be considered in determining if, or to what extent, the requirements of any section of this Subpart apply to any emission unit (including any exempt or

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trivial activity as defined in Part 201 of this Title), which is part of a proposed source project or proposed major facility, or to any emission unit, area source, mobile source, or other source which is used to establish an ERC. Any emission unit subject to this Subpart must also comply with State facility or title V permitting requirements, as applicable, pursuant to Part 201 of this Title.

(a) *Applicability to emission increases in any nonattainment area and attainment portions of the ozone transport region.* Any emission unit (including any exempt or trivial activity as defined in Part 201 of this Title) which emits any nonattainment contaminant is subject to this Subpart if:

(1) a permit action for such emission unit occurs on or after November 15, 1992; or an exempt or trivial activity is constructed on or after November 15, 1992 and prior to the effective date of Subparts 231-3 through 231-13 of this Part; and

(2) it is part of a proposed major facility for any such nonattainment contaminant, including any major electric generating facility subject to article X of the Public Service Law, or any major steam electric generating facility subject to article VIII of the Public Service Law; or

(3) at an existing non-major facility, it is part of a proposed source project which, by itself, has a project emission potential of any such nonattainment contaminant equal to or greater than the corresponding major facility size threshold in section 231-2.12 or 231-2.13 of this Subpart; or

(4) at an existing major facility, it is part of a significant source project for any such nonattainment contaminant which results in a significant net emission increase for that nonattainment contaminant. For emissions of VOC or NO_x in the severe ozone nonattainment area, special rules apply as set forth in subdivision (b) of this section. If the emission unit is part of a significant source project which does not result in a significant net emission increase, the emission unit remains subject to the applicable provisions of sections 231-2.3, 231-2.4, 231-2.6, and 231-2.7 of this Subpart.

(b) *Severe ozone nonattainment area; special rules.* For emissions of VOC or NO_x only, any emission unit which is part of a significant source project which results in a significant net emission increase as identified in paragraph (a)(4) of this section is also subject to the following requirements:

(1) At an existing major facility, if the facility emission potential of VOC or NO_x is less than 100 tons per year:

(i) an emission offset of the project emission potential at a ratio of at least 1.3 to 1 is required, except that best available control technology (BACT) may be substituted for LAER; or

(ii) if the project emission potential is internally offset at a ratio of at least 1.3 to 1, the proposed source project is exempt from the requirements of BACT and an emission offset, but is subject to sections 231-2.3, 231-2.4, 231-2.8 and 231-2.10 of this Subpart.

(2) At an existing major facility, if the facility emission potential of VOC or NO_x is 100 tons per year or more:

(i) both an emission offset of the project emission potential at a ratio of at least 1.3 to 1 and LAER are required; or

(ii) if the project emission potential is internally offset at a ratio of at least 1.3 to 1, the proposed source project is exempt from the requirements of LAER and an emission offset, but is subject to sections 231-2.3, 231-2.4, 231-2.8 and 231-2.10 of this Subpart.

(c) *Fugitive emissions.* For the purposes of this Subpart, the fugitive emissions of a facility shall be included in determining whether the facility is major if the facility belongs to one of the following source categories:

- (1) coal cleaning plants (with thermal dryers);
- (2) kraft pulp mills;
- (3) portland cement plants;
- (4) primary zinc smelters;
- (5) iron and steel mills;
- (6) primary aluminum ore reduction plants;

- (7) primary copper smelters;
- (8) municipal solid waste incineration facilities (or combinations thereof) capable of charging more than 50 tons of refuse per day;
- (9) hydrofluoric, sulfuric, or nitric acid plants;
- (10) petroleum refineries;
- (11) lime plants;
- (12) phosphate rock processing plants;
- (13) coke oven batteries;
- (14) sulfur recovery plants;
- (15) carbon black plants (furnace process);
- (16) primary lead smelters;
- (17) fuel conversion plants;
- (18) sintering plants;
- (19) secondary metal processing plants;
- (20) chemical processing plants;
- (21) fossil fuel-fired boilers (or combinations thereof) totaling more than 250 million British thermal units per hour of heat input;
- (22) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (23) taconite ore processing plants;
- (24) glass fiber manufacturing plants;
- (25) charcoal production plants;
- (26) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour of heat input;
- (27) any other stationary source category referenced in sections 200.9, Table 1, and 200.10, Tables 2 and 3 of this Title.

(d) *Exemptions.* (1) Any applicant for a proposed source project or proposed major facility subject to this Subpart may petition the department and the administrator of the United States Environmental Protection Agency, in accordance with 42 U.S.C. section 7511a(f) (see Table 1, section 200.9 of this Title), for a determination that reductions in emissions of NO_x from the proposed source project or proposed major facility would not produce net ozone air quality benefits in the nonattainment area or ozone transport region. To the extent that such a petition is granted by both the department and the administrator, the requirements of this Subpart for the proposed source project or proposed major facility with respect to emissions of NO_x shall not apply.

(2) Any emission unit which is to be operated for one year or less, and is determined not to be a significant action in accordance with the procedures contained in Part 617 of this Title, is not subject to this Subpart. Any permit representing such an emission unit shall include enforceable conditions to prohibit operation beyond one year. Relocation of the emission unit will not constitute a basis for extension or recommencement of the one-year period. If the owner of the emission unit proposes to continue operation beyond one year, the emission unit shall be subject to this Subpart. Operation of the emission unit shall not continue beyond one year until the applicant has demonstrated compliance with this Subpart and received approval for such continued operation.

(3) If an applicant for a proposed source project or proposed major facility which would be subject to this Subpart proposes enforceable permit conditions which reduce the project emission potential or facility emission potential such that the proposed source project or proposed major facility is not subject to this Subpart according to any applicability criterion contained in subdivision (a) of this section, the requirements of this Subpart shall not apply.

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- (4) The addition, replacement, or use of a pollution control project at:
- (i) an existing electric utility steam generating unit shall not be subject to this Subpart if the applicant demonstrates to the department's satisfaction that such action:
 - (a) will not render the unit less environmentally beneficial; and
 - (b) will not result in a significant net increase in representative actual annual emissions of a nonattainment contaminant over levels used for that emission unit in the most recent air quality impact analysis in the area conducted for State Implementation Plan (SIP) purposes; and
 - (c) will not cause or contribute to a violation of a national ambient air quality standard (NAAQS); or
 - (ii) any emission unit other than an electric utility steam generating unit shall not be subject to this Subpart if the applicant demonstrates to the department's satisfaction that such action:
 - (a) will not render the unit less environmentally beneficial; and
 - (b) will not result in a collateral increase in emissions of a nonattainment contaminant which exceeds the appropriate significant source project threshold; or for any such increase, emission offsets at a ratio of 1:1 have been obtained; and
 - (c) will not cause or contribute to a violation of a NAAQS.
- (5) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project shall not be subject to this Subpart if the project complies with:
- (i) the New York SIP; and
 - (ii) any other requirements necessary to attain and maintain any NAAQS during the project and after it is terminated.
- (6) The replacement of an emission source with similar equipment using the same or new emission stack shall not be subject to this Subpart provided there is no increase in the maximum annual potential of the emission unit representing the emission source. Similarly, the relocation of an emission source within the same facility is exempt from this Subpart. However, such a relocation must satisfy all other applicable Parts of this Title and result in acceptable air quality impacts pursuant to section 200.6 of this Title.
- (e) *Applicability to emission reductions.* Emission reductions through facility shutdown, emission unit shutdown, curtailment, over-control of emissions beyond an applicable limit, source reduction, and emission reductions associated with mobile sources or demand side management efforts are eligible for certification as ERCs in accordance with the provisions of section 231-2.6 of this Subpart.

Historical Note

Sec. filed Sept. 15, 1994; amds. filed: June 7, 1996; Sept. 22, 1998; April 3, 2000; Jan. 20, 2009 eff. 30 days after filing. Amended (a)(1).

§ 231-2.3 Prohibitions.

- (a) *Construction prohibited.* No person shall begin actual construction of a proposed source project or proposed major facility subject to this Subpart until a permit has been issued in accordance with Part 201 of this Title.
- (b) *Operation prohibited.* No person shall commence operation of a proposed source project or proposed major facility requiring emission offsets until all the emission reductions being used as offsets have physically occurred.
- (c) *Certification of emission reductions.* (1) An emission reduction shall not be certified as an ERC unless the emission reduction is a past reduction or a future reduction as defined in section 231-2.1 of this Subpart.
- (2) Emission reductions resulting from the shutdown of an emission unit subject to Part 201 of this Title, but never issued a permit, shall not be certified as ERCs. However, unpermitted

operational emission sources will be considered for ERCs subsequent to these sources being permitted in accordance with section 201-1.2 of this Title.

Historical Note

Sec. filed Sept. 15, 1994; amd. filed April 3, 2000 eff. 30 days after filing.

§ 231-2.4 Permit requirements.

Any proposed source project or proposed major facility which emits any nonattainment contaminant and is subject to this Subpart according to any applicability criterion contained in section 231-2.2(a) of this Subpart must comply with the following permit requirements:

(a) *Application requirements.* (1) Proposed source project netting out of applicability. The applicant shall, as part of a permit application for any significant source project that does not result in a significant net emission increase, identify each emission unit from which an ERC was used in a net emission increase determination of non-applicability in accordance with the requirements of section 231-2.7 of this Subpart. This shall include the name of the emission unit, emission unit identification number, and the mechanism proposed to effect the ERC (*i.e.*, emission unit shutdown, source reduction, curtailment, over-control of emissions beyond an acceptable limit).

(2) Proposed source project or proposed major facility subject to this Subpart. As part of a permit application for a proposed source project or proposed major facility subject to this Subpart, the applicant shall:

(i) certify that all emission units which are part of any major facility located in New York State and under the applicant's ownership or control (or under the ownership or control of any entity which controls, is controlled by, or has common control with the applicant) are in compliance, or are on a schedule for compliance, with all applicable emission limitations and standards under Chapter III of this title; and

(ii) submit an analysis of alternative sites, sizes, production processes, and environmental control techniques which demonstrates that benefits of the proposed source project or proposed major facility significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification within New York State; and

(iii) submit a LAER analysis in accordance with section 231-2.5 of this Subpart for each nonattainment contaminant subject to this Subpart; and

(iv) for emissions of PM-10 or CO only:

(a) submit a list of the offset sources (facilities) from which ERCs will be used as part of the emission offsets required pursuant to section 231-2.9(b) of this Subpart. This list must include the name and location of the facility, DEC identification number (if applicable) and the emission reduction mechanism (*i.e.*, facility shutdown, emission unit shutdown, source reduction, curtailment, over control of emissions beyond an applicable limit); and

(b) submit an air quality impact evaluation in accordance with the provisions of section 231-2.9(d) of this Subpart; and

(c) submit a revised air quality impact evaluation, if the list changes after the department's *Notice of Complete Application*. Also, a supplemental public notice and a 30-day comment period shall be required in accordance with section 231-2.10(c)(1) of this Subpart.

(b) *Permit issuance requirements.* Prior to issuance of a permit for a proposed source project or proposed major facility subject to this Subpart, the applicant shall:

(1) submit a list of offset sources (facilities) from which ERCs of VOC or Nox will be used as part of an internal offset or a required emission offset. This list must include the name and location of the facility, DEC identification number (if applicable), and the emission reduction mechanism (*i.e.*, facility shutdown, emission unit shutdown, source reduction, curtailment, over-control of emissions beyond an applicable limit). If a part or all of the list is submitted or if the list changes, after the department's *Notice of Complete Application*, then a supplemental public notice and a 30-day comment period in accordance with section 231-2.10(c)(1) of this Subpart shall be required;

(2) submit a *Use of Emission Reduction Credits Form* (duly completed and signed by the applicant and an authorized representative of the seller facility) to the department for each offset

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source listed in paragraph (1) of this subdivision. Upon issuance of the permit for the proposed source project or proposed major facility, the NYS ERC Registry will be amended to reflect that the ERCs are committed to the proposed project or facility;

(3) submit a copy of each modified permit establishing emission reduction credits, only for future reductions as defined in section 231-2.1 of this Subpart; and

(4) for emissions of VOC or NOx in an ozone nonattainment area, comply with the contribution demonstration required in section 231-2.9(e) of this Subpart.

(c) *Offset confirmation prior to commencement of operation.* At least 60 days prior to the date a proposed source project or proposed major facility commences operation, the applicant shall submit:

(1) the original ERC certificate(s) to document procurement of sufficient ERCs for required emission offsets. The original certificate(s) must be sent to the department at the address shown on the reverse side of the certificate. Copies of such certificates must also be sent to the appropriate department regional office;

(2) any changes to the list of offset sources included in the permit issued in subdivision (b) of this section. For each such change, the applicant must submit another *Use of Emission Reduction Credits Form* signed by the applicant and an authorized representative of the new offset source; and

(3) no less than 10 working days prior to the date the proposed source project or proposed major facility commences operation, a letter stating that the future reductions (as defined in section 231-2.1 of this Subpart) identified in the list of offset sources have physically occurred.

Once the project commences operation, the ERCs will be deemed to be used and the Registry will be amended accordingly.

(d) *Reissuance of ERC certificates for canceled or abandoned projects.* Prior to commencement of operation of a proposed source project or proposed major facility, if the applicant submits a letter informing the department of the cancellation of the proposed source project or proposed major facility, the department will reissue a certificate to the applicant for the total tons per year of ERCs submitted to the department as offsets.

(e) *Permit revocation.* Any permit issued pursuant to this Subpart to a proposed source project or proposed major facility shall be subject to revocation pursuant to Part 621 of this Title if:

(1) construction is not commenced within 18 months from the date of issuance, excluding any period of time that the permit modification or preconstruction permit is subject to challenge in State or Federal court;

(2) construction is discontinued for a period of 18 months or more, excluding any period of time that the permit is subject to challenge in State or Federal court; or

(3) construction is not completed within a reasonable time acceptable to the department.

The department may extend the 18 month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

Historical Note

Sec. filed Sept. 15, 1994; amds. filed: Oct. 17, 1995; April 3, 2000 eff. 30 days after filing.

§ 231-2.5 Lowest achievable emission rate, LAER.

(a) *LAER applicability.* For a proposed source project or a proposed major facility which is subject to this Subpart for any nonattainment contaminant, LAER shall be required for any emission source which is part of the proposed source project or the proposed major facility and which emits that nonattainment contaminant.

(b) *LAER analysis requirement.* A LAER analysis shall be submitted as part of a permit application for a proposed source project or proposed major facility subject to this Subpart.

(c) *Timing for LAER.* LAER shall not be established in final form until the permit for the proposed source project or proposed major facility is issued.

Historical Note

Sec. filed Sept. 15, 1994; amd. filed Sept. 25, 1997; renum. 231-2.7, new filed April 3, 2000
eff. 30 days after filing.

§ 231-2.6 Emission reduction credits (ERCs).

This section represents the required provisions and criteria for certification, registration, and use of emission reductions as ERCs for all emission units (including those that are not subject to Part 201 of this Title), and for mobile sources and demand side management (DSM). Unless otherwise specified, the term ERC in this section refers to past reductions as defined in section 231-2.1 of this Subpart.

(a) *Certification of emission reductions.* (b) Certification basis. Emission reductions must be certified as ERCs on an emission unit basis.

(2) Certification deadlines. Applicants are encouraged to apply for ERCs soon after the occurrence of the emission reductions, although there are no time restrictions for submittal of ERC applications. The department may deny ERCs if sufficient supporting documentation is not submitted as required by paragraph (5) of this subdivision.

(3) ERC creation mechanisms. ERCs may be created from past or future reductions resulting from facility shutdown, emission unit shutdown, curtailment, source reduction, over-control of emissions beyond an applicable limit or any other reduction mechanism acceptable to the department.

(4) Future reductions. Future reductions shall not be certified if they are not linked to a proposed major facility or proposed source project through enforceable permit conditions. Any certified future reduction shall become invalid if the applicant abandons the proposed major facility or proposed source project linked to the reduction prior to commencement of operation.

(5) Application for ERC certification. The applicant must submit an air permit application requesting a minor permit modification (as defined in Part 201 of this Title) for certification of an emission reduction. Such an application must include the following:

(i) a notarized letter indicating the name and title of the person authorized to act on the company's behalf for certification/transfer of ERCs. Subsequent to the permit modification, an ERC certificate will be issued to the authorized representative for the company;

(ii) a complete *Emission Reduction Credit Quantification Form* with supporting documentation establishing that the emission reduction is surplus, quantifiable, permanent and enforceable. The above-mentioned ERC criteria are described below:

(a) surplus. The applicant must ensure that the emission reduction for an emission unit is in excess of any reduction required by RACT or MACT or any other regulations applicable to the emission unit during the baseline period for the emission reduction. The determination of "surplus" is as follows:

(1) for an emission reduction which physically occurred prior to the *State or Federal Register* publication date proposing RACT or MACT requirements, the applicant is eligible for the full amount of the reduction. Otherwise, the applicant is eligible only for the lesser of the prior actual annual emissions or prior allowable annual emissions reflecting RACT or MACT emission limits;

(2) for a future reduction as defined in section 231-2.1 of this Subpart, if the date of certification of the ERC is prior to the *State or Federal Register* publication date proposing RACT or MACT requirements, then the applicant is eligible for the full amount of the reduction. Otherwise, the applicant is eligible only for the lesser of the prior actual annual emissions or prior allowable annual emissions reflecting RACT or MACT emission limits;

(b) quantifiable. The applicant must use a reliable basis for quantifying the reduction. Continuous emissions monitoring data, stack test data, emission statements, EPA's AP-42 data, fuel and solvent purchase records are acceptable bases for quantifying emission reductions;

- (c) permanent. The applicant must ensure that all reductions are permanent as defined in section 231-2.1 of this Subpart; and
 - (d) enforceable. For any ERC to be enforceable, the permit modification establishing the ERC must be noticed in the *Environmental Notice Bulletin* and a local newspaper for a 30-day public comment period.
- (6) Retention of ERCs by the department. (i) For VOC or NO_x ERCs (except those meeting the criteria listed in subparagraph [ii] of this paragraph) generated from facility or emission unit shutdowns in a moderate or severe ozone nonattainment area, 25 percent of such ERCs shall be retained by the department and may be used in support of the New York SIP to demonstrate reasonable further progress towards attaining and maintaining the national ambient air quality standard for ozone.
- (ii) An ERC is exempt from retention by the department provided it:
 - (a) is used at the same facility as part of a net emission increase determination of nonapplicability, an internal offset, or as an emission offset; or
 - (b) occurs at a nonmajor facility.
- (7) Certification issuance. Upon approval of an ERC application, the department will issue ERC certification as follows:
- (i) Reduction from an emission unit subject to Part 201 of this Title located at a facility subject to a State or title V permit (Subparts 201-5 and 201-6 of this Title). For such a reduction resulting from:
 - (a) over-control of emissions beyond an applicable limit;
 - (b) emission unit shutdown;
 - (c) curtailment; or
 - (d) source reduction.

A permit modification with federally enforceable special conditions representing the emission unit will be issued.
 - (ii) Reduction from the shutdown of an emission unit subject to Part 201 of this Title located at a facility subject to registration (Subpart 201-4 of this Title). Such a reduction shall be made federally enforceable if the applicant demonstrates to the satisfaction of the department that the emission unit has been physically removed or rendered inoperable.
 - (iii) Reduction from the shutdown of a facility subject to Part 201 of this Title. Such a reduction shall be made federally enforceable if the applicant surrenders the title V permit, State facility permit, or registration certificate as appropriate.
 - (iv) Reduction from an emission unit not subject to Part 201 of this Title. Such a reduction shall be made federally enforceable by requiring the applicant to submit a single source SIP revision for department and EPA approval. Upon such approvals, the department will issue a SIP revision approval letter along with appropriate enforceable conditions.
 - (v) Certificate issuance.
 - (a) For past reductions (see section 231-2.1 of this Subpart) listed in subparagraphs (i) through (iv) of this paragraph, a certificate establishing the amount of the ERCs for each nonattainment contaminant will be issued subsequent to the issuance of the permit modification or SIP revision approval letter, as appropriate.
 - (b) For future reductions (see section 231-2.1 of this Subpart), the permit for the emission unit creating the ERCs would be modified. No certificates will be issued for future reductions.
 - (vi) Certification date. The date of certification of an emission reduction as an ERC shall be the date of issuance of a certificate establishing the ERCs.
- (8) Certification disapproval. If the department determines that the emission reduction cannot be certified, the applicant shall be notified in writing of the reasons for such determination.
- (9) Issuance of certificates for ERCs which have been previously certified through permit modifications. A certificate establishing the amount of ERCs will be issued by the department to the owner of any available ERCs listed in the New York State ERC Registry.

(10) Mobile source and demand side management ERCs. Applications for mobile sources and demand side management ERCs will be approved by the department on a case-by-case basis upon submittal of acceptable protocols. A single source SIP revision must be submitted by the department to EPA for approval to make the ERC federally enforceable. A certificate establishing the amount of the ERCs will be issued along with the SIP revision approval letter.

(b) *Registration.* All certified emission reductions shall be entered into a listing of available ERCs (Registry) maintained by the department. This listing may be obtained from the department upon request.

(c) *Transfer of ERCs.* For transfer of ERCs, the authorized representatives of the transferor (seller) and transferee (buyer) companies shall sign and date the reverse side of the ERC certificate. Both signatures must be notarized. After completing the reverse side of the ERC certificate, the transferor shall send the certificate to the department (address provided on the certificate). Subsequent to the receipt of this certificate, the department will issue certificates to the transferor and transferee reflecting the transfer.

(d) *Use of ERCs.* (1) An ERC may be used in a net emission increase determination or as an internal offset or an emission offset.

(2) An ERC may be used as an offset without time limit or restriction, within New York State or in another state in the ozone transport region if New York has established a reciprocal trading agreement with that state.

(3) An ERC shall be of the same class of nonattainment contaminant as the emission increase requiring ERCs. For example, only a particulate form of emission shall be used as an offset for new particulate emissions, only CO shall be used as an offset for new CO emissions, and so on.

(4) An ERC may include emission reductions from control or elimination of fugitive emissions, provided these emissions are contained in the New York State emissions inventory.

(5) An ERC may include incidental emission reductions which the department has not relied upon in issuing any permit under a federally approved SIP or delegated Federal regulation.

(6) An ERC, or portion thereof, which was used in a net emission increase determination of nonapplicability or as an internal offset or an emission offset shall not subsequently be used for demonstrating attainment with ambient air quality standards or reasonable further progress in a federal-approved SIP.

(7) An ERC, or portion thereof, which was used in a net emission increase determination of nonapplicability shall not subsequently be used for internal offset or emission offset purposes, but may be used in a subsequent net emission increase determination, if contemporaneous.

(8) An ERC, or portion thereof, which was used as an internal offset or an emission offset shall not be used again for any purpose.

(e) *ERCs for replacement and relocation of emission sources.* (1) ERCs for the replacement of an emission source with new similar equipment (connected to the existing stack or a new stack) shall be quantified as follows:

(i) the difference between the lower of the prior actual annual emissions or prior allowable annual emissions of the emission unit representing the old emission source; and

(ii) the future potential of the emission unit representing the new emission source.

(2) The relocation of an emission source within the same facility would neither qualify for ERCs for the shutdown of the emission source nor be subject to this Subpart at the new location. However, such a relocation must comply with all other applicable Parts of this Title and result in acceptable air quality impacts pursuant to section 200.6 of this Title.

Historical Note

Sec. filed Sept. 15, 1994; amd. filed Sept. 25, 1997; renum. 231-2.8, new filed April 3, 2000 eff. 30 days after filing.

§ 231-2.7 Netting.

This section represents a mechanism for avoiding a determination of applicability of this Subpart in those instances where a significant source project is proposed at an existing major facility.

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(a) *Creditable emission increases and ERCs.* (1) Any creditable emission increase or emission reduction credit shall be of the same class of nonattainment contaminant. Any VOC may be substituted for any other VOC.

(2) Any creditable emission increase or ERC which is used in a net emission increase determination shall occur at the same major facility as a proposed source project.

(b) *Net emission increase determination.* A net emission increase determination shall be confined to the appropriate contemporaneous period(s) for a proposed source project, and is subject to the following:

(1) A net emission increase determination shall only be allowed at an existing major facility.

(2) At an existing major facility, a significant source project shall be subject to this Subpart unless the net emission increase associated with the proposed source project is demonstrated to be less than the corresponding significant net emission increase threshold in section 231-2.12 or 231-2.13 of this Subpart.

(3) Any ERC (or portion thereof) which is used in a net emission increase determination of non-applicability shall be described as a special condition in the permit for the proposed source project for which the reduction is used.

(4) Any creditable emission increase from an emission unit issued a permit for which an emission offset or an internal offset was obtained, shall not be considered in any subsequent net emission increase determination.

(c) *Revisiting a net emission increase determination of non-applicability.* Any source project proposed at an existing major facility subsequent to a net emission increase determination of non-applicability for a previously permitted source project shall be evaluated by the applicant in terms of the effect the project emission potential of the proposed source project will have on the prior determination. If the permit application for the proposed source project indicates it will commence operation subsequent to the close of the contemporaneous period for the previously permitted source project, an enforceable condition shall be added to the permit for the proposed source project prohibiting operation prior to this date. If the permit application for the proposed source project indicates it will commence operation during the contemporaneous period for the previously permitted source project and would as a result of such operation cause the prior net emission increase to exceed any significant net emission increase threshold in section 231-2.12 or 231-2.13 of this Subpart, the applicant shall:

(1) request a special permit condition which prohibits the proposed source project from commencing operation until after the close of the contemporaneous period for the previously permitted source project; or

(2) obtain additional ERCs, sufficient to preserve the prior net emission increase determination of non-applicability; or

(3) submit applications requesting modification of the permit for the previously permitted source project to reflect applicability of this Subpart.

Historical Note

Sec. filed Sept. 15, 1994; repealed, new added by renum. and amd. 231-2.5, filed April 3, 2000 eff. 30 days after filing.

§ 231-2.8 Internal offsets, severe ozone nonattainment area only.

This section represents a mechanism for avoiding a determination of applicability of this Subpart, for emissions of VOC or NO_x in the severe ozone nonattainment area only, in those instances where a significant source project is proposed at an existing major facility and a net emission increase determination of non-applicability is not possible.

(a) *Internal offset applicability.* An internal offset shall be considered for purposes of determining applicability or degree of control required under section 231-2.2(b)(1) or (2) of this Subpart for a proposed source project at an existing major facility in the severe ozone nonattainment area, for emissions of VOC or NO_x only. An internal offset shall only be considered subsequent to a net emission increase determination.

(b) *Use of an ERC as part of an internal offset.* An ERC shall meet the following conditions to be used as part of an internal offset:

- (1) such an ERC shall come from an emission unit within the same existing major facility as a proposed source project;
- (2) such an ERC shall have physically occurred on or after November 15, 1990, but need not be contemporaneous with a proposed source project for which the reduction is used; and
- (3) such an ERC, or portion thereof, shall be described as a special condition in the permit for the proposed source project for which the reduction is used.

Historical Note

Sec. filed Sept. 15, 1994; amd. filed Sept. 25, 1997; renum. 231-2.9, new added by renum. and amd. 231-2.6, filed April 3, 2000 eff. 30 days after filing.

§ 231-2.9 Emission offsets.

(a) *Emission offset applicability.* For a proposed source project or proposed major facility which is subject to this Subpart for any nonattainment contaminant, the project emission potential or facility emission potential respectively shall be offset.

(b) *Offset ratio.* (1) An emission offset of VOC or NO_x shall exceed the corresponding project emission potential or facility emission potential (subsequent to application of LAER or BACT), as appropriate, by the ratio amounts indicated in section 231-2.12 of this Subpart.

(2) An emission offset of PM-10 or CO shall at least equal the corresponding project emission potential or facility emission potential (subsequent to application of LAER or BACT), as appropriate. A greater amount of offset may be required to provide a net air quality benefit as set forth in subdivision (d) of this section.

(c) *Use of an ERC as part of an emission offset.* An ERC shall meet the following conditions to be used as part of an emission offset:

(1) such an ERC shall have physically occurred on or after November 15, 1990 but need not be contemporaneous; and

(2) such an ERC, or portion thereof, shall be described as a special condition in the permit for the proposed source project or proposed major facility for which the reduction is used.

(d) *Net air quality benefit and emission offset location for PM-10 or CO.* An emission offset of PM-10 or CO shall meet the following:

(1) Contribution demonstration. The emission offset may be obtained from the same nonattainment area in which a proposed source project or proposed major facility is to be located. An emission offset may also be obtained from other nonattainment areas of equal or higher classification if emissions from such other areas contribute to a violation of the NAAQS for PM-10 or CO in the nonattainment area where the proposed source project or proposed major facility is to be located.

(2) Net air quality benefit demonstration. As part of a permit application, the applicant must submit an air quality impact evaluation which is acceptable to the department and demonstrates that:

(i) the net impact of the proposed emissions increase and the emission offset provides for a net benefit, on balance, in the area affected by the proposed source project or proposed major facility; and

(ii) the net impact in no case exceeds an applicable significant impact level of section 231-2.11 of this Subpart.

(3) Interstate offsets. An emission offset of PM-10 or CO from areas of equal or higher classification may be obtained from another state, provided that an interstate reciprocal trading agreement is in place and the requirements of paragraphs (1) and (2) of this subdivision are met.

(e) *Ozone nonattainment and emission offset location.* An emission offset of VOC or NO_x is subject to the following:

(1) Proposed source project or proposed major facility is located in an ozone nonattainment area.

(i) Intrastate offset sources. An emission offset of VOC or NO_x must be obtained from:

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(a) the same ozone nonattainment area; or

(b) other ozone nonattainment areas of equal or higher classification, if emissions from such other areas contribute to a violation of the NAAQS for ozone in the nonattainment area where the proposed source project or proposed major facility is to be located.

Appendix D or Air Guide 26 (or equivalent department policy) may be used by an applicant to find default acceptable VOC or NO_x offset source locations within New York State or to do a case specific contribution demonstration.

(ii) Interstate offset sources. An emission offset may be obtained from other ozone nonattainment areas of equal or higher classification in another state, if emissions from such other areas contribute to a violation of the NAAQS for ozone in the nonattainment area where the proposed source project or proposed major facility is to be located and an interstate reciprocal trading agreement is in place. Appendix D of Air Guide 26 (or equivalent department policy) may be used by an applicant to do a case specific contribution demonstration.

(2) Proposed source project or proposed major facility located in an attainment area. An emission offset of VOC or NO_x may be obtained from any location within the ozone transport region. Such an offset may also be obtained from another state in the ozone transport region, provided that an interstate reciprocal trading agreement is in place.

Historical Note

Sec. filed Sept. 15, 1994; repealed, new added by renum. and amd. 231-2.8, filed April 3, 2000 eff. 30 days after filing.

§ 231-2.10 Public participation.

(a) Local government and public participation shall be in conformance with the procedures established in Part 621 (Uniform Procedures) of this Title.

(b) In certifying ERCs pursuant to section 231-2.6 of this Subpart, the department will provide for public notice and a 30-day public comment period.

(c) For use of an ERC of VOC or NO_x as an emission offset the following apply:

(1) Prior to issuance of a permit for a proposed source project or proposed major facility subject to this Subpart, the applicant shall submit a list of facilities providing ERCs, pursuant to section 231-2.4(b)(1) of this Subpart. If a part or all of the list is submitted, or if the list changes after the department's *Notice of Complete Application*, then a supplemental public notice and a 30-day comment period shall be required.

(2) Petitions for party status pursuant to the supplemental public notice in paragraph (1) of this subdivision based on an offer of proof that raises substantive and significant issues related to emission offset requirements of section 231-2.9 of this Subpart will not be considered as late filed petitions for party status pursuant to section 624.5(c) of Part 624 (Permit Hearing Procedures) of this Title.

Historical Note

Sec. filed Sept. 15, 1994; amds. filed: Oct. 17, 1995; April 3, 2000 eff. 30 days after filing. Amended (b), (c).

§ 231-2.11 Table 1—Significant impacts for nonattainment areas.

Significant Impacts For Nonattainment Areas		
Nonattainment contaminant	PPM	Significant air quality impact
		Weight/volume ¹
PM-10		
calendar year	—	1.0 µg/m ³
24-hour	—	5.0 µg/m ³
CO		
8-hour	0.45	0.5 mg/m ³
1-hour	1.8	2.0 mg/m ³

¹ Weight/volume values are referenced to 25°C and 760 mm of mercury.

Historical Note

Sec. filed Sept. 15, 1994; repealed, new added by renum. 231-2.14, filed April 3, 2000 eff. 30 days after filing.

§ 231-2.12 Table 2—Ozone nonattainment area and transport region classification for volatile organic compounds (VOC) and nitrogen oxides (NO_x).

Ozone Nonattainment Area and Transport Region Classification for VOC and NO_x

<i>Area/contaminant classification</i>	<i>Major facility size threshold (tons per year)¹</i>	<i>Significant source project threshold (tons per year)²</i>	<i>Significant net emission increase threshold (tons per year)³</i>	<i>Offset ratio</i>
Marginal, or moderate, or ozone transport region				
VOC	50	40	40	1.15:1 or more
NO _x	100	40	40	1.15:1 or more
Severe				
VOC	25	2.5	more than 25	1.3:1 or more
NO _x	25	2.5	more than 25	1.3:1 or more

¹ facility emission potential

² project emission potential

³ net emission increase

Historical Note

Sec. filed Sept. 15, 1994; amds. filed: Jan. 16, 1996; Jan. 7, 1997; repealed, new added by renum. and amd. 231-2.15, filed April 3, 2000 eff. 30 days after filing.

§ 231-2.13 Table 3—Nonattainment area classification for particulate matter less than 10 microns in size (PM-10) and carbon monoxide (CO).

Nonattainment Area Classification for PM-10 and CO

<i>Area/contaminant classification</i>	<i>Major facility size threshold (tons per year)¹</i>	<i>Significant source project threshold (tons per year)²</i>	<i>Significant net emission increase threshold (tons per year)³</i>	<i>Offset ratio</i>
Moderate				
PM-10	100	15	15	1:1 or more
Moderate				
CO	50 ⁴	100	100	1:1 or more

¹ facility emission potential

² project emission potential

³ net emission increase

⁴ The department may exempt a proposed major CO facility from the requirements of this Subpart if the facility emission potential for carbon monoxide is less than 100 tons per year, provided the source owner demonstrates to the satisfaction of the department that carbon monoxide emissions from the facility will not cause the significant air quality impact criteria in section 231-2.14 of this Subpart for carbon monoxide to be exceeded.

Historical Note

Sec. filed Sept. 15, 1994; amds. filed: Jan. 16, 1996; Jan. 7, 1997; repealed, new added by renum. 231-2.16, filed April 3, 2000 eff. 30 days after filing.

§ 231-2.14 - 231-2.16

Historical Note

Secs. filed Sept. 15, 1994; renum 231-2.11—231-2.13, filed April 3, 2000 eff. 30 days after filing.

SUBPART 231-3

GENERAL PROVISIONS

Sec.	
231-3.1	Statement of purpose.
231-3.2	Transition plan.
231-3.3	Summary of applicability.
231-3.4	Exemptions.
231-3.5	General prohibitions.
231-3.6	Source obligation.
231-3.7	Permits.
231-3.8	Requirement to commence construction.
231-3.9	Facility shakedown period.
231-3.10	Circumvention.
231-3.11	Severability clause.

Historical Note

Subpart (§§ 231-3.1—231-3.11) filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-3.1 Statement of purpose.

The purpose of this Part is to establish the new source review (NSR) preconstruction, construction and operation requirements for new and modified facilities in a manner which furthers the policy and objectives of article 19 of the Environmental Conservation Law, and meets the plan requirements for nonattainment areas (part D) and prevention of significant deterioration (PSD) of air quality (part C) of subchapter I of the act.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-3.2 Transition plan.

(a) On or after the effective date of this Subpart, any owner and/or operator of a proposed new or modified facility, for which a complete application has not been submitted to the department, must comply with the provisions of this Subpart and Subparts 231-4 through 231-13 of this Part.

(b) On or after the effective date of this Subpart, Subpart 231-2 will only apply to applications determined to be complete prior to the effective date of this Subpart.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-3.3 Summary of applicability.

(a) Subpart 231-5 of this Part applies to proposed new facilities, and to modifications at existing non-major facilities, proposed in a designated nonattainment area or in the ozone transport region which by themselves equal or exceed the applicable major facility threshold.

(b) Subpart 231-6 of this Part applies to modifications of existing major facilities proposed in a designated nonattainment area or in the ozone transport region.

(c) Subpart 231-7 of this Part applies to proposed new facilities, and to modifications at existing non-major facilities, proposed in areas designated in attainment of the national ambient air quality standards (NAAQS) or unclassified which by themselves equal or exceed the applicable major facility threshold.

(d) Subpart 231-8 of this Part applies to modifications of existing major facilities proposed in areas designated in attainment of the NAAQS or unclassified.

(e) Subpart 231-9 of this Part provides for a voluntary management of activities at an existing major facility under a plantwide applicability limitation (PAL).

(f) Subpart 231-10 of this Part specifies how to create and use ERCs.

(g) Subpart 231-11 of this Part specifies permit and reasonable possibility requirements.

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(h) Subpart 231-12 of this Part defines the requirements for an ambient air quality impact analysis.

(i) Subpart 231-13 of this Part sets forth tables and emission thresholds for determining applicability.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-3.4 Exemptions.

(a) Any applicant for a proposed new or modified facility which is subject to this Part may petition the department and the administrator of the United States Environmental Protection Agency, in accordance with 42 U.S.C. section 7511a(f), for a determination that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the facility. In addition, this Part shall not apply to facilities in nonattainment areas within the ozone transport region if the administrator determines, in accordance with section 7511a(f), that reductions of NO_x would not produce net ozone air quality benefits, or facilities in nonattainment areas outside the ozone transport region if the administrator determines, in accordance with section 7511a(f), that reductions of NO_x would not contribute to attainment of the national ambient air quality standard for ozone in the area. To the extent that such a petition is granted by both the department and the administrator, consistent with the act, the requirements of this Part for the proposed new or modified facility with respect to emissions of NO_x shall not apply.

(b) The facility is exempt from this Part if it is major based only on the addition of fugitive emissions and does not belong to one of the source categories listed in table 9 of Subpart 231-13 of this Part.

(c) The provisions of Subparts 231-7 and 231-8 of this Part do not apply to a new or modified facility as follows:

(1) the facility or emission source is portable and has previously received a permit under requirements equivalent to those contained in this Part, if:

(i) the facility or emission source proposes to relocate and emissions of the facility or emission source at the new location would be for less than one year;

(ii) the emissions from the facility would not exceed its emission limit(s) established in a permit;

(iii) the emissions from the facility would impact no Federal class I area and no area where an applicable increment is known to be violated; and

(iv) reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice must be given to the department not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the department; or

(2) with respect to a particular regulated NSR contaminant, the facility is located in an area designated as nonattainment under section 107 of the act for that contaminant.

(d) For the purposes of Subparts 231-7 and 231-8 of this Part, if the emissions from a facility or modification would occur for less than one year and impact no Federal class I area, no area where an applicable increment is known to be violated, and would not contribute to known standards violations, then the requirements of Subparts 231-7 and 231-8 of this Part regarding source impact analysis and additional impact Analyses, and section 231-12.3 (pre-application analysis for Subparts 231-7 and 231-8) of this Part, do not apply to a facility with respect to a particular regulated NSR contaminant.

(e) If an existing major facility owner or operator submits a Part 201 application that includes a proposed modification and a request for enforceable permit terms and conditions to restrict or cap facility wide emissions, in accordance with Subpart 201-7 of this Title, below applicable major facility thresholds, the modification is not subject to the requirements of this Part. The Part 201 State facility permit issued by the department must include all applicable requirements, including any control technology requirements and emission limitations that were in the title V permit.

(f) Any emission source which is to be operated for less than one year, is determined not to be a significant action in accordance with the procedures contained in Part 61.7 of this Title, and which

has a project emission potential less than the applicable significant project threshold in table 3, table 4 or table 6 of Subpart 231-13 of this Part, is not subject to this Part.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-3.5 General prohibitions.

Construction and operation prohibited. No owner or operator of a proposed major facility, NSR major modification, or existing major facility which undertakes a significant modification but avoids NSR applicability through netting, shall be allowed to begin actual construction, commence operation, or operate such new facility or modification, as appropriate, without a permit which incorporates the requirements of this Part. This provision shall not affect any requirement under Part 201 of this Title for an owner and/or operator to obtain a permit or permit modification prior to beginning actual construction, commencing operation or operating a new or modified facility.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-3.6 Source obligation.

(a) The issuance of a permit does not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan.

(b) For the purposes of Subparts 231-7 and 231-8 of this Part only, at such time that a particular facility becomes a major facility, or a modification becomes a NSR major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the facility or modification otherwise to emit a regulated NSR contaminant, such as a restriction on hours of operation, then the requirements of Subparts 231-7 and 231-8 of this Part, as applicable, apply to the facility as though construction had not yet commenced on the facility.

(c) Any owner or operator of a facility that proposes a project that involves a physical change or change in the method of operation that the owner or operator determines would be followed by a facility emissions increase that equals or exceeds any of the significant project thresholds in Subpart 231-13 of this Part, tables 3, 4 or 6, must notify the department in writing of the proposed project prior to implementing the change if the owner or operator determines that the project does not constitute a modification because all the emission increases are attributable to independent factors in accordance with section 231-4.1(b)(40)(i)(c) of this Part. The notification shall include the following:

- (1) a description of the change;
- (2) the calculation of the projected emissions increase;
- (3) the proposed date of the change; and
- (4) an explanation of the factual basis for the conclusion that none of the projected emission increases are attributable to the proposed project.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing; amended adoption filed Feb. 3, 2009 eff. March 5, 2009. Amended (a).

§ 231-3.7 Permits.

(a) Permit applications for proposed new and modified facilities subject to this Part will be processed in accordance with Parts 201 and 621 of this Title.

(b) In accordance with section 165(c) of the act, the department will make a final determination on an application submitted pursuant to Subpart 231-7 or Subpart 231-8 of this Part within one year of the filing of a complete application as defined under Part 621 of this Title.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-3.8 Requirement to commence construction.

The existence of a valid permit shall not be construed as authorizing construction if construction is not commenced within 18 months after the date of permit issuance, if construction is discontinued

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for a period of 18 months or more, or if construction is not completed within a reasonable time as determined by the department. The department may grant one extension for a period not to exceed 18 months upon a satisfactory showing that an extension is justified. A permit shall become subject to revocation or modification if construction is not commenced and completed as provided in this section. This provision does not apply to the time period between the completion and start of construction, of the approved phases, of a phased construction project; each phase must commence construction within 18 months of its projected and approved commencement date.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-3.9 Facility shakedown period.

Upon commencement of operation, as defined in section 231-4.1(b)(11)(i) of this Part, of a major facility or new or modified emission source(s) at an existing facility, the owner or operator is allowed a shakedown period for such major facility or modified emission source(s) according to the following provisions:

(a) The shakedown period shall not exceed 180 days from the date of commencement of operation. The department may specify a shakedown period of less than 180 days in a permit.

(b) The total mass emissions during the shakedown period must be quantified, in a manner approved by the department, and are to be included in the calculation demonstrating compliance with the permitted annual limit in tons per year (tpy) of the facility or emission source(s).

(c) Emission limits other than annual emission limitations do not apply to a major facility or new or modified emission source(s) at an existing facility during the shakedown period. However, the owner or operator must make all reasonable efforts to minimize emissions during the shakedown period.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-3.10 Circumvention.

(a) An owner or operator of a facility may not circumvent this Part by causing or allowing a pattern of ownership or development, including the phasing, staging, delaying, or engaging in incremental construction at a facility which, except for the pattern of ownership or development, would otherwise require a permit.

(b) The sale or other transfer of a facility to a new owner or operator does not relieve the new owner or operator from the requirement to obtain a permit and operate the facility in conformance with the requirements of this Part.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-3.11 Severability clause.

Each section or portion thereof, of this Part shall be deemed severable, and in the event that any section, or portion thereof, of this Part is held to be invalid, the remainder of this Part will continue in full force and effect.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

SUBPART 231-4

DEFINITIONS

Sec.
231-4.1 Definitions.

Historical Note

Subpart (§ 231-4.1) filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-4.1 Definitions.

(a) Unless otherwise defined in this section, the general definitions of Parts 200 and 201 of this Title apply.

(b) For the purposes of this Part the following definitions also apply:

(1) *Actual emissions.* For the purposes of determining the baseline concentration, and the calculation of air quality impacts according to section 231-12.2 of this Part:

(i) the actual rate of emissions of a regulated NSR contaminant from an emission source, as determined in accordance with the following paragraphs;

(ii) actual emissions as of a particular date shall equal the rate at which the emission source actually emitted the regulated NSR contaminant during the 24 consecutive month period which precedes the particular date and which is representative of normal emission source operation. The department will allow the use of a different time period upon a determination that it is more representative of normal facility operation. Actual emissions shall be calculated using the emission source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period;

(iii) the department may presume that facility-specific allowable emissions for the emission source are equivalent to the actual emissions of the emission source; and

(iv) for any emission source that has not commenced operation on the particular date, actual emissions shall equal the potential to emit of the emission source on that date.

(2) *Adverse impact on visibility.* Visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment.

(3) *Allowable emissions.* This definition applies only for the purposes of determining the baseline concentration and the calculation of air quality impacts according to section 231-12.2 of this Part. The emission rate of a facility calculated using the maximum rated capacity of the facility (unless the facility is subject to permit conditions which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(i) the applicable standards as set forth in 40 CFR parts 60 and 61; or

(ii) the applicable State implementation plan emissions limitation, including those with a future compliance date; or

(iii) the emission rate specified in a permit condition, including those with a future compliance date.

(4) *Baseline actual emissions.* The annual rate of emissions of a regulated NSR contaminant from an emission source determined as follows:

(i) The average rate (as defined in clauses [a], [b], [c], and [d] of this subparagraph), in tpy, at which an emission source physically emitted the contaminant during its baseline period, determined by using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected baseline period.

(a) The average rate includes fugitive emissions to the extent quantifiable if the facility belongs to one of the source categories listed in table 9 of Subpart 231-13 of this Part, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate must be adjusted downward to exclude any non-compliant emissions that occurred while the emission source was operating above any applicable emission limitation.

(c) Except for electric utility steam generating units, the average rate must be adjusted downward to exclude any emissions that exceeded an emission limitation with which the emission source must currently comply, had such emission source been required to comply with such limitations during the baseline period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR part 63, the baseline actual emissions rate need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G). For the purposes of a creditable emission increase or emission reduction credit used for netting, currently means at the time that the increase or reduction actually occurred.

(d) For a regulated NSR contaminant, when a project involves multiple emissions sources, one baseline period must be used to determine the baseline actual emissions of the emission sources being modified. A different baseline period cannot be used for each regulated NSR contaminant.

(ii) The applicant must use a reliable basis for quantifying the baseline actual emissions. Continuous emissions monitoring (CEM) data or stack test data approved by the department must be used if the facility is required to generate such data. If such data is not available, acceptable bases for quantifying baseline actual emissions include, but are not limited to, emission statements, EPA's AP-42 emission factors, and fuel and solvent purchase records, with department approval.

(5) *Baseline area.* Any intrastate area (and every part thereof), designated as attainment or unclassifiable under section 107 of the act, in which the major facility or NSR major modification establishing the minor facility baseline date would construct or would have an air quality impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) of the regulated NSR contaminant for which the minor facility baseline date is established.

(i) area redesignations under section 107 of the act cannot intersect or be smaller than the area of impact of any major facility or NSR major modification which establishes a minor facility baseline date; or

(ii) baseline areas pursuant to established air quality control regions (AQCR) are defined and listed in the department's policy document on ambient air quality impact analysis procedures.

(6) *Baseline concentration.* (i) The ambient concentration level that exists in the baseline area at the time of the applicable minor facility baseline date. A baseline concentration is determined for each regulated NSR contaminant for which a minor facility baseline date is established and must include:

(a) the actual emissions representative of facilities in existence on the applicable minor facility baseline date, except as provided in this subparagraph; and

(b) the allowable emissions of major facilities that commenced construction before the major facility baseline date, but were not in operation by the applicable minor facility baseline date.

(ii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) actual emissions from any major facility on which construction commenced after the major facility baseline date; and

(b) actual emission increases and decreases at any facility occurring after the minor facility baseline date.

(7) *Baseline period.* A period of time used to quantify a creditable emission increase, an ERC, or project emission potential. The baseline period consists of any 24 consecutive months within the five years immediately preceding the date identified below (if less than 24 consecutive months of operation exist, this period of operation must be used as the baseline period):

(i) for a creditable emission increase which has physically occurred, the date of the occurrence of the emission increase;

(ii) for an ERC which has physically occurred, the date of the occurrence of the emission reduction;

(iii) for a creditable emission increase or an ERC which is scheduled to occur in the future, the date of receipt by the department of the permit application which proposes to use the creditable emission increase or ERC;

(iv) for the calculation of project emission potential of a modification, the date of receipt by the department of a permit application for the modification; or

(v) for a facility which fails to submit a permit application for a NSR major modification and begins actual construction of such modification, the department will determine an appropriate baseline period.

(8) *Begin actual construction.* In general, initiation of physical on-site construction activities on an emission source which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(9) *Best available control technology (BACT).* An emissions limitation based on the maximum degree of reduction for each air pollutant subject to regulation under the act which would be emitted from or which results from any proposed major facility or NSR major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such proposed major facility or NSR major modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of BACT result in emissions of any air pollutant which would exceed the emissions allowed by any applicable standard established pursuant to section 7411 or 7412 of the act. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to enactment of the Clean Air Act amendments of 1990.

(10) *Commence construction.* The date on which the owner or operator has all necessary preconstruction approvals or permits (including those permits or approvals required under Federal air quality control laws and those which are part of the State Implementation Plan) and has either:

(i) begun, or caused to begin, a continuous program of actual construction, to be completed within a reasonable time as determined by the department; or

(ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction to be completed within a reasonable time as determined by the department.

With respect to a change in the method of operation, commence construction refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(11) *Commence(s) operation or commencement of operation.* (i) the date that a proposed new or modified facility first emits or increases emissions of any regulated NSR contaminant to which this Part applies; or

(ii) the date on which the facility shakedown period ends for a proposed modified facility which utilizes future ERCs for netting.

(12) *Contemporaneous.* The time period used in a net emission increase determination for a regulated NSR contaminant as follows:

(i) the period beginning five years prior to the proposed commence construction date of the new or modified emission source, and ending with the proposed commence operation date. These dates must be proposed by an applicant in a permit application; and

(ii) for facilities proposing to use an alternative operating scenario pursuant to Part 201 of this Title, the period beginning five years prior to the date the application for the permit modification is determined complete by the department, in accordance with Part 621 of this Title, and ending with the final permit issuance date.

(13) *Creditable emission increase.* Any increase in emissions of a regulated NSR contaminant in tpy from an emission source at an existing major facility, other than such an increase from any proposed modified facility under review, which:

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(i) results from a physical change in, or a change in the method of operation of an emission source(s); and

(ii) is quantified as the difference between baseline actual emissions and projected actual emissions.

(14) *Curtailment*. A restriction on the operation of an emission source at an existing facility included in a permit, which results in an emission reduction and reflects a partial reduction in hours of operation or capacity utilization of such emission source.

(15) *Electric utility steam generating unit*. Any steam-electric generating unit constructed for the purpose of supplying more than one third of its potential electric output capacity and more than 25 megawatts of electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity.

(16) *Emission offset*. ERCs or emission reductions which are required to be obtained by a proposed new or modified facility, which is or will be located in a nonattainment area or an attainment area of the State within the ozone transport region, in order to obtain a permit to construct and/or operate a new or modified facility.

(17) *Emission reduction credit, ERC*. The actual decrease in emissions of a regulated NSR contaminant, in tpy, determined in accordance with the requirements of Subpart 231-10 of this Part.

(18) *Emission source shutdown*. For the purposes of establishing ERCs:

(i) the permanent removal from service of an emission source, as reflected by a permit condition that formally prohibits the emission source from further operation, provided that it does not result in a facility shutdown; or

(ii) the physical removal of an emission source at a facility as reflected by a permit modification that removes the emission source from the permit, provided that it does not result in a facility shutdown.

(19) *Facility shutdown*. For the purposes of establishing ERCs, the permanent removal from service of all emission sources at a facility, as reflected by the surrender to the department of the applicable title V or State facility permit, or registration.

(20) *Federal class I area*. All of the following areas which were in existence on August 7, 1977 shall be Federal class I areas and may not be redesignated:

(i) international parks;

(ii) national wilderness areas which exceed 5,000 acres in size;

(iii) national memorial parks which exceed 5,000 acres in size; and

(iv) national parks which exceed 6,000 acres in size.

(21) *Federal land manager*. With respect to any class I lands of the United States, the secretary of the department with authority over such class I lands.

(22) *Future reductions*. Reductions which are scheduled to occur subsequent to the issuance of a permit for a new or modified major facility using the reductions.

(23) *Internal offset*. ERCs of volatile organic compounds (VOC) or NO_x, in the severe ozone nonattainment area only, from emission sources within the same existing major facility as a proposed NSR major modification, which physically occur on or after November 15, 1990. Such reductions must meet the requirements of this Part.

(24) *Major facility baseline date*:

(i) in the case of particulate matter (PM) and SO₂, January 6, 1975; and

(ii) in the case of nitrogen dioxide, February 8, 1988.

(25) *Major PAL emission source*. For the purposes of Subpart 231-9 of this Part, any emission source located in an attainment area that emits or has the potential to emit 100 tpy or more of a PAL contaminant; or any emission source located in a nonattainment area that emits or has

the potential to emit a PAL contaminant in an amount that is equal to or greater than the major facility threshold for the PAL contaminant.

(26) *Minor PAL emission source.* For the purposes of Subpart 231-9 of this Part, an emission source that emits or has the potential to emit a PAL contaminant in an amount less than the significant project threshold as listed in Subpart 231-13 of this Part or in the act, whichever is lower, for that PAL contaminant.

(27) *Minor facility baseline date.* The earliest date after the trigger date on which a major facility or a NSR major modification subject to Subpart 231-7 or 231-8 of this Part submits a complete application.

(i) The trigger date is:

(a) in the case of PM and SO₂, August 7, 1977; and

(b) in the case of nitrogen dioxide, February 8, 1988.

(ii) The baseline date is established for each contaminant for which increments or other equivalent measures have been established if:

(a) the area in which the proposed emission source or modification would construct is designated as attainment or unclassifiable under section 7407 of the act for the regulated NSR contaminant on the date of its complete application; and

(b) in the case of a major facility, the regulated NSR contaminant would be emitted at or greater than the major facility thresholds, or, in the case of a NSR major modification, there would be a significant net emissions increase of the regulated NSR contaminant.

(iii) The minor facility baseline dates have been established for SO₂, NO_x, and PM-10. These dates are listed in the department's policy documents on air quality impact analysis.

(28) *Modification.* Any physical change in, or change in the method of operation of, a facility which results in a level of annual emissions in excess of the baseline actual emissions of any regulated NSR contaminant emitted by such facility or which results in the emission of any regulated NSR contaminant not previously emitted. A modification shall not include the following:

(i) routine maintenance, repair, or replacement as defined in Part 200 of this Title;

(ii) use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) use of an alternative fuel by reason of an order or rule under section 125 of the act;

(iv) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) use of an alternative fuel or raw material by a facility which:

(a) the facility was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51 subpart 1 or 40 CFR 51.166; or

(b) the facility is approved to use, pursuant to this Part, or which is included in a permit issued pursuant to 40 CFR 52.21.

(vi) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51 subpart 1 or 40 CFR 51.166; and

(vii) any change in ownership at a facility.

(29) *Net emission increase.* The aggregate increase in emissions of a regulated NSR contaminant in tpy at an existing major facility resulting from the sum of:

(i) the project emission potential of the modification;

(ii) every creditable emission increase at the facility which is contemporaneous and for which an emission offset was not obtained; and

(iii) any ERC at the facility, or portion thereof, selected by the applicant which is contemporaneous and which was not previously used as part of an emission offset, an internal offset, or relied upon in the issuance of a permit under this Part.

(30) *Nonattainment contaminant.* A regulated NSR contaminant emitted by an emission source located or proposed to be located in an area designated in Part 200 of this Title as nonattainment for that contaminant. All of New York State is within the ozone transport region as designated by the act. Therefore, VOC and NO_x are treated as nonattainment contaminants statewide as precursors of ozone.

(31) *NSR major modification.* Any modification of a major facility that would exceed the applicable significant project threshold of a regulated NSR contaminant in table 3, table 4, or table 6 of Subpart 231-13 of this Part; and would result in a significant net emissions increase of that contaminant from the major facility.

(i) Any modification with a project emission potential for VOC or NO_x that exceeds the applicable significant project threshold or any net emissions increase at a major facility that is significant for VOC or NO_x shall be considered significant for ozone.

(ii) This definition shall not apply with respect to a particular regulated NSR contaminant when the major facility is complying with the requirements under Subpart 231-9 of this Part for a PAL for that contaminant. Instead, the definition of PAL major modification shall apply.

(32) *Offset ratio.* The ratio of a required ERC, on a nonattainment contaminant specific basis, to the project emission potential of a modification at an existing facility or the potential to emit of a new facility, as applicable. Offset ratios are listed in Subpart 231-13 of this Part.

(33) *Permanent.* Permanent relative to an ERC from an emission source means that the reduction is irreversible through the life of the emission source except as provided in this Part.

(34) *Plantwide applicability limitation (PAL).* A facility-wide emission limitation for a regulated NSR contaminant at a major facility that is expressed in tpy and is included in the facility's permit.

(35) *PAL contaminant.* The regulated NSR contaminant for which a PAL is established at a major facility.

(36) *PAL effective date.* The date of issuance of the permit which establishes a PAL. The PAL effective date for a facility that undergoes a modification which increases a prior PAL is the date when the modification commences operation and begins to emit the PAL contaminant.

(37) *PAL effective period.* The period beginning with the PAL effective date and ending 10 years later or, the date of expiration of the title V permit following the renewal of the title V permit which established the PAL, whichever is earlier. Thereafter, the effective period is 10 years from date of issuance of the title V permit. The effective period is not to exceed 10 years.

(38) *PAL major modification.* Notwithstanding the definitions for NSR major modification and net emissions increase, any modification of a facility with a PAL that causes it to emit the PAL contaminant at a level equal to or greater than the PAL.

(39) *Project emission potential.* Project emission potential is determined only for modifications at existing facilities.

(i) For each regulated NSR contaminant, the project emission potential must consider only the proposed emission increases and is calculated as the sum of the following:

- (a) for new emission sources, the potential to emit of each emission source; and
- (b) for existing emission sources at a non-major facility, the difference between the baseline actual emissions and the potential to emit of the emission source; or
- (c) for existing emission sources at a major facility, the difference between the baseline actual emissions and the projected actual emissions of the emission source.

(ii) Project emission potential does not include secondary emissions.

(iii) Fugitive emissions are not included in the project emission potential unless the facility belongs to one of the source categories listed in table 9 of Subpart 231-13 of this Part.

(iv) For emergency power generating stationary internal combustion engines, the project emission potential will be based on a maximum of 500 hours of operation per year per engine unless a more restrictive limitation exists in a permit or registration.

(40) *Projected actual emissions.* The maximum annual rate, in tpy, at which an existing emission source is projected to emit a regulated NSR contaminant in any one of the five years (12-month period) following the date the source commences operation after a modification, or in any one of the 10 years following that date if the project involves increasing the emission source's design capacity or its potential to emit that regulated NSR contaminant and full utilization of the emission source would result in exceeding the applicable significant project threshold in table 3, 4 or 6 of Subpart 231-13 of this Part or a significant net emissions increase at the major facility. Projected actual emissions are calculated only for existing major facilities.

(i) In determining the projected actual emissions as defined in this section (before beginning actual construction), the owner or operator of the major facility:

(a) must consider all relevant information, including but not limited to, historical operational data, the facility's own representations, the facility's expected business activity and the facility's highest projections of business activity, the facility's filings with the State or Federal regulatory authorities, and compliance plans under the approved State Implementation Plan;

(b) must include fugitive emissions to the extent quantifiable if the facility belongs to one of the source categories listed in table 9 of Subpart 231-13 of this Part, and emissions associated with startups and shutdowns; and

(c) may exclude, in calculating any increase in emissions that results from the particular project, that portion of the emission source's emissions following the project that the existing emission source could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project.

(ii) In lieu of using the method set out in subparagraph (i) of this paragraph, the owner or operator of the facility may elect to use the potential to emit of the emission source(s), in tpy.

(41) *Quantifiable.* A reliable basis must exist for calculating the amount and the rate of the emissions increase or reduction, along with a description of the characteristics of such increase or reduction. The same method must be used to quantify emissions before and after the emissions increase or reduction, unless the department approves an alternate method.

(42) *Reasonable further progress.* Annual incremental reductions in emissions of a nonattainment contaminant required by applicable regulations and implementation plans to ensure timely attainment of the corresponding national ambient air quality standard.

(43) *Regulated NSR contaminant.* A regulated NSR contaminant is any one of the following:

(i) any contaminant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such contaminants identified under the act or by the administrator of the US EPA in a promulgated rule;

(ii) any contaminant that is subject to any standard promulgated under section 111 of the act;

(iii) any Federal class I or II substance subject to a standard promulgated under or established by title VI of the Clean Air Act; or

(iv) any contaminant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in section 112 of the act or added to the list pursuant to section 112(b)(2) of the act, which have not been delisted pursuant to section 112(b)(3) of the act, are not regulated NSR contaminants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a criteria contaminant listed under section 108 of the act.

(44) *Secondary emissions.* Emissions of a regulated NSR contaminant which will occur as a result of the construction or operation of a proposed new or modified facility, not including emissions from the proposed new or modified facility itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the proposed new or modified facility which causes the secondary emissions. Secondary emissions include regulated NSR contaminant emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the proposed new or modified facility. Secondary emissions do not include any emissions which come directly from a

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mobile source subject to any regulation under title II of the Clean Air Act, such as emissions from a motor vehicle or a train. Secondary emissions will not be considered in an applicability determination for a proposed new or modified facility. For the purposes of Subpart 231-12 of this Part, secondary emissions must be included during the modeling exercise.

(45) *Significant net emission increase.* (i) A net emission increase of a nonattainment contaminant at an existing major facility that equals or exceeds the applicable significant net emissions increase threshold specified in tables 3 and 4 of Subpart 231-13 of this Part; or

(ii) a net emission increase of a regulated NSR contaminant at an existing major facility located in an attainment area or unclassifiable area under section 7407 of the act that equals or exceeds the applicable significant net emissions increase threshold specified in table 6 of Subpart 231-13 of this Part.

(46) *Significant PAL emission source.* An emission source that emits or has the potential to emit a PAL contaminant in an amount that is equal to or greater than the significant project threshold (as listed in Subpart 231-13 of this Part or in the act, whichever is lower) for that PAL contaminant, but less than the amount that would qualify the emission source as a major PAL emission source.

(47) *Source reduction.* Any practice which reduces emissions of a regulated NSR contaminant, other than a facility shutdown, emission source shutdown, curtailment, or over control of emissions beyond an applicable limit. Examples of source reduction would be reformulation of inks, paints, coatings, etc., which result in reductions beyond levels required by the most stringent applicable State or Federal emission limitation, or replacement at the same location, or contiguous locations, of a source with another source which emits less to perform the same task, or replacement or repair of valves, fittings, or other equipment to reduce fugitive emissions.

(48) *Surplus.* A reduction in emissions beyond levels prescribed by the most stringent applicable State or Federal emission limitation required by the act.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing; amended adoption filed Feb. 3, 2009 eff. March 5, 2009. Amended (b)(29)(iii).

SUBPART 231-5**NEW MAJOR FACILITIES AND MODIFICATIONS TO EXISTING NON-MAJOR FACILITIES IN NONATTAINMENT AREAS, AND ATTAINMENT AREAS OF THE STATE WITHIN THE OZONE TRANSPORT REGION**

Sec.	
231-5.1	Applicability.
231-5.2	Permit application content.
231-5.3	Permit content and terms of issuance.
231-5.4	Lowest achievable emission rate (LAER).
231-5.5	Emission offset requirements.

Historical Note

Subpart (§§ 231-5.1—231-5.5) filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-5.1 Applicability.

(a) The requirements of this Subpart apply, in nonattainment areas and attainment areas of the State within the ozone transport region, to the construction and/or operation of:

(1) any proposed facility which has the potential to emit a nonattainment contaminant in an amount that equals or exceeds the applicable major facility threshold, in tables 1 or 2 of Subpart 231-13 of this Part, for that contaminant; or

(2) a modification to an existing non-major facility which has a project emission potential for any nonattainment contaminant that equals or exceeds the applicable major facility threshold, in tables 1 or 2 of Subpart 231-13 of this Part, for that contaminant.

(b) An existing non-major facility that is located in a nonattainment area or an attainment area of the State within the ozone transport region which proposes a modification that has a project emission potential for any nonattainment contaminant that does not equal or exceed the applicable major facility threshold, in tables 1 or 2 of Subpart 231-13 of this Part, but would result in the facility becoming a major facility for such contaminant, is not subject to review under this Subpart. However, the facility owner or operator must apply for and obtain a permit in accordance with Part 201 of this Title and the permit must contain an emission limit(s) equal to the potential to emit of the emission source(s) affected by the modification.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing; amended adoption filed Feb. 3, 2009 eff. March 5, 2009. Amended (a)(1), (2), (b).

§ 231-5.2 Permit application content.

The information required in a permit application is set forth in Part 201 of this Title and generally in Subpart 231-11 of this Part. In addition, the following information must be included with the permit application at the time the application is submitted to the department, unless otherwise specified:

(a) A certification that all emission sources which are part of any major facility located in New York State and under the applicant's ownership or control (or under the ownership or control of any entity which controls, is controlled by, or has common control with the applicant) are in compliance, or are on a schedule for compliance, with all applicable emission limitations and standards under Chapter III of this Title.

(b) An analysis of alternative sites, sizes, production processes, and environmental control techniques which demonstrates that benefits of the proposed new or modified facility significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification within New York State.

(c) A LAER analysis in accordance with section 231-5.4 of this Subpart.

(d) Emission offset information for VOC or NO_x. At the time of the initial permit application or before the department issues a final permit determination, the applicant must submit:

(1) a list which identifies the source(s) of approved or proposed ERCs of VOC or NO_x that will be used as required emission offsets. This list must include the name and location of the fa-

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cility, DEC identification number, if applicable, and the emission reduction mechanism (*i.e.*, facility shutdown, emission unit shutdown, source reduction, curtailment, over-control of emissions beyond an applicable limit). All the proposed ERCs must be certified prior to the issuance of the final permit; and

(2) a use of emission reduction credits form (duly completed and signed by the applicant and an authorized representative of the ERC seller) for each ERC source listed in paragraph (1) of this subdivision. Upon issuance of the permit for the proposed new or modified facility, the NYS ERC Registry will be amended to reflect that the ERCs are committed as emission offsets to the proposed new or modified facility; and

(3) for emissions of VOC or NO_x in an ozone nonattainment area, documentation of compliance with the contribution demonstration required according to the department's policy documents on air quality impact analyses pursuant to Subpart 231-12 of this Part.

(e) *Emission offset information for PM-10 and PM-2.5.* The following information must be submitted at the time of the initial permit application:

(1) a list which identifies the source(s) of approved or proposed ERCs of PM-10 or PM-2.5 that will be used as required emission offsets. This list must include the name and location of the facility, DEC identification number, if applicable, and the emission reduction mechanism (*i.e.*, facility shutdown, emission unit shutdown, source reduction, curtailment, over-control of emissions beyond an applicable limit); and

(2) a use of emission reduction credits form (duly completed and signed by the applicant and an authorized representative of the ERC seller) for each ERC source listed in paragraph (1) of this subdivision. Upon issuance of the permit for the proposed new or modified facility, the NYS ERC Registry will be amended to reflect that the ERCs are committed as emission offsets to the proposed new or modified facility; and

(3) an air quality impact evaluation in accordance with the provisions of section 231-5.5(d) of this Subpart and Subpart 231-12 of this Part and the department's policy document on air quality impact analysis.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing; amended adoption filed Feb. 3, 2009 eff. March 5, 2009. Amended (d)(1), (e)(1).

§ 231-5.3 Permit content and terms of issuance.

The permit content and terms of issuance are set forth generally in Subpart 231-11 of this Part. In addition, the following provisions apply:

(a) The following emission limitations, as applicable, shall be established in a permit:

(1) the potential to emit of all applicable nonattainment contaminants of a proposed facility;

(2) the potential to emit each applicable nonattainment contaminant of a modification at an existing non-major facility which has a project emission potential for any nonattainment contaminant that exceeds the major facility threshold for that contaminant; and

(3) any applicable LAER limitation.

(b) A revised air quality impact evaluation must be submitted if the emission offset list changes after the department provides a notice of complete application in accordance with Part 621 of this Title, and a supplemental public notice must be provided in accordance with subdivision (c) of this section.

(c) *Supplemental public notice requirements for ERCs used as emission offsets.* (1) A supplemental public notice is required prior to final permit issuance if the list of facilities providing ERCs for emission offsets is changed or finalized after the date of the notice of complete application. Such notice will be provided in accordance with Part 621 of this Title.

(2) A significant permit modification in accordance with Part 201 of this Title, and supplemental public notice are required if the list of facilities providing ERCs is changed after final permit issuance and prior to commencement of operation. Such notice will be provided in accordance with Part 621 of this Title.

(d) A petition for party status pursuant to the supplemental notice provisions based on an offer of proof that raises substantive and significant issues related to emission offset requirements of this Part will not be considered as late filed petitions for party status pursuant to Part 624 of this Title.

(e) *Offset confirmation prior to the commencement of operation.* At least 60 days prior to the date a proposed new or modified facility commences operation, the permittee must submit an application to the department if there are any proposed changes to the approved list of emission offset sources included in the permit for that facility. For each such change, the applicant must submit another use of emission reduction credits form signed by the applicant and an authorized representative of the new offset source.

(f) *Future ERCs.* The permittee must submit prior to permit issuance a copy of each modified permit establishing future ERCs and a letter to the department stating that the future reductions have physically occurred. The letter shall be submitted as follows:

(1) no less than 10 working days prior to the date the proposed new or modified facility commences operation, except for a functional replacement of an existing emission source(s); or

(2) by the conclusion of the facility shakedown period, as identified under section 231-3.9 of this Part, for a functional replacement of an existing emission source(s).

(g) *Canceled or abandoned projects.* Prior to the commencement of operation, a facility owner or operator may notify the department of their intention to abandon the project and request a return of ERCs committed for use as emission offsets. Following the department's approval of such request and rescission of the permit, the department will return the unused ERCs to the ERC Registry.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-5.4 Lowest achievable emission rate (LAER).

(a) For a proposed new or modified facility LAER is required for each emission source which emits a nonattainment contaminant for which the new facility or modification is major.

(b) In establishing the final LAER limit, the department may consider any new information, including recent permit decisions, or public comment received, subsequent to the submittal of a complete application.

(c) LAER will not be established in final form until the final permit is issued.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-5.5 Emission offset requirements.

(a) *Emission offset applicability.* (1) A proposed new facility which is subject to this Subpart must offset its potential to emit for each nonattainment contaminant for which it equals or exceeds the major facility threshold.

(2) A proposed modification to an existing non-major facility must offset its project emission potential for each nonattainment contaminant for which the project emission potential equals or exceeds the major facility threshold.

(b) *Offset ratio.* (1) An emission offset of VOC or NO_x as ozone precursors must exceed the corresponding facility potential to emit or project emission potential (subsequent to application of LAER), as appropriate, by the applicable offset ratio specified in Subpart 231-13 of this Part. A greater offset ratio may be required, on a case-by-case basis, to provide an acceptable contribution demonstration as set forth in this section.

(2) An emission offset of PM-10 and PM-2.5 must at least equal (offset ratio of one to one or greater) the corresponding facility potential to emit or project emission potential (subsequent to application of LAER), as appropriate, as indicated in Subpart 231-13 of this Part. A greater offset ratio may be required to provide a net air quality benefit as set forth in this section.

(c) *Use of an ERC as part of an emission offset.* An ERC must meet the following conditions to be used as part of an emission offset:

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- (1) for NO_x, PM-10, or VOC emissions, ERCs must have physically occurred on or after November 15, 1990 but need not be contemporaneous;
- (2) for PM-2.5 emissions, ERCs must have physically occurred on or after April 5, 2005 but need not be contemporaneous;
- (3) an ERC, or portion thereof, must be included as a condition in the permit for the proposed new or modified facility for which the reduction is used.
- (d) *Net air quality benefit and emission offset location for PM-10 or PM-2.5.* An emission offset of PM-10 or PM-2.5 must meet the following:
 - (1) Contribution demonstration. An emission offset may be obtained from the same nonattainment area in which a proposed new or modified facility is to be located. An emission offset may also be obtained from other nonattainment areas of equal or higher classification if emissions from such other areas contribute to a violation of the NAAQS for PM-10 or PM-2.5, as applicable, in the nonattainment area where the proposed new or modified facility is to be located.
 - (2) Net air quality benefit demonstration. As part of a permit application, the applicant must submit an air quality impact evaluation in accordance with the department's policy document on ambient air quality impact analysis provisions. The ambient air quality impact analysis must demonstrate that:
 - (i) the net impact of the proposed emissions increase and the emission offset provides for a net benefit, on balance, in the area affected by the proposed new or modified facility; and
 - (ii) for PM-10 only, the net impact in no case exceeds an applicable significant impact level of section 231-12.6 of this Part.
 - (3) Interstate offsets. An emission offset of PM-10 or PM-2.5, from areas of equal or higher classification may be obtained from another state, provided that an interstate reciprocal trading agreement is in place and the requirements of paragraphs (1) and (2) of this subdivision are met.
- (e) *Ozone nonattainment and emission offset location.* The department's policy documents on an air quality impact analysis must be used by an applicant to find default acceptable VOC or NO_x offset source locations within New York State or to perform a case specific contribution demonstration. An emission offset of VOC or NO_x is subject to the following:
 - (1) Proposed new or modified facility located in an ozone nonattainment area.
 - (i) Intrastate offset sources. An emission offset of VOC or NO_x must be obtained from:
 - (a) the same ozone nonattainment area; or
 - (b) other ozone nonattainment areas of equal or higher classification, if emissions from such other areas contribute to a violation of the NAAQS for ozone in the nonattainment area where the proposed new or modified facility is to be located.
 - (ii) Interstate offset sources. An emission offset may be obtained from other ozone nonattainment areas of equal or higher classification in another state, if emissions from such other areas contribute to a violation of the NAAQS for ozone in the nonattainment area where the proposed new or modified facility is to be located and an interstate reciprocal trading agreement is in place. The department's policy document on an air quality impact analysis may be used by an applicant to perform a case specific contribution demonstration.
 - (2) Proposed new or modified facility located in an attainment area of the state within the ozone transport region. An emission offset of VOC or NO_x may be obtained from any location within the ozone transport region. Such an offset may also be obtained from another state in the ozone transport region, provided that an interstate reciprocal trading agreement is in place.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

SUBPART 231-6**MODIFICATIONS TO EXISTING MAJOR FACILITIES IN
NONATTAINMENT AREAS AND ATTAINMENT AREAS OF THE STATE
WITHIN THE OZONE TRANSPORT REGION**

Sec.	
231-6.1	Applicability.
231-6.2	Netting.
231-6.3	Permit application content.
231-6.4	Permit content and terms of issuance.
231-6.5	Lowest achievable emission rate, LAER.
231-6.6	Emission offset requirements.
231-6.7	Internal offset requirements, severe ozone nonattainment area only.

Historical Note

Subpart (§§ 231-6.1—231-6.7) filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-6.1 Applicability.

The requirements of this Subpart apply to the construction and/or operation of any proposed modification at an existing major facility located in a nonattainment area, or an attainment area of the State within the ozone transport region as follows:

(a) For a modification with a project emission potential, calculated utilizing projected actual emissions, which does not equal or exceed the applicable significant project threshold in table 3 or table 4 of Subpart 231-13 of this Part, the facility owner or operator must comply with the provisions of section 231-11.2 of this Part.

(b) For a modification with a project emission potential which equals or exceeds the applicable significant project threshold in table 3 or table 4 of Subpart 231-13 of this Part, but does not result in a NSR major modification, the facility owner or operator must comply with the provisions of section 231-6.2 of this Subpart.

(c) For a modification which the facility determines will result in a NSR major modification, the facility owner or operator must comply with the provisions of this Subpart as appropriate.

(d) *Special applicability rules for modifications of existing major facilities in severe ozone nonattainment areas.* (1) Modifications of facilities emitting less than 100 tpy. In the case of any major facility of VOC or NO_x (other than a facility which emits or has the potential to emit 100 tpy or more of VOC or NO_x), whenever any modification at the facility results in an NSR major modification of VOC or NO_x from any discrete operation, emission source, or other regulated NSR contaminant emitting activity at the facility, such emission increase shall be considered as a modification for purposes of requiring a permit under this Part, except that such increase shall not be considered a modification for such purposes if the owner or operator of the facility elects to offset the emission increase by a greater reduction in emissions of VOC or NO_x, as applicable, from other operations, emission sources, or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such election, the modification shall be considered an NSR major modification for such purposes, but in applying control requirements, BACT shall be substituted for LAER.

(2) Modifications of facilities emitting 100 tpy or more. In the case of any major facility of VOC or NO_x which emits or has the potential to emit 100 tpy or more of VOC or NO_x whenever any modification at the facility results in an NSR major modification of VOC or NO_x from any discrete operation, emission source, or other contaminant emitting activity at the facility, such emission increase shall be considered a modification for purposes of requiring a permit under this Part, except that if the owner or operator of the facility elects to offset the emission increase by a greater reduction in emissions of VOC or NO_x, as applicable, from other operations, emission sources, or activities within the facility at an internal offset ratio of at least 1.3 to 1, the requirements of LAER shall not apply.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

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§ 231-6.2 Netting.

This section sets forth the procedures for avoiding a NSR major modification where the proposed modification exceeds the significant project threshold(s) but does not result in a significant net emission increase.

(a) *General requirements.* (1) A net emission increase determination shall be confined to the appropriate contemporaneous period for a proposed modification.

(2) Any ERC which is used in a net emission increase determination must have physically occurred on or after the applicable date listed in section 231-5.5(c) of this Part.

(3) A net emission increase determination will only be allowed at an existing major facility.

(4) Any creditable emission increase or ERC must be of the same class of nonattainment contaminant.

(5) Any creditable emission increase or ERC which is used in a net emission increase determination must occur at the same major facility as the proposed modification.

(6) Any creditable emission increase from an emission source issued a permit for which an emission offset or an internal offset was obtained, shall not be considered in any subsequent net emission increase determination.

(b) *Permit requirements for netting.* A facility owner or operator which proposes a modification that does not result in a significant net emission increase, must:

(1) apply for and obtain a permit which establishes an emission limit that equals the projected actual emissions or potential to emit, as appropriate, of the modification of each nonattainment contaminant(s) which exceed(s) the applicable significant project threshold;

(2) apply for and obtain a permit which establishes the ERCs relied on for the net emission increase determination, if the ERCs are not already approved by the department;

(3) submit a use of emission reduction credits form (duly completed and signed by the applicant) for each source of ERCs to be used for netting. Upon issuance of the permit for the proposed modification, the ERC Registry will be amended to reflect that the ERCs have been committed to the proposed modification; and

(4) apply for and obtain a permit which complies with any additional requirements of Subpart 231-11 of this Part.

(c) *Re-evaluation of a prior net emission increase determination at a facility that was not significant.* The facility owner or operator must reevaluate the determination of the net emission increase of a prior modification which did not result in a significant net emission increase if a proposed modification will commence operation within the contemporaneous period of the prior modification. The facility owner or operator must recalculate the net emission increase of the prior modification at the facility by including the project emission potential of the proposed modification as a creditable emission increase. If the recalculated net emission increase of the prior modification results in a significant net emission increase, taking into account the proposed modification, the facility owner or operator must select one of the following options:

(1) submit a permit application and accept a condition prohibiting the proposed modification from commencing operation until after the close of the contemporaneous period for the previously permitted modification; or

(2) create additional ERCs according to the provisions of Subpart 231-10 of this Part at the facility in an amount which ensures that the net emission increase of the prior modification, after taking into account the creditable emission increase of the proposed modification does not result in a significant net emission increase; or

(3) submit an application requesting modification of the permit for the prior modification which reflects the applicability of this Subpart. The facility owner or operator may not begin actual construction of the prior modification or begin operation until the department approves the application and issues a permit which incorporates the requirements of this Subpart.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-6.3 Permit application content.

The information required in a permit application is set forth in Part 201 of this Title and generally in Subpart 231-11 of this Part. The following information must also be included at the time a permit application is submitted to the department for a modification which results in a NSR major modification, unless otherwise specified:

(a) A certification that all emission sources which are part of any major facility located in New York State and under the applicant's ownership or control (or under the ownership or control of any entity which controls, is controlled by, or has common control with the applicant) are in compliance, or are on a schedule for compliance, with all applicable emission limitations and standards under Chapter III of this Title.

(b) An analysis of alternative sites, sizes, production processes, and environmental control techniques which demonstrates that benefits of the proposed project or proposed major facility significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification within New York State.

(c) A LAER analysis in accordance with section 231-6.5 of this Subpart.

(d) *Emission offset and internal offset information for VOC or NO_x*. At the time of the initial permit application or before the department issues a final permit determination for a NSR major modification, the applicant must submit:

(1) a list which identifies the source(s) of approved or proposed ERCs of VOC or NO_x that will be used as an internal offset or required emission offset. This list must include the name and location of the facility, DEC identification number, if applicable, and the emission reduction mechanism (*i.e.*, facility shutdown, emission unit shutdown, source reduction, curtailment, over-control of emissions beyond an applicable limit). All the proposed ERCs must be certified prior to the issuance of the final permit; and

(2) a use of emission reduction credits form (duly completed and signed by the applicant and an authorized representative of the ERC seller) to the department for each ERC source listed in paragraph (1) of this subdivision. Upon issuance of the permit for the proposed modification, the NYS ERC Registry will be amended to reflect that the ERCs are committed as an internal offset or emission offset, as applicable, to the proposed modification; and

(3) for emissions of VOC or NO_x in an ozone nonattainment area, documentation of compliance with the contribution demonstration required according to the department's policy documents on air quality impact analyses pursuant to Subpart 231-12 of this Part.

(e) *Emission offset information for PM-10 and PM-2.5*. The following information must be submitted at the time of the initial permit application for a NSR major modification:

(1) a list which identifies the source(s) of approved or proposed ERCs of PM-10 or PM-2.5 that will be used as required emission offsets. This list must include the name and location of the facility, DEC identification number, if applicable, and the emission reduction mechanism (*i.e.*, facility shutdown, emission unit shutdown, source reduction, curtailment, over-control of emissions beyond an applicable limit);

(2) a use of emission reduction credits form (duly completed and signed by the applicant and an authorized representative of the ERC seller) for each ERC source listed in paragraph (1) of this subdivision. Upon issuance of the permit for the proposed modification, the NYS ERC Registry will be amended to reflect that the ERCs are committed as emission offsets to the proposed modification;

(3) an air quality impact evaluation in accordance with the provisions of section 231-6.6(d) of this Subpart and Subpart 231-12 of this Part and the department's policy documents on air quality impact analyses.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing; amended adoption filed Feb. 3, 2009 eff. March 5, 2009. Amended (d)(1), (e)(1).

§ 231-6.4 Permit content and terms of issuance.

The permit content and terms of issuance for an NSR major modification are set forth generally in Subpart 231-11 of this Part. In addition, the following provisions apply:

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(a) The following emission limitations, as applicable, shall be established in a permit:

(1) the projected actual emissions or potential to emit, as appropriate, of each applicable nonattainment contaminant(s) for a proposed NSR major modification;

(2) any LAER limitation.

(b) A revised air quality impact evaluation must be submitted if the internal offset or emission offset list changes after the department provides a notice of complete application in accordance with Part 621 of this Title, and a supplemental public notice must be provided in accordance with subdivision (c) of this section.

(c) *Supplemental public notice requirements for ERCs used as an internal offset or emission offset.* (1) A supplemental public notice is required prior to final permit issuance, if the list of ERCs provided as internal offsets or emission offsets is changed or finalized after the date the notice of complete application. Such notice will be provided in accordance with Part 621 of this Title.

(2) A permit modification and supplemental public notice are required if the list of ERCs is changed after final permit issuance. Such notice will be provided in accordance with Part 621 of this Title.

(d) A petition for party status pursuant to the supplemental notice provisions based on an offer of proof that raises substantive and significant issues related to internal offset or emission offset requirements of this Part will not be considered as late filed petitions for party status pursuant to Part 624 of this Title.

(e) *Offset confirmation prior to the commencement of operation.* At least 60 days prior to the date a proposed modification commences operation, the permittee must submit an application to the department if there are any proposed changes to the approved list of internal offset or emission offset sources included in the permit for that facility. For each such change, the applicant must submit another use of emission reduction credits form signed by the applicant and an authorized representative of the new offset source.

(f) *Future ERCs.* The permittee must submit prior to permit issuance a copy of each modified permit establishing future ERCs and a letter to the department stating that the future reductions have physically occurred. The letter shall be submitted as follows:

(1) no less than 10 working days prior to the date the proposed new or modified facility commences operation, except for a functional replacement of an existing emission source(s); or

(2) by the conclusion of the facility shakedown period, as identified under section 231-3.9 of this Part, for a functional replacement of an existing emission source(s).

(g) *Canceled or abandoned projects.* Prior to the commencement of operation, a facility owner or operator may notify the department of their intention to abandon the project and request a return of ERCs committed for use as an internal offset or emission offset. Following the department's approval of such request and rescission of the permit, the department will return the unused ERCs to the ERC Registry.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-6.5 Lowest achievable emission rate, LAER.

(a) For a proposed NSR major modification, LAER is required for each emission source which emits the applicable nonattainment contaminant.

(b) In establishing the final LAER limit, the department may consider any new information, including recent permit decisions, or public comment received, subsequent to the submittal of a complete application.

(c) LAER is not to be established in final form until the final permit for the proposed modification is issued.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-6.6 Emission offset requirements.

(a) *Emission offset applicability.* For a NSR major modification, the project emission potential must be offset.

(b) *Offset ratio.* (1) An emission offset of VOC or NO_x must exceed the corresponding project emission potential, subsequent to application of LAER, by the applicable offset ratio specified in Subpart 231-13 of this Part. A greater offset ratio may be required, on a case by case basis, to provide an acceptable contribution demonstration as set forth in this section.

(2) An emission offset of PM-10 or PM-2.5 must at least equal (offset ratio of one to one or greater) the corresponding project emission potential (subsequent to application of LAER), as indicated in Subpart 231-13 of this Part. A greater offset ratio may be required to provide a net air quality benefit as set forth in this section.

(c) *Use of an ERC as an emission offset.* An ERC must meet the following requirements to be used as an emission offset:

(1) for NO_x, PM-10, and VOC emissions, ERCs must have physically occurred on or after November 15, 1990 but need not be contemporaneous;

(2) for PM-2.5 emissions, ERCs must have physically occurred on or after April 5, 2005 but need not be contemporaneous;

(3) an ERC, or portion thereof, must be established in the permit for the proposed NSR major modification for which the reduction is used.

(d) *Net air quality benefit and emission offset location for PM-10 or PM-2.5.* An emission offset of PM-10 or PM-2.5 must meet the following requirements:

(1) *Contribution demonstration.* An emission offset may be obtained from the same nonattainment area in which a proposed NSR major modification is to be located. An emission offset may also be obtained from other nonattainment areas of equal or higher classification if emissions from such other areas contribute to a violation of the NAAQS for PM-10 or PM-2.5 in the nonattainment area where the proposed NSR major modification is to be located.

(2) *Net air quality benefit demonstration.* As part of a permit application, the applicant must submit an air quality impact evaluation in accordance with department's policy document on air quality impact analysis provisions. The ambient air quality impact analysis must demonstrate that:

(i) the net impact of the proposed emissions increase and the emission offset provides for a net benefit, on balance, in the area affected by the proposed NSR major modification; and

(ii) for PM-10 only, the net impact in no case exceeds an applicable significant impact level set forth in section 231-12.6 of this Part.

(3) *Interstate offsets.* An emission offset of PM-10 or PM-2.5, from areas of equal or higher classification may be obtained from another state, provided that an interstate reciprocal trading agreement is in place and the requirements of paragraphs (1) and (2) of this subdivision are met.

(e) *Ozone nonattainment and emission offset location.* The department's policy document on air quality impact analysis must be used by an applicant to find default acceptable VOC or NO_x offset source locations within New York State or to perform a case specific contribution demonstration. An emission offset of VOC or NO_x is subject to the following:

(1) Proposed NSR major modification located in an ozone nonattainment area.

(i) Intrastate offset sources. An emission offset of VOC or NO_x be obtained from:

(a) the same ozone nonattainment area; or

(b) other ozone nonattainment areas of equal or higher classification, if emissions from such other areas contribute to a violation of the NAAQS for ozone in the nonattainment area where the proposed NSR major modification is to be located.

(ii) Interstate offset sources. An emission offset may be obtained from other ozone nonattainment areas of equal or higher classification in another state, if emissions from such other areas contribute to a violation of the NAAQS for ozone in the nonattainment area where the

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proposed NSR major modification is to be located and an interstate reciprocal trading agreement is in place. The department's policy document on an air quality impact analysis may be used by an applicant to perform a case specific contribution demonstration.

(2) Proposed NSR major modification located in an attainment area of the state within the ozone transport region. An emission offset of VOC or NO_x may be obtained from any location within the ozone transport region. Such an offset may also be obtained from another state in the ozone transport region, provided that an interstate reciprocal trading agreement is in place.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-6.7 Internal offset requirements, severe ozone nonattainment area only.

This section represents a mechanism for avoiding a determination of applicability of this Part, for emissions of VOC or NO_x in the severe ozone nonattainment area only, in those instances where an NSR major modification is proposed at an existing major facility and a net emission increase determination of non-applicability is not possible.

(a) *Internal offset applicability.* An internal offset shall be considered for purposes of determining applicability or degree of control required under section 231-6.1(d)(1) or (2) of this Subpart for a proposed NSR major modification.

(b) Use of a NO_x or VOC ERC as part of an internal offset. An ERC shall meet the following conditions to be used as part of an internal offset:

(1) an ERC shall come from an emission source within the same existing major facility as a proposed NSR major modification;

(2) an ERC shall have physically occurred on or after November 15, 1990, but need not be contemporaneous with a proposed NSR major modification for which the reduction is used;

(3) an ERC, or portion thereof, shall be described as a special condition in the permit for the proposed NSR major modification for which the reduction is used.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

SUBPART 231-7**NEW MAJOR FACILITIES AND MODIFICATIONS TO EXISTING NON-MAJOR FACILITIES IN ATTAINMENT AREAS (PREVENTION OF SIGNIFICANT DETERIORATION)**

Sec.	
231-7.1	Applicability.
231-7.2	Pre-application analysis.
231-7.3	Permit application content.
231-7.4	General requirements.
231-7.5	Permit content and terms of issuance.
231-7.6	Best available control technology, BACT.

Historical Note

Subpart (§§ 231-7.1—231-7.6) filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-7.1 Applicability.

(a) The requirements of this Subpart apply in attainment areas of the State to the construction and/or operation of:

(1) any proposed facility which has the potential to emit a regulated NSR contaminant in an amount that equals or exceeds the applicable major facility threshold, in table 5 of Subpart 231-13 of this Part, for that contaminant; or

(2) a modification to an existing non-major facility which has a project emission potential for any regulated NSR contaminant that equals or exceeds the applicable major facility threshold, in table 5 of Subpart 231-13 of this Part, for that contaminant.

(b) An existing non-major facility that is located in an attainment area of the State which proposes a modification that has a project emission potential for any regulated NSR contaminant that does not equal or exceed the applicable major facility threshold, in table 5 of Subpart 231-13 of this Part, but would result in the facility becoming a major facility for such contaminant, is not subject to review under this Subpart. However, the facility owner or operator must apply for and obtain a permit in accordance with Part 201 of this Title and the permit must contain an emission limit(s) equal to the potential to emit of the emission source(s) affected by the modification.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing; amended adoption filed Feb. 3, 2009 eff. March 5, 2009. Amended (a)(1), (2), (b).

§ 231-7.2 Pre-application analysis.

Prior to submitting a permit application, the facility owner or operator must comply with the requirements of section 231-12.3 (pre-application analysis for Subparts 231-7 and 231-8) of this Part.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-7.3 Permit application content.

The information required in a permit application is set forth in Part 201 of this Title and generally in Subpart 231-11 of this Part. In addition, the following information must be included with the permit application at the time the application is submitted to the department, unless otherwise specified:

(a) *Air quality impact analyses according to Subpart 231-12 of this Part.*

(b) *A BACT review in accordance with section 231-7.6 of this Part.*

(c) *Source impact analysis.* The applicant must demonstrate according to the provisions of Subpart 231-12 (Ambient Air Quality Impact Analysis) of this Part that allowable emission increases from the proposed new or modified facility, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or significantly contribute to air pollution in violation of:

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- (1) any national ambient air quality standard in any air quality control region;
 - (2) any applicable maximum allowable increase over the baseline concentration in any area; and
 - (3) any other applicable requirements identified in Subpart 231-12 of this Part, and section 231-7.4(f)(3) of this Subpart including visibility and air quality related value (AQRV) analyses for Federal class I areas, as applicable.
- (d) *Source information.* The applicant must submit all information necessary to perform any analysis or make any determination required under this section and Subpart 231-12 of this Part, including:

- (1) a detailed description as to what system of continuous emission reduction is planned for the facility, emission estimates, and any other information necessary to determine that best available control technology would be applied;

- (2) information on the air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the facility would affect, upon request of the department; and

- (3) a demonstration of the stack height, consistent with good engineering practice pursuant to 40 CFR 51.100(ii) and section 231-7.4(e) of this Subpart.

(e) *Additional impact analyses.* (1) The owner or operator must provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the proposed new or modified facility, and general commercial, residential, industrial and other growth associated with the proposed new or modified facility. The owner or operator does not have to provide an analysis of the impact on vegetation if the vegetation has no ecological or significant commercial or recreational value.

- (2) The owner or operator must provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the proposed new or modified facility.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-7.4 General requirements.

The following provisions are also applicable for the review of applications under this Subpart.

(a) *Ambient air increments.* Concentration limitations necessary to assure that in areas designated as Federal class I, class II, or class III, increases in any regulated NSR contaminant concentration over the baseline concentration do not exceed those listed in Subpart 231-12 of this Part.

(b) *Ambient air ceilings.* For any regulated NSR contaminant for a period of exposure, no concentration of that regulated NSR contaminant is allowed to exceed the lower of the following:

- (1) the concentration permitted under the national secondary ambient air quality standard; or
- (2) the concentration permitted under the national primary ambient air quality standard.

(c) *Restrictions on area classifications and redesignation.* (1) All areas of the State are designated class II as identified in department policy documents, but may be redesignated as provided in this subdivision.

- (2) The following areas may be redesignated only as Federal class I:

- (i) an area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

- (ii) a national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

- (3) The State may submit to the administrator a proposal to redesignate areas in the State as class I according to the provisions established by 40 CFR part 51.166.

(d) *Exclusions from increment consumption.* (1) The following concentrations must be excluded in determining compliance with the maximum allowable ambient air increment:

(i) concentrations attributable to the increase in emissions from facilities which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding Federal legislation) over the emissions from such facilities before the effective date of such an order;

(ii) concentrations attributable to the increase in emissions from facilities which have converted from using natural gas by reason of any applicable natural gas curtailment plan in effect pursuant to the Federal Power Act (or any other superseding Federal legislation) over the emissions from such facilities before the effective date of such plan;

(iii) concentrations attributable to the increase in emissions from construction of other temporary emission related activities at the facility;

(iv) increase in concentrations attributable to new facilities outside the United States over the concentrations attributable to existing facilities which are included in the baseline concentration; and

(v) for subparagraphs (i) and (ii) of this paragraph, no exclusion of such concentrations applies more than two years after the effective date which is applicable. If both such order and plan are applicable, no such exclusion applies more than five years after the later of such effective dates.

(2) Concentrations attributable to the temporary increase in emissions of SO₂, PM, or NO_x from facilities which are limited to less than one year in duration are excluded, provided the department:

(i) approves the time over which the temporary emissions increase of SO₂, PM, or NO_x would occur;

(ii) specifies that the time period for excluding certain contributions in accordance with this subdivision, is not renewable;

(iii) allows no emissions increase from a facility which would:

(a) impact a Federal class I area or an area where an applicable increment is known to be violated; or

(b) cause a violation or contribute to a known violation of a national ambient air quality standard;

(iv) requires limitations to be in effect at the end of the time period specified in accordance with this subdivision, which would ensure that the emissions levels from facilities would not exceed those levels occurring from such facilities before the exclusion was approved.

(e) *Stack heights.* The degree of emission limitation required for control of any regulated NSR contaminant under this Subpart must not be affected in any manner by:

(1) a stack height, not in existence before December 31, 1970, as exceeds good engineering practice, pursuant to 40 CFR 51.100(ii); or

(2) any other dispersion technique not implemented before December 31, 1970.

(f) *Requirements for sources impacting Federal class I areas:* (1) Notice to EPA and Federal land manager. The department or the applicant, at the request of the department, shall submit a copy of the permit application and all relevant information to the EPA region 2 office and the Federal land manager within 30 days of receipt of the application.

(2) Federal land manager. The Federal land manager and the Federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the AQRVs (including visibility) of such lands and to consider, in consultation with the department, whether a proposed new or modified facility will have an adverse impact on such values.

(3) Visibility analysis and AQRV analysis. The department must consider any analysis performed by the Federal land manager, provided prior to the date of publication of the draft permit that shows that a proposed new major facility may have an adverse impact on visibility or

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other AQRV in any Federal class I area. Where the department finds that such an analysis does not demonstrate to the satisfaction of the department that an adverse impact on visibility or other AQRV will result in the Federal class I area, the department must, in the notice of public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.

(4) Denial of a permit based on adverse impact on AQRVs. The Federal land manager of any such lands may demonstrate to the department that the emissions from a proposed new or modified facility would have an adverse impact on the AQRVs (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from the proposed new or modified facility would not cause or significantly contribute to concentrations which would exceed the maximum allowable increases for a Federal class I area. If the department concurs with such demonstration, then it must not issue the permit.

(5) Federal class I variances. The owner or operator of a proposed new or modified facility may demonstrate to the Federal land manager that the emissions from the new or modified facility would have no adverse impact on the air quality related values (including visibility) of any such lands, notwithstanding that the change in air quality resulting from emissions from the new or modified facility would cause or contribute to concentrations which would exceed the maximum allowable increases for a Federal class I area. If the Federal land manager concurs with such demonstration and so certifies, provided that the applicable requirements of this section are otherwise met, the State may issue the permit with such emission limitations as may be necessary to assure that emissions of SO₂, PM, and NO_x would not exceed the maximum allowable increases over minor source baseline concentration as listed in table 7 of Subpart 231-13 of this Part.

(6) SO₂ variance by Governor of the Federal class I area with Federal land manager's concurrence. The owner or operator of a proposed new or modified facility which cannot be approved under paragraph (4) of this subdivision may demonstrate to the governor of the Federal class I area that the new or modified facility cannot be constructed by reason of any maximum allowable increase for SO₂ for a period of 24 hours or less applicable to any Federal class I area, and that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor of the Federal class I area, after consideration of the Federal land manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the department will issue a permit to the new or modified facility, provided that the applicable requirements of this Subpart are otherwise met.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-7.5 Permit content and terms of issuance.

The permit content and terms of issuance are set forth generally in Subpart 231-11 of this Part. In addition, the following emission limitations, as applicable, shall be established in a permit:

- (a) the potential to emit of a proposed facility;
- (b) the potential to emit of a modification at an existing non-major facility which has a project emission potential for any regulated NSR contaminant that exceeds the major facility threshold for that contaminant; and
- (c) any BACT limitations.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-7.6 Best available control technology, BACT.

(a) For a proposed new or modified facility, BACT is required for each emission source that is part of the proposed new facility or modification, for all regulated NSR contaminants to be emitted by the proposed new facility or modification which equal or exceed the applicable significant project threshold listed in table 6 of Subpart 231-13 of this Part.

(b) For phased construction projects, the determination of BACT must be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to com-

mencement of construction of each independent phase of the project. At such time, the applicant may be required to demonstrate the adequacy of any previous determination of BACT for the new or modified facility.

(c) In establishing the final BACT limit, the department may consider any new information, including recent permit decisions, or public comment received, subsequent to the submittal of a complete application.

(d) BACT will not be established in final form until the final permit is issued.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

SUBPART 231-8**MODIFICATIONS TO EXISTING MAJOR FACILITIES IN ATTAINMENT AREAS (PREVENTION OF SIGNIFICANT DETERIORATION)**

Sec.	
231-8.1	Applicability.
231-8.2	Netting.
231-8.3	Pre-application analysis.
231-8.4	Permit application content.
231-8.5	General requirements.
231-8.6	Permit content and terms of issuance.
231-8.7	Best available control technology, BACT

Historical Note

Subpart (§§ 231-8.1—231-8.7) filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-8.1 Applicability.

The requirements of this Subpart apply to the construction and/or operation of any proposed modification at an existing major facility located in an attainment area of the State as follows:

(a) For a modification with a project emission potential, calculated utilizing projected actual emissions, which does not equal or exceed the applicable significant project threshold in table 6 of Subpart 231-13 of this Part, the facility owner or operator must comply with the provisions of section 231-11.2 of this Part.

(b) For a modification with a project emission potential which equals or exceeds the applicable significant project threshold in table 6 of Subpart 231-13 of this Part, but does not result in a NSR major modification, the facility owner or operator must comply with the provisions of section 231-8.2 of this Subpart.

(c) For a modification which the facility determines will result in a NSR major modification, the facility owner or operator must comply with the provisions of this Subpart as appropriate.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-8.2 Netting.

This section sets forth the procedures for avoiding a NSR major modification where the proposed modification exceeds the significant project threshold(s) but does not result in a significant net emission increase.

(a) *General requirements.* (1) A net emission increase determination shall be confined to the appropriate contemporaneous period for a proposed modification.

(2) A net emission increase determination will only be allowed at an existing major facility.

(3) Any creditable emission increase or ERC must be of the same class of regulated NSR contaminant.

(4) Any creditable emission increase or ERC which is used in a net emission increase determination must occur at the same major facility as the proposed modification.

(b) *Permit requirements for netting.* A facility owner or operator which proposes a modification that does not result in a significant net emission increase, must:

(1) apply for and obtain a permit which establishes an emission limit that equals the projected actual emissions or potential to emit, as appropriate, of the modification of each regulated NSR contaminant(s) which exceed(s) the applicable significant project threshold;

(2) apply for and obtain a permit which establishes the ERCs relied on for the net emission increase determination, if the ERCs are not already approved by the department;

(3) submit a use of emission reduction credits form (duly completed and signed by the applicant) for each source of ERCs to be used for netting;

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(4) apply for and obtain a permit which complies with any additional requirements of Subpart 231-11 of this Part.

(c) *Re-evaluation of a prior net emission increase determination at a facility that was not significant.* The facility owner or operator must reevaluate the determination of the net emission increase of a prior modification which did not result in a significant net emission increase if a proposed modification will commence operation within the contemporaneous period of the prior modification. The facility owner or operator must recalculate the net emission increase of the prior modification at the facility by including the project emission potential of the proposed modification as a creditable emission increase. If the recalculated net emission increase of the prior modification results in a significant net emission increase, taking into account the proposed modification, the facility owner or operator must select one of the following options:

(1) submit a permit application and accept a condition prohibiting the proposed modification from commencing operation until after the close of the contemporaneous period for the previously permitted modification; or

(2) create additional ERCs according to the provisions of Subpart 231-10 of this Part at the facility in an amount which ensures that the net emission increase of the prior modification, after taking into account the creditable emission increase of the proposed modification does not result in a significant net emission increase; or

(3) submit an application requesting modification of the permit for the prior modification which reflects applicability of this Subpart. The facility owner or operator may not begin actual construction of the prior modification or begin operation until the department approves the application and issues a permit which incorporates the requirements of this Subpart.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-8.3 Pre-application analysis.

Prior to submitting a permit application, the facility owner or operator must comply with the requirements of Section 231-12.3 (pre-application analysis for Subparts 231-7 and 231-8) of this Part.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-8.4 Permit application content.

The information required in a permit application is set forth in Part 201 of this Title and generally in Subpart 231-11 of this Part. In addition, the following information must be included with the permit application for a NSR major modification, at the time the application is submitted to the department, unless otherwise specified:

(a) *An air quality impact analyses according to Subpart 231-12 of this Part.*

(b) *A BACT review in accordance with section 231-8.7 of this Subpart.*

(c) *Source impact analysis.* The applicant must demonstrate according to the provisions of Subpart 231-12 (ambient air quality impact analysis) of this Part that allowable emission increases from the proposed modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or significantly contribute to air pollution in violation of:

(1) any national ambient air quality standard in any air quality control region;

(2) any applicable maximum allowable increase over the baseline concentration in any area;

(3) any other applicable requirements identified in Subpart 231-12 of this Part, and section 231-8.5(f)(3) of this Subpart including visibility and air quality related value (AQRV) analyses for Federal class I areas, as applicable.

(d) *Source information.* The applicant must submit all information necessary to perform any analysis or make any determination required under this section and Subpart 231-12 of this Part, including:

(1) a detailed description as to what system of continuous emission reduction is planned for the facility, emission estimates, and any other information necessary to determine that best available control technology would be applied;

(2) information on the air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the facility would affect, upon request of the department;

(3) a demonstration of the stack height, consistent with good engineering practice pursuant to 40 CFR 51.100(ii) and section 231-8.5(e) of this Subpart.

(e) *Additional impact analyses.* (1) The owner or operator must provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the proposed modification, and general commercial, residential, industrial and other growth associated with the proposed modification. The owner or operator does not have to provide an analysis of the impact on vegetation if the vegetation has no ecological or significant commercial or recreational value.

(2) The owner or operator must provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the proposed modification.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-8.5 General requirements.

The following provisions are also applicable for the review of applications under this Subpart.

(a) *Ambient air increments.* Concentration limitations necessary to assure that in areas designated as Federal class I, class II, or class III, increases in any regulated NSR contaminant concentration over the baseline concentration do not exceed those listed in Subpart 231-12 of this Part.

(b) *Ambient air ceilings.* For any regulated NSR contaminant for a period of exposure, no concentration of that regulated NSR contaminant is allowed to exceed the lower of the following:

- (1) the concentration permitted under the national secondary ambient air quality standard; or
- (2) the concentration permitted under the national primary ambient air quality standard.

(c) *Restrictions on area classifications and redesignation.* (1) All areas of the State are designated class II as identified in department policy documents, but may be redesignated as provided in this subdivision.

(2) The following areas may be redesignated only as Federal class I:

- (i) an area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and
- (ii) a national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

(3) The State may submit to the administrator a proposal to redesignate areas in the State as class I according to the provisions established by 40 CFR part 51.166.

(d) *Exclusions from increment consumption.* (1) The following concentrations must be excluded in determining compliance with the maximum allowable ambient air increment:

- (i) concentrations attributable to the increase in emissions from facilities which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding Federal legislation) over the emissions from such facilities before the effective date of such an order;
- (ii) concentrations attributable to the increase in emissions from facilities which have converted from using natural gas by reason of any applicable natural gas curtailment plan in effect pursuant to the Federal Power Act (or any other superseding Federal legislation) over the emissions from such facilities before the effective date of such plan;

(iii) concentrations attributable to the increase in emissions from construction of other temporary emission related activities at the facility;

(iv) increase in concentrations attributable to new facilities outside the United States over the concentrations attributable to existing facilities which are included in the baseline concentration; and

(v) for subparagraphs (i) and (ii) of this paragraph, no exclusion of such concentrations applies more than two years after the effective date which is applicable. If both such order and plan are applicable, no such exclusion applies more than five years after the later of such effective dates.

(2) Concentrations attributable to the temporary increase in emissions of SO₂, PM, or NO_x from facilities which are limited to less than one year in duration are excluded, provided the department:

(i) approves the time over which the temporary emissions increase of SO₂, PM, or NO_x would occur;

(ii) specifies that the time period for excluding certain contributions in accordance with this subdivision, is not renewable;

(iii) allows no emissions increase from a facility which would:

(a) impact a Federal class I area or an area where an applicable increment is known to be violated; or

(b) cause a violation or contribute to a known violation of a national ambient air quality standard;

(iv) requires limitations to be in effect at the end of the time period specified in accordance with this subdivision, which would ensure that the emissions levels from facilities would not exceed those levels occurring from such facilities before the exclusion was approved.

(e) *Stack heights.* The degree of emission limitation required for control of any regulated NSR contaminant under this Subpart must not be affected in any manner by:

(1) a stack height, not in existence before December 31, 1970, as exceeds good engineering practice, pursuant to 40 CFR 51.100(ii); or

(2) any other dispersion technique not implemented before December 31, 1970.

(f) *Requirements for sources impacting Federal class I areas:* (1) Notice to EPA and federal land manager. The department or the applicant, at the request of the department, shall submit a copy of the permit application and all relevant information to the EPA region 2 office and the Federal land manager within 30 days of receipt of the application.

(2) Federal land manager. The Federal land manager and the Federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the AQRVs (including visibility) of such lands and to consider, in consultation with the department, whether a proposed new or modified facility will have an adverse impact on such values.

(3) Visibility analysis and AQRV analysis. The department must consider any analysis performed by the Federal land manager, provided prior to the date of publication of the draft permit that shows that a proposed new major facility may have an adverse impact on visibility or other AQRV in any Federal class I area. Where the department finds that such an analysis does not demonstrate to the satisfaction of the department that an adverse impact on visibility or other AQRV will result in the Federal class I area, the department must, in the notice of public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.

(4) Denial of a permit based on adverse impact on AQRVs. The Federal land manager of any such lands may demonstrate to the department that the emissions from a proposed new or modified facility would have an adverse impact on the AQRVs (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from the proposed new or modified facility would not cause or significantly contribute to concentrations which would exceed the maximum allowable increases for a Federal class I area. If the department concurs with such demonstration, then it must not issue the permit.

(5) Federal class I variances. The owner or operator of a proposed new or modified facility may demonstrate to the Federal land manager that the emissions from the new or modified facility would have no adverse impact on the air quality related values (including visibility) of any such lands, notwithstanding that the change in air quality resulting from emissions from the new or modified facility would cause or contribute to concentrations which would exceed the maximum allowable increases for a Federal class I area. If the Federal land manager concurs with such demonstration and so certifies, provided that the applicable requirements of this section are otherwise met, the State may issue the permit with such emission limitations as may be necessary to assure that emissions of SO₂, PM, and NO_x would not exceed the maximum allowable increases over minor source baseline concentration as listed in table 7 of Subpart 231-13 of this Part.

(6) SO₂ variance by governor of the Federal class I area with Federal land manager's concurrence. The owner or operator of a proposed new or modified facility which cannot be approved under paragraph (4) of this subdivision may demonstrate to the governor of the Federal class I area that the new or modified facility cannot be constructed by reason of any maximum allowable increase for SO₂ for a period of 24 hours or less applicable to any Federal class I area, and that a variance under this paragraph would not adversely affect the air quality related values of the area (including visibility). The governor of the Federal class I area, after consideration of the Federal land manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the department will issue a permit to the new or modified facility, provided that the applicable requirements of this Subpart are otherwise met.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-8.6 Permit content and terms of issuance.

The permit content and terms of issuance for a NSR major modification are set forth generally in Subpart 231-11 of this Part. In addition, the following emission limitations, as applicable, shall be established in a permit:

(a) The projected actual emissions or potential to emit, as appropriate of each applicable regulated NSR contaminant(s) for a proposed NSR major modification.

(b) Any BACT limitations.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-8.7 Best available control technology, BACT

(a) For a proposed NSR major modification BACT is required for each emission source that is part of the proposed modification, for all regulated NSR contaminants to be emitted by the proposed modification which equal or exceed the applicable significant project threshold listed in table 6 of Subpart 231-13 of this Part.

(b) For phased construction projects, the determination of BACT must be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the applicant may be required to demonstrate the adequacy of any previous determination of BACT for the modification.

(c) In establishing the final BACT limit, the department may consider any new information, including recent permit decisions, or public comment received, subsequent to the submittal of a complete application.

(d) BACT will not be established in final form until the final permit is issued.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

SUBPART 231-9**PLANTWIDE APPLICABILITY LIMITATION (PAL)**

Sec.	
231-9.1	General provisions.
231-9.2	Permit application requirements.
231-9.3	Permit processing.
231-9.4	Setting the initial PAL.
231-9.5	Permit contents.
231-9.6	Permit modifications and reopenings.
231-9.7	PAL renewals and expirations.

Historical Note

Subpart (§§ 231-9.1—231-9.7) filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-9.1 General provisions.

(a) Upon request of an applicant, the department shall establish a PAL at an existing major facility, provided that at a minimum, the following provisions are met:

(1) the PAL must impose a facility-wide annual emission limitation in tpy that is included in the Part 201 permit for the facility;

(i) for each month during the PAL effective period after the first 12 months following the PAL effective date, the facility must show that the sum of the monthly emissions from each emission source under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month total rolled monthly); and

(ii) for each month during the first 11 months following the PAL effective date, the facility must demonstrate that the sum of the preceding monthly emissions from the PAL effective date for each emission source under the PAL is less than the PAL;

(2) the PAL must include fugitive emissions, to the extent quantifiable, from all emission sources that emit or have the potential to emit the PAL contaminant;

(3) each PAL shall establish an emission limit for only one PAL contaminant;

(4) each PAL shall have a PAL effective period as defined in section 231-4.1 of this Part; and

(5) at no time (during or after the PAL effective period) are emissions reductions of a PAL contaminant that occur during the PAL effective period creditable as decreases for purposes of establishing emission offsets under this Part unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(b) Any physical change or change in the method of operation of a major facility that maintains its total facility wide emissions below the PAL level, and is otherwise consistent with the requirements of this Subpart, will not be considered a NSR major modification for the PAL contaminant and is not subject to this Part.

(c) A facility must continue to comply with all applicable requirements, including any terms and conditions of the facility's Part 201 permit that were in effect prior to the effective date of the PAL.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-9.2 Permit application requirements.

As part of a permit application requesting a PAL, the owner or operator of a major facility must submit the following information:

(a) A list of all emission sources at the facility.

(b) For each emission source:

(1) the potential to emit of the PAL contaminant;

(2) the applicable requirements for that emission source; and

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(3) the baseline actual emissions (with supporting documentation).

(c) The methodology that the facility is proposing to use for conversion of the monitoring system data to monthly and annual emissions based on a 12-month rolling total for each month.

(d) If the applicant seeks to utilize section 231-9.4(c)(2) of this Subpart as the basis for calculating the reduced PAL level, the applicant shall provide, as applicable, a BACT review in accordance with section 231-8.7 of this Part and/or a LAER analysis in accordance with section 231-6.5 of this Part.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-9.3 Permit processing.

(a) A permit application requesting the establishment of a PAL will be treated as a major permit modification for the title V permit and be processed in accordance with the procedures in Parts 201 and 621 of this Title.

(b) A request to renew a PAL must be included in the application to renew the title V permit and will be processed in accordance with the procedures in Parts 201 and 621 of this Title.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-9.4 .Setting the initial PAL.

The PAL for a facility must be calculated as the sum of the baseline actual emissions of the PAL contaminant for each emission source at the facility plus an amount equal to the applicable significant project threshold for the PAL contaminant under Subpart 231-13 of this Part or under the act, whichever is lower.

(a) When establishing the PAL for a particular PAL contaminant, only one 24 consecutive month period may be used to determine the baseline actual emissions for all emission sources. However, a different 24 consecutive month period may be used for each different PAL contaminant.

(b) Emissions associated with emission sources that were permanently shut down after this 24 consecutive month period must be subtracted from the PAL calculation.

(c) Emissions from a permitted emission source or an exempt or trivial emission source on which actual construction began after the 24 consecutive month period, but has not yet commenced operation, must be added to the PAL calculation in an amount equal to the potential to emit of the emission source.

(d) Where the department is aware of any future applicable requirement(s), prior to issuance of the permit which establishes the PAL, the department will specify a reduced PAL in the permit to become effective on the future compliance date(s) of the applicable requirement(s). For example, if the facility will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, the permit must contain a future effective PAL that is equal to the current PAL reduced by half of the original baseline emissions of such emission source(s).

(e) Commencing with the first day of the sixth year of the PAL, the PAL shall be reduced as follows:

(1) The PAL level shall be reduced to 75 percent of the initial PAL level unless the owner or operator demonstrates that a lesser level of reduction is justified in accordance with paragraph (2) of this subdivision.

(2) The owner or operator may seek an alternative reduced PAL level by demonstrating, at the time of application for the PAL, that application of BACT and/or LAER (depending on whether attainment or nonattainment requirements apply) on all major PAL emission sources at the facility would not result in a 25 percent reduction in the initial PAL level, assuming operation of those major PAL emission sources at full capacity. In its application for a PAL, the owner or operator shall provide, as applicable, a BACT review in accordance with section 231-8.7 of this Part and/or a LAER analysis in accordance with section 231-6.5 of this Part. Based on the information provided, the department may, in its sole discretion, authorize a reduction in the PAL to a level that would reflect the emissions from the facility if all major PAL emission sources are

operated at full capacity after complying with BACT and/or LAER, as applicable. In making these determinations, emissions from minor PAL emissions sources shall be held constant at the initial baseline levels. In no event shall the reduced PAL level calculated in this paragraph exceed the initial PAL level set in subdivisions (a) through (d) of this section.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-9.5 Permit contents.

The following terms and conditions, at a minimum, must be included in a permit which establishes a PAL:

(a) The PAL contaminant, the applicable facility-wide emission limitation in tpy, and required monitoring provisions consistent with this section.

(b) The effective date of the permit and the expiration date of the PAL (PAL effective period).

(c) The emissions calculations to be used for compliance purposes. These calculations must include emissions from start-ups, shutdowns, and malfunctions.

(d) The procedures to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by this Subpart.

(e) *Monitoring requirements.* (1) General requirements.

(i) A requirement that the monitoring system accurately determines facility emissions of the PAL contaminant in terms of mass per unit of time according to the criteria contained in the following paragraphs of this section as applicable.

(ii) The PAL monitoring system must employ one or more of the four monitoring approaches meeting the minimum requirements set forth in paragraph (2) of this subdivision. If the facility utilizes CEMS to monitor a particular contaminant for which a PAL is sought, the facility must use the CEMS to monitor that contaminant.

(2) Minimum performance requirements for approved monitoring approaches. The following are acceptable monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (3) through (9) of this subdivision:

(i) mass balance calculations for activities using coatings or solvents;

(ii) CEMS;

(iii) other monitoring systems as approved by the department; and

(iv) emission factors.

(3) Mass balance calculations. A facility using mass balance calculations to monitor PAL contaminant emissions from activities using coating or solvents must meet the following requirements:

(i) provide a demonstrated means of validating the published content of the PAL contaminant that is contained in or created by all materials used in or at the emission source;

(ii) assume that the emission source emits all the PAL contaminant that is contained in or created by any raw material or fuel used in or at the emission source, if it cannot otherwise be accounted for in the process;

(iii) where the vendor of a material or fuel, which is used in or at the emission source, publishes a range of contaminant content from such material, the facility must use the highest value of the range to calculate the PAL contaminant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(4) CEMS. A facility using CEMS to monitor PAL contaminant emissions must meet the following requirements:

(i) CEMS must comply with applicable performance specifications found in 40 CFR part 60, appendix B.

(ii) CEMS must sample, analyze and record data at least every 15 minutes while the emission source is operating.

(5) Other monitoring systems. A facility using other monitoring systems to monitor PAL contaminant emissions must meet the following requirements:

- (i) the monitoring system must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL contaminant emissions across the range of operation of the emission source; and
- (ii) each monitoring system must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emission source is operating.

(6) Emission factors. A facility using emission factors to monitor PAL contaminant emissions must meet the following requirements:

- (i) all emission factors must be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors development;
- (ii) the emission source must operate within the designated range of use for the emission factor, if applicable; and
- (iii) if technically practicable, any facility with a significant PAL emission source that relies on an emission factor to calculate PAL contaminant emissions must conduct validation testing to determine a site-specific emission factor within six months of permit issuance, unless the department determines that testing is not required.

(7) A facility owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emission source during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the permit.

(8) Notwithstanding the requirements in paragraphs (3) through (7) of this subdivision, where an owner or operator of a facility cannot demonstrate a correlation between the monitored parameter(s) and the PAL contaminant emissions rate at all operating points of the emission source, the department must include in the permit default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s). Alternatively, the department must determine that operation of the emission source during circumstances where there is no correlation between monitored parameter(s) and the PAL contaminant emissions is a violation of the PAL.

(9) Re-validation. All data used to establish the PAL contaminant must be re-validated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every five years after issuance of the PAL.

(f) *Recordkeeping requirements.* (1) The facility must retain a copy of all records necessary to determine compliance with any requirement of this Subpart and of the PAL, including a determination of each emission source's 12-month rolling total emissions, for five years from the date of such record.

(2) The facility must retain a copy of the following records for the duration of the PAL effective period plus five years:

- (i) a copy of the permit application and any applications for revisions to the PAL; and
- (ii) each annual certification of compliance pursuant to Part 201 of this Title and the data relied on for such certification.

(3) The records must be maintained on-site or at an alternative location approved by the department. Such records may be retained in an electronic format.

(g) *Reporting and notification requirements.* Semi-annual monitoring reports and prompt deviation reports must be submitted to the department. The reports must meet the requirements in this section and Subpart 231-11 of this Part.

(1) Semi-annual report. The semi-annual report must be submitted to the department within 30 days of the end of each reporting period, and include the following:

- (i) total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (f)(1) of this section.
- (ii) all data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL contaminant emissions;

(iii) a list of any emission sources modified or added to the major facility during the preceding six-month period;

(iv) the number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken; and

(v) a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emission source monitored by the monitoring system continued to operate, and the calculation of the emissions of the PAL contaminant or the number determined by method included in the permit, as provided by paragraph (e)(7) of this section.

(2) Deviation report. The major facility owner or operator must promptly submit a report of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. The deviation report must be submitted within the time limits prescribed by Part 201 of this Title and the Title V permit. A deviation report submitted in accordance with Subpart 201-6 of this Title will satisfy this reporting requirement. The report must contain, among other information required under Subpart 201-6 of this Title, identification of the owner or operator, the PAL requirement that experienced the deviation or that was exceeded, emissions resulting from the deviation or exceedance, and a signed statement by the responsible official as defined by the applicable title V permit certifying the truth, accuracy, and completeness of the information contained in the report.

(3) Re-validation results. The owner or operator must submit to the department the results of any re-validation test or method within three months after completion of such test or method.

(h) Provisions which implement the monitoring, recordkeeping, and reporting and notification requirements contained in this Subpart and any other requirements that the department deems necessary to implement and enforce the PAL.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-9.6 Permit modifications and reopenings.

(a) *Permit reopening to revise a PAL.* The following provisions apply to permit reopenings to revise a PAL.

(1) During the PAL effective period, the department must reopen the permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the facility creates creditable emissions reductions for use as emission offsets under this Part;

(iii) revise the PAL to reflect an increase in the PAL as provided under subdivision (b) of this section.

(2) The department retains discretion to reopen the permit for the following:

(i) reduce the PAL to reflect new applicable requirements with compliance dates after the PAL effective date;

(ii) reduce the PAL consistent with any other requirement the State may impose on the major facility under the State Implementation Plan; and

(iii) reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal class I area by a Federal land manager and for which information is available to the general public.

(3) Except for permit reopenings for the correction of typographical or calculation errors that do not increase the PAL, all other reopenings must be processed in accordance with the procedures in Parts 201 and 621 of this Title for a major permit modification.

(b) *Increasing a PAL during the PAL effective period.* (1) Upon request of an applicant, the department may increase a PAL during the PAL effective period provided all of the following provisions are met:

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(i) A complete application for a significant Part 201 of this Title permit modification is submitted in accordance with the provisions of Parts 201 and 621 of this Title requesting an increase in the PAL. Such application must identify the emission source(s) which will have additional emissions that will cause the emissions of the facility to equal or exceed its current PAL.

(ii) As part of this application, the facility must demonstrate that the sum of the following two items will exceed the existing PAL:

(a) for all new or modified emission sources, the sum of the potential to emit of each emission source; and

(b) for all other emission sources:

(1) the sum of baseline actual emissions of all the minor PAL emission sources; and

(2) the sum of baseline actual emissions of all the significant and major PAL emission sources assuming application of BACT or LAER equivalent controls as appropriate.

The level of control that would result from the application of BACT or LAER equivalent controls on each significant or major emission source must be determined by conducting a new BACT or LAER analysis at the time the application is submitted, unless the emission source is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emission source must be equal to the level of BACT or LAER with which that emission source must currently comply.

(iii) The facility must obtain a permit modification that includes all emission source(s) identified in subparagraph (i) of this paragraph, regardless of the magnitude of the emissions increase resulting from them. These emission source(s) must continue to comply with any other applicable requirements contained in the Part 201 of this Title permit even though they have also become subject to the PAL or continue to be subject to the PAL.

(2) Permit contents. The following provisions, in addition to the other requirements of this Subpart, must be included in the permit authorizing the increased PAL:

(i) A provision that the increased PAL will be effective on the date any emission source that is part of the PAL modification becomes operational and begins to emit the PAL contaminant.

(ii) The new PAL shall be calculated as the sum of the facility potential to emit for each proposed new or modified emission source, plus the sum of the baseline actual emissions of the significant and major emission sources (assuming application of BACT or LAER equivalent controls as determined in accordance with subparagraph [1][ii] of this subdivision) of this Part, plus the sum of the baseline actual emissions of each minor PAL emission source.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-9.7 PAL renewals and expirations.

(a) *Permit renewal where PAL is not renewed.* The following provisions set forth the requirements for an application to renew a title V permit where a PAL will expire at the end of the PAL effective period and the facility has not included a request to renew the PAL in such application. The facility must continue to comply with the PAL until such time as the department issues a renewed title V permit.

(1) Application content. In addition to any other information required pursuant to this Chapter, the title V permit application must include a proposed allowable emission limitation for each emission source. Such emission limitations must be calculated by distributing the PAL of the facility among each emission source that is subject to an emission limitation under the PAL and must be adjusted to reflect any applicable requirements that became effective during the PAL effective period if the PAL was not previously adjusted.

(2) Permit content. In addition to any other requirements of this Chapter, a title V permit issued following the expiration of a PAL shall include the following provisions:

(i) emission limits for each emission source on a 12-month rolling basis. The allowable emission limits shall be established in accordance with a distribution of the PAL that the department determines is appropriate; and

(ii) a facility must demonstrate compliance with the allowable emission limitation(s) through the use of CEMS or other monitoring systems (source testing, emission factors, etc.) as the department may approve.

(b) *Permit renewal where a PAL is renewed.* (1) Application deadline. The application deadlines for renewal of the title V permits in Part 201 of this Title shall govern the application to renew a PAL.

(2) Application content. The application to renew a permit with a PAL must contain the following information:

(i) the information required in section 231-9.2(a) through (c) of this Subpart;

(ii) a proposed PAL;

(iii) the sum of the potential to emit of all emission sources subject to the PAL with supporting documentation; and

(iv) any other relevant information the owner or operator submits to the department for consideration in determining the appropriate level for renewing the PAL.

(3) PAL adjustment. In determining whether and how to adjust the PAL, the department must consider the options outlined below. All adjustments must comply with subparagraph (iii) of this paragraph.

(i) If the emissions level calculated in accordance with section 231-9.4(a) through (d) of this Subpart is equal to or greater than 80 percent of the level of the existing PAL at the time of renewal, the department may renew the PAL at the same level, without considering the factors set forth in subparagraph (ii) of this paragraph.

(ii) The department may set the PAL at a level that the department determines is more representative of the baseline actual emissions of the facility, or is more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage voluntary emissions reductions at the facility, or other factors as specifically identified by the department.

(iii) Notwithstanding subparagraphs (i) and (ii) of this paragraph:

(a) if the potential to emit of the facility is less than the PAL, the department must adjust the PAL to a level no greater than the potential to emit of the facility; and

(b) the department cannot approve a renewed PAL higher than the current PAL, unless the facility has complied with the provisions of section 231-9.6(b) of this Subpart.

(iv) Section 231-9.4(e) of this Subpart is inapplicable to the renewal of a PAL.

(4) If the compliance date for an applicable requirement occurs during the PAL effective period, and the department has not already adjusted the PAL to reflect such requirement, the PAL must be adjusted at the time of permit renewal.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

SUBPART 231-10**EMISSION REDUCTION CREDITS (ERCS)**

Sec.	
231-10.1	General provisions.
231-10.2	Determinations of ERCS.
231-10.3	Applications for ERC approval.
231-10.4	Permit application processing.
231-10.5	Permit requirements.
231-10.6	ERC Registry.
231-10.7	Mobile source and demand side management ERCS.
231-10.8	Replacement and relocation of emission sources

Historical Note

Subpart (§§ 231-10.1—231-10.8) filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-10.1 General provisions.

(a) An ERC may be used in a net emission increase determination, internal offset, or as an emission offset.

(b) An ERC may be used as an internal offset or emission offset, as applicable, without time limit or restriction within New York State. In another state in the ozone transport region, an ERC may be used as an emission offset in accordance with that state's requirements if New York State has established a reciprocal trading agreement with that state.

(c) An ERC must be the same type of regulated NSR contaminant as the emission increase requiring ERCS. For example, only a particulate form of emission reduction is allowed to be used as an emission offset or in netting for new particulate emissions.

(d) An ERC may include emission reductions from control or elimination of fugitive emissions, provided these emissions are contained in the New York State emissions inventory.

(e) An ERC, or portion thereof, which was used to avoid a determination of a significant net emission increase, as an internal offset, or as an emission offset cannot subsequently be used for demonstrating attainment with ambient air quality standards or reasonable further progress in a federally approved SIP.

(f) An ERC, or portion thereof, which was used to avoid a determination of a significant net emission increase, cannot subsequently be used as an internal offset, emission offset, or in any subsequent netting determinations.

(g) An ERC, or portion thereof, which was used as an internal offset or an emission offset cannot be used again for any purpose.

(h) An ERC of NO_x, PM-10, or VOC used as an emission offset or for netting, for compliance with Subpart 231-5 or 231-6 of this Part, must have physically occurred on or after November 15, 1990.

(i) An ERC of PM-2.5 used as an emission offset or for netting, for compliance with Subpart 231-5 or 231-6 of this Part, must have physically occurred on or after April 5, 2005.

(j) An ERC used as an internal offset for NO_x or VOC emissions must have physically occurred on or after November 15, 1990 but need not be contemporaneous.

(k) The department will approve applications for ERCS submitted on or after the effective date of this regulation on an emission source basis. Applications submitted prior to the effective date of this regulation will be processed according to the provisions of Subpart 231-2 of this Part.

(l) ERCS may be created from past or future emission reductions resulting from facility shutdown, emission source shutdown, curtailment, emission source reduction, over-control of emissions beyond an applicable limit, or any other reduction mechanism acceptable to the department.

(m) The department may approve future emission reductions only if they are designated for a specific facility. The facility seeking to establish the future emission reductions must submit an ap-

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plication to the department for modification of its Part 201 permit. The permit of the facility proposing to use the future emission reductions must identify the source(s) of the reductions. The permit of the facility establishing the future emission reductions is subject to modification by the department to remove the approval of the future emission reductions if the facility proposing to use the future emission reductions does not commence construction within the time period specified in this Part, or if the applicant notifies the department of its intent to abandon the proposed new or modified facility and the applicant surrenders the permit prior to commencement of operation.

(n) Emission reductions resulting from the shutdown of an unpermitted emission source which was subject to the requirement to obtain a permit pursuant to Part 201 of this Title will not be certified as ERCs.

(o) Unpermitted emission sources that are operational may be considered for ERCs in accordance with this Part subsequent to being permitted in accordance with Part 201 of this Title.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing; amended adoption filed Feb. 3, 2009 eff. March 5, 2009. Amended (h), (i).

§ 231-10.2 Determinations of ERCs.

Any decrease in emissions of a regulated NSR contaminant, in tpy, which:

- (a) is surplus, quantifiable, permanent, enforceable, and included in a Part 201 permit; and
- (b) will result or resulted from a physical change in, or a change in the method of operation of an emission source subject to Part 201 of this Title:
 - (1) is quantified as the difference between baseline actual and the subsequent potential to emit;
 - (2) is certified in accordance with the provisions of this Part; or
- (c) will result or resulted from a physical change in, or a change in the method of operation of an emission source not subject to Part 201 of this Title, and is approved in accordance with the provisions of this Part.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing; amended adoption filed Feb. 3, 2009 eff. March 5, 2009. Amended (c).

§ 231-10.3 Applications for ERC approval.

This section applies to applications for ERCs at sources subject to Part 201 of this Title.

- (a) *Application procedures.* (1) For approval of ERCs from a facility subject to Subpart 201-5 or 201-6 of this Title, other than a facility shutdown, the facility owner or operator must submit an application for a permit modification.
 - (2) For approval of ERCs from a registered facility, other than a facility shutdown, the owner or operator must apply for a State facility permit.
 - (3) For approval of ERC's as a result of shutdown of a facility subject to Subpart 201-5 or 201-6 of this Title, the facility owner or operator must submit a written request to the department to discontinue the permit.
 - (4) For approval of ERC's as a result of shutdown of a registered facility, the facility owner or operator must submit a written request to the department to discontinue the registration.
- (b) *Application content.* A permit application involving ERCs must include the following information:
 - (1) The signature of a responsible official or other representative authorized to act on behalf of the facility with respect to the ERCs.
 - (2) A complete "emission reduction credit quantification form" with supporting documentation establishing that the emission reduction is surplus, quantifiable, permanent and enforceable.
 - (i) Surplus. The applicant must demonstrate to the satisfaction of the department that the emission reduction for an emission source is in excess of any reduction required by RACT or

MACT or any other regulations applicable to the emission source during the baseline period for the emission reduction. The determination of "surplus" is as follows:

(a) For an emission reduction which physically occurred prior to the state or federal register publication date proposing RACT or MACT requirements, the applicant is eligible for the full amount of the reduction. Otherwise, the applicant is eligible only for the baseline actual emissions reflecting RACT or MACT emission limits.

(b) For a future reduction as defined in this Part, if the date of approval of the ERC is prior to the State or Federal register publication date proposing RACT or MACT requirements, then the applicant is eligible for the full amount of the reduction. Otherwise, the applicant is eligible only for the baseline actual emissions reflecting RACT or MACT emission limits.

(ii) Quantifiable. The applicant must use a reliable basis for quantifying the reduction. Continuous emissions monitoring (CEM) data or stack test data approved by the department must be used if the facility is required to generate such data. Emission statements, EPA's AP-42 emission factors, and fuel and solvent purchase records, with department approval, are acceptable bases for quantifying baseline actual emissions if an applicant demonstrates to the department's satisfaction that CEM or stack test data are not available and that CEM or stack test data was not a permit requirement.

(iii) Permanent. The applicant must demonstrate to the satisfaction of the department that all emission reductions will be permanent.

(iv) Enforceable.

(a) For a facility which submits a written request to the department to discontinue its permit or registration (facility shutdown) pursuant to this section, no further action is required.

(b) For an emission source shutdown where the facility will continue to operate, the applicant must apply for and obtain a permit modification in accordance with this section which reflects the permanent shutdown of the emission source through a permit condition prohibiting operation of the emission source, or physically removes the emission source from the permit. As to emission sources which will continue to operate at the facility, the applicant must submit for department approval a monitoring, recordkeeping, and reporting strategy that will be used to demonstrate that the emission reductions are verifiable. If approvable, the department will include terms and conditions in the operating permit which implement the applicant's strategy. If the department determines the strategy is incomplete or otherwise not approvable, the department may propose terms and conditions for the permit or as part of proposed single source SIP revision as appropriate to ensure that the emission reductions are verifiable.

(c) Any permit modification must be processed in accordance with this Subpart.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-10.4 Permit application processing.

(a) Any permit modification, discontinuance of the permit or proposed SIP revision establishing an ERC will be processed in accordance with Parts 621 and 201 of this Title and subject to a 30 day public comment period. The department will publish notice of such application in the Environmental Notice Bulletin and the applicant must publish notice in a local newspaper.

(b) Upon approval of a permit application for a proposed new or modified facility which lists ERC sources for use as emission offsets, the department will publish notice of the source of ERCs with the draft permit. If the source of ERCs changes or is approved after the draft permit has been noticed, the department will publish a supplemental notice of the source of the ERCs prior to the final permit issuance.

(c) The department may deny an application for ERCs if sufficient supporting documentation as required by this section is not submitted or provided upon request.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

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§ 231-10.5 Permit requirements.

This section applies to facilities which create ERCs from emission reductions other than a facility shutdown. In addition to the other requirements of this Part and Parts 201 and 621 of this Title, a permit establishing ERCs must include such emission limitations, monitoring, recordkeeping, and reporting conditions as are necessary to demonstrate that the emission reductions are verifiable and enforceable. Such emission limitations may include a reduction in the hours of operation, limitations on fuel usage, reformulations, installation of control equipment, and/or the making of process changes.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-10.6 ERC Registry.

(a) All approved ERCs that may be used as emission offsets will be entered into a listing of available ERCs (designated the ERC Registry) maintained by the department after the department has approved the ERC application in accordance with the procedures in this Part. In the case of a single source SIP revision, the ERCs will be entered into the registry after EPA has approved the SIP revision. The registry may be obtained from the department upon request.

(b) *ERC transfers.* The authorized representative or a responsible official of the transferor (seller) must submit a "use of emission reduction credits" form to the department specifying the terms of the transfer. If the department determines that the proposed ERC transfer is approvable, the department will note the transfer of ERCs on the registry.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-10.7 Mobile source and demand side management ERCs.

Applications for mobile sources and demand side management ERCs will be approved by the department on a case-by-case basis upon submittal of acceptable protocols. The department will prepare a SIP revision approval letter which sets forth the appropriate enforceable terms and conditions pursuant to which the ERCs are being approved and submit the package as a single source SIP revision to EPA for approval following public notice of the ERCs. Upon approval of the SIP revision by EPA, the department will publish the ERCs in the ERC Registry.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing; amended adoption filed Feb. 3, 2009 eff. March 5, 2009.

§ 231-10.8 Replacement and relocation of emission sources

(a) ERCs for the replacement of an emission source with new similar equipment (connected to the existing stack or a new stack) must be quantified as the difference between:

- (1) the baseline actual emissions of the emission source representing the old emission source; and
- (2) the future potential to emit of the new emission source.

(b) The relocation of an emission source within the same facility would neither qualify for ERCs for the shutdown of the emission source nor be subject to this Subpart at the new location. However, the relocation must comply with all other applicable Parts of this Title and result in acceptable air quality impacts pursuant to section 200.6 of this Title.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

SUBPART 231-11**PERMIT AND REASONABLE POSSIBILITY REQUIREMENTS**

Sec.

231-11.1 Permit requirements for new major facilities, NSR major modifications, and netting.

231-11.2 Reasonable possibility requirements for insignificant modifications.

Historical Note

Subpart (§§ 231-11.1—231-11.2) filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-11.1 Permit requirements for new major facilities, NSR major modifications, and netting.

(a) *Permit application requirements.* In addition to the application requirements under Part 201 of this Title the following information must be included in the permit application for any new major facility, NSR major modification, or facility netting out of applicability, required to obtain a permit pursuant to this Part:

(1) project description, location, design capacity, and typical operating schedule, including specifications and drawings showing its design and the plant layout, as applicable;

(2) a detailed schedule for construction, as applicable;

(3) applicable calculations and supporting documentation of potential-to-emit for a new facility, and baseline actual emissions, projected actual emissions or potential-to-emit as applicable, project emission potential and net emissions increase determination for a modified facility. The information submitted must be sufficiently detailed to allow the department to verify the emissions calculation(s) and to determine the applicability status of the source with respect to this Part. If the calculation of projected actual emissions excludes emissions which an existing emission source could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, detailed documentation of the calculation of the excluded emissions must be provided at the time of permit application in order for the exclusion of those emissions to be allowed in determining future compliance; and

(4) proposed emission monitoring, recordkeeping and reporting provisions to establish compliance with the applicable requirements of this Part.

(b) *General permit conditions and terms of issuance.* Any new major facility, NSR major modification or facility netting out of applicability subject to this Part must comply with the requirements of section 201-6.5(a) of this Title and the following:

(1) within 30 days of commencement of construction, the applicant must notify the department in writing that construction has begun; and

(2) the filing of a request by the permittee for a permit modification or renewal, or of a notification by the permittee of planned changes or anticipated noncompliance does not authorize the permittee to undertake any action without department approval. The permittee shall not begin actual construction or operate a new or modified facility without department approval in accordance with this Chapter. Operation in a manner other than authorized by a permit shall be grounds for enforcement.

(c) *Permit conditions for monitoring.* Any permit issued in accordance with this Part must include the monitoring provisions required in section 201-6.5(b) of this Title.

(d) *Permit conditions for recordkeeping and reporting of compliance monitoring.* Any permit issued in accordance with this Part must include the recordkeeping and reporting of compliance monitoring provisions required in section 201-6.5(c) of this Title.

(e) *Compliance certification.* Any permit issued in accordance with this Part must include the compliance certification provisions required in section 201-6.5(e) of this Title and, if applicable,

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submission of documentation that the actual measured emissions less those attributed to independent factors such as demand growth are below the permitted projected actual emissions limit.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-11.2 Reasonable possibility requirements for insignificant modifications.

(a) The requirements of this section do not apply if potential-to-emit is used in lieu of projected actual emissions in determining the project emission potential for a proposed modification.

(b) For a modification with a project emission potential which is less than 50 percent of the applicable significant project threshold in table 3, table 4 or table 6 of Subpart 231-13 of this Part, or for a modification with a project emission potential which when added to emissions excluded in accordance with section 231-4.1(b)(40)(i)(c) of this Part is less than 50 percent of the applicable significant project threshold in table 3, table 4 or table 6 of Subpart 231-13 of this Part, the facility owner or operator, in addition to complying with any requirements under Part 201 of this Title, must maintain the following information for a minimum of five years:

- (1) a description of the modification;
- (2) an identification of each new or modified emission source(s) including the associated processes and emission unit;
- (3) the calculation of the project emission potential for each modified emission source(s) including supporting documentation; and
- (4) the date the modification commenced operation.

These recordkeeping requirements apply to exempt and trivial activities but do not affect their exempt or trivial permitting status under Subpart 201-3 of this Title.

(c) For a modification with a project emission potential which is less than 50 percent of the applicable significant project threshold in table 3, table 4 or table 6 of Subpart 231-13 of this Part, but equals or exceeds 50 percent of the applicable significant project threshold when emissions excluded in accordance with section 231-4.1(b)(40)(i)(c) of this Part are added, or for a modification with a project emission potential which equals or exceeds 50 percent of the applicable significant project threshold in table 3, table 4 or table 6 of Subpart 231-13 of this Part, the facility owner or operator must submit an application to modify the facility permit under the minor permit provisions of Subpart 201-6 of this Title or obtain a preconstruction permit under the provisions of Subpart 201-6 of this Title, and must:

- (1) maintain the following information for a minimum of five years:
 - (i) a description of the modification;
 - (ii) an identification of each new or modified emission source(s) including the associated processes and emission unit;
 - (iii) the calculation of the project emission potential for each modified emission source(s) including supporting documentation; and
 - (iv) the date the modification commenced operation;
- (2) monitor the emissions of each regulated NSR contaminant from the emission source(s) that will increase as a result of the modification, and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the modification, or for a period of 10 years following resumption of regular operations after the change if the modification increases the design capacity of or potential to emit the regulated NSR contaminant at such emission source(s);
- (3) submit a report to the department within 30 days after the end of each year during which records must be generated in accordance with paragraph (2) of this subdivision. The report must contain:
 - (i) the name, address, and telephone number of the major facility;
 - (ii) the annual emissions as calculated pursuant to paragraph (2) of this subdivision; and

(iii) a comparison of actual annual emissions to the projected actual emissions and, if applicable, an explanation as to why the actual annual emissions exceeded the projected actual emissions.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

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SUBPART 231-12**AMBIENT AIR QUALITY IMPACT ANALYSIS**

Sec.	
231-12.1	Applicability.
231-12.2	Modeling analysis methodologies.
231-12.3	Pre-application analysis for Subparts 231-7 and 231-8.
231-12.4	Exemption and waiver from onsite (i.e., site specific) air quality monitoring.
231-12.5	Post-construction monitoring.
231-12.6	Significant impact levels in nonattainment areas.
231-12.7	Significant impact levels for facilities located in attainment areas.
231-12.8	Federal class I significant impact levels.

Historical Note

Subpart (§§ 231-12.1—231-12.8) filed Jan. 20, 2009 eff. 30 days after filing.

Preamble: This Subpart sets forth the procedures and requirements for the performance of an air quality impact analysis to determine whether a new or modified facility complies with quantified air quality levels, including air quality standards, PSD increments and monitoring deminimis levels, air quality related values, and significant impact levels.

§ 231-12.1 Applicability.

(a) The following provisions apply to all new facilities or modifications required to evaluate impact on the surrounding areas and the public including, but not limited to ambient and sensitive receptors, public health impacts, nonattainment areas, and Federal class I areas.

(b) The impact analysis procedures are also appropriate for conducting any required air quality related environmental impact assessments in conjunction with the permit application for the proposed new or modified facility.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-12.2 Modeling analysis methodologies.

(a) The ambient impact analysis must follow the procedures in the applicable guidelines at 40 CFR part 51, appendix W: Guideline on Air Quality Models of the EPA and the NYSDEC guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis available from the department.

(b) Where an air quality model specified in appendix W of 40 CFR part 51 is deemed inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case by case basis or, where appropriate, on a generic basis for a specific program. Written approval from the department must be obtained for any modification or substitution. In addition, use of a modified or substituted model shall be subject to public notice and opportunity for public comment, with the determination of a complete permit application, in accordance with Parts 201 and 621 of this Title.

(c) For the purposes of Subparts 231-7 and 231-8 of this Part, the owner or operator of the proposed new or modified facility must demonstrate that allowable emission increases from the proposed facility or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) would not, at a minimum, cause or contribute to air pollution in violation of:

- (1) any national ambient air quality standard in any air quality control region; and
- (2) any applicable maximum allowable PSD increment increase over the baseline concentration in any area, as defined in the following table:

<i>Contaminant</i>	<i>Maximum allowable increase (micrograms per cubic meter)</i>
Federal Class I	
Particulate matter:	
PM-10, annual arithmetic mean	4
PM-10, 24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate matter:	
PM-10, annual arithmetic mean	17
PM-10, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III	
Particulate matter:	
PM-10, annual arithmetic mean	34
PM-10, 24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location;

(3) quantified air quality related values (AQRVs) including visibility for the applicable Federal class I areas.

(d) The emission rates for any existing emission sources to be used for the analysis of increment increases in paragraph (c)(2) of this section can be based on representative actual emissions instead of the allowable emission rates, provided the maximum actual rates under representative normal operations are used for short term increments. Any increment expansions analysis for the purposes of paragraph (c)(2) of this section must use representative actual short term and annual emissions instead of the allowable emissions.

(e) For the purposes of Subparts 231-5 and 231-6 of this Part, the owner or operator of the proposed new or modified facility must demonstrate that allowable emission increases from the proposed new or modified facility would not, at a minimum, cause or contribute to air pollution in violation of any national ambient air quality standard in any non-attainment area in accord with section 231-12.6 of this Subpart significance levels.

(f) For the purposes of the required net air quality benefit analysis of Subparts 231-5 and 231-6 of this Part, the owner or operator of the proposed new or modified facility must use the allowable emission increases from the proposed new or modified facility. For the impact offsetting sources, this analysis must use representative actual short term and annual emissions corresponding to the averaging times of the standards. The modeling methods for conducting the net air quality benefit analyses are provided in department guidelines on air quality impact analysis.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-12.3 Pre-application analysis for Subparts 231-7 and 231-8.

(a) Prior to submitting an application for a permit in accordance with Subpart 231-7 and Subpart 231-8 of this Part, the applicant must provide an analysis of air quality data in the area that the proposed new or modified facility would affect for each of the following regulated NSR contaminants:

(1) for the new facility, each regulated NSR contaminant that would have the potential to emit in an amount equal to or greater than the applicable significant project threshold in table 6 of Subpart 231-13 of this Part; and

(2) for the modified facility, each regulated NSR contaminant that would result in a significant net emissions increase.

(b) With respect to any such regulated NSR contaminant from the list of applicable regulated NSR contaminants in section 231-12.4 of this Subpart for which no NAAQS exists, the analysis must contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that regulated NSR contaminant in any attainment area that the emissions of the source would affect.

(c) With respect to any such regulated NSR contaminant for which a NAAQS does exist, the analysis must contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that regulated NSR contaminant would cause or contribute to a violation of the standard or any maximum allowable increase in section 231-12.2(c)(2) of this Subpart.

(d) In general, the continuous air quality monitoring data that is required must have been gathered over a period of at least one year and must represent at least the year preceding receipt of the application, except that, if the department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year, but not less than four months.

(e) The owner or operator of a proposed new or modified facility involving the emissions of VOC who satisfies all other conditions of Subparts 231-7 and 231-8 of this Part may, when authorized by the department, provide post approval monitoring data for ozone in lieu of providing preconstruction monitoring data.

(f) *Operations of monitoring stations.* The owner or operator of a new or modified facility must meet the requirements of appendix B to 40 CFR part 58 and the NYSDEC policy, Oversight of Private Air Monitoring Networks, available from the department, during the operation of monitoring stations for purposes of satisfying applicable provisions of this Subpart.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-12.4 Exemption and waiver from onsite (i.e., site specific) air quality monitoring.

(a) The department may exempt a proposed new or modified facility from the requirements of section 231-12.3 of this Subpart with respect to monitoring for a particular regulated NSR contaminant, if:

(1) the emissions increase of the regulated NSR contaminant from the proposed new or modified facility would cause, in any attainment area, air quality impacts less than the following de minimis monitoring levels:

Carbon Monoxide	575 µg/m ³ , 8-hour average;
Nitrogen dioxide	14 µg/m ³ , annual average;
Particulate matter (PM-10)	10 µg/m ³ , 24-hr average;
Sulfur dioxide	13 µg/m ³ , 24-hour average;
Ozone ¹	see footnote
Elemental lead	0.1 µg/m ³ , 3-month average;

¹No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of NO_x or volatile organic compounds subject to Subpart 231-7 or Subpart 231-8 may be required to gather ambient air quality data according to the provisions of section 231-12.3.

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Fluorides	0.25 µg/m3, 24-hour average;
Total and reduced sulfur	10 µg/m3, 1-hour average;
Hydrogen sulfide	0.2 µg/m3, 1-hour average; or

(2) the concentrations of the regulated NSR contaminant in the area that the facility would affect are less than the concentrations listed in paragraph (1) of this subdivision.

(b) In cases where the source impacts are above the de minimis monitoring levels of paragraph (a)(1) of this section, the department may waive the requirements of section 231-12.3 of this Subpart with respect to monitoring for a particular regulated NSR contaminant for which an applicant makes an acceptable showing that representative existing ambient monitoring data exists in the effected area of the quality and nature which demonstrates the current conditions of the air quality of the area.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-12.5 Post-construction monitoring.

The owner or operator of a new or modified facility may be required, after construction of the facility or modification, to conduct such ambient monitoring as the department determines is necessary to determine the effect of the emissions from the new or modified facility on air quality in any area.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-12.6 Significant impact levels in nonattainment areas.

For the purposes of Subparts 231-5 and 231-6 of this Part, a new or modified facility will be considered to cause or contribute to a violation of a national ambient air quality standard when such new or modified facility would, at a minimum, exceed the following significant impact levels (SILs) at any locality that does not or would not meet the applicable national standard:

Regulated NSR Contaminant	Annual Average	Short Term Averaging Times (hours)			
		24	8	3	1
SO ₂	1.0 µg/m3	5 µg/m3		25 µg/m3	
PM-10	1.0 µg/m3	5 µg/m3			
NO _x	1.0 µg/m3				
CO			500 µg/m3		2000 µg/m3

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-12.7 Significant impact levels for facilities located in attainment areas.

For the purposes of an impact analysis in support of provisions of Subparts 231-7 and 231-8 of this Part, the significant impact levels defined in section 231-12.6 of this Subpart will serve to determine whether a new or modified source will have a significant air quality impact or a contribution to potential standards violation or PSD increment exceedances in both the attainment area of the proposed project and in any adjacent non-attainment areas. A showing that the maximum impacts from the proposed new or modified facility for any regulated NSR contaminant are below these significant impact levels will be deemed adequate as the required impact analysis to demonstrate that the source will not contribute to a standards violation or PSD increment exceedance for that regulated NSR contaminant. However, such a demonstration will not exclude the performance of any other required impact analysis to satisfy other applicable provisions of Subparts 231-5 to 231-8 of this Part, including the modeling for air quality related values in Federal class I areas.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-12.8 Federal class I significant impact levels.

For the purposes of the PSD increment impact analysis in support of provisions of Subparts 231-7 and 231-8 of this Part, the following significant impact levels will be used to determine whether a new or modified facility will have a significant air quality impact in Federal class I areas:

<i>Regulated NSR Contaminant</i>	<i>Annual Average</i>	<i>24 Hour Average</i>	<i>3 Hour Average</i>
Sulfur Dioxide	0.1 µg/m ³	0.2 µg/m ³	1.0 µg/m ³
Nitrogen Dioxide	0.1 µg/m ³	Not applicable	Not applicable
PM-10	0.2 µg/m ³	0.3 µg/m ³	Not applicable
CO	Not applicable	Not applicable	Not applicable

A showing that the maximum impacts from the proposed new or modified facility for any regulated NSR contaminant are below these significant impact levels will be deemed adequate as the required impact analysis to demonstrate that the source will not contribute to a PSD increment exceedance for that regulated NSR contaminant. However, such a demonstration will not exclude the performance of any other required impact analysis to satisfy other applicable provisions of Subparts 231-7 to 231-10 of this Part, including the modeling for air quality related values in Federal class I areas.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

SUBPART 231-13**TABLES AND EMISSION THRESHOLDS**

Sec.	
231-13.1	Table 1—Major facility thresholds and offset ratios - ozone nonattainment areas and the ozone transport region.
231-13.2	Table 2—Major facility thresholds and offset ratios for PM nonattainment areas.
231-13.3	Table 3—Significant project thresholds, significant net emissions increase thresholds, and offset ratios for ozone nonattainment areas and the ozone transport region.
231-13.4	Table 4—Significant project thresholds, significant net emission increase thresholds, and offset ratios for PM nonattainment areas.
231-13.5	Table 5—Major facility thresholds for attainment and unclassified areas.
231-13.6	Table 6—Significant project thresholds and significant net emission increase thresholds for attainment and unclassified areas.
231-13.7	Table 7—Federal class I variance maximum allowable increase concentrations.
231-13.8	Table 8—Maximum allowable increase in SO ₂ concentrations for gubernatorial variances.
231-13.9	Table 9—Source category list.

Historical Note

Subpart (§§ 231-13.1—231-13.9) filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-13.1 Table 1—Major facility thresholds and offset ratios - ozone nonattainment areas and the ozone transport region.

<i>Area/Contaminant Classification</i>	<i>Major Facility Threshold (tons per year)¹</i>	<i>Offset Ratio</i>
Marginal, Moderate, or Ozone Transport Region		
VOC	50	At least 1.15:1
NO _x	100	At least 1.15:1
Severe		
VOC	25	At least 1.3:1
NO _x	25	At least 1.3:1

¹ tons per year (tpy)

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-13.2 Table 2—Major facility thresholds and offset ratios for PM nonattainment areas.

<i>Area/Contaminant Classification</i>	<i>Major Facility Threshold (tpy)¹</i>	<i>Offset Ratio</i>
Moderate		
PM-10	100	At least 1:1
No classification		
PM-2.5	100	At least 1:1

¹ condensible emissions are to be included.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

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§ 231-13.3 Table 3—Significant project thresholds, significant net emissions increase thresholds, and offset ratios for ozone nonattainment areas and the ozone transport region.

<i>Area/Contaminant Classification</i>	<i>Significant Project Threshold (tpy)¹</i>	<i>Significant Net Emission Increase Threshold (tpy)</i>	<i>Offset Ratio</i>
Marginal, Moderate, or Ozone Transport Region			
VOC	40	40	At least 1.15:1
NO _x	40	40	At least 1.15:1
Severe			
VOC	2.5	>25	At least 1.3:1
NO _x	2.5	>25	At least 1.3:1

¹ project emission potential threshold.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-13.4 Table 4—Significant project thresholds, significant net emission increase thresholds, and offset ratios for PM nonattainment areas.

<i>Area/Contaminant Classification</i>	<i>Significant Project Threshold (tpy)¹</i>	<i>Significant Net Emission Increase Threshold (tpy)¹</i>	<i>Offset Ratio</i>
Moderate			
PM-10	15	15	At least 1:1
No classification			
PM-2.5	10	10	At least 1:1

¹ condensable emissions are to be included.

² project emission potential threshold.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-13.5 Table 5—Major facility thresholds for attainment and unclassified areas.

<i>Contaminant</i>	<i>Major Facility Threshold (tpy)</i>
Carbon monoxide	100 ¹ /250
Nitrogen oxides	100/250
Sulfur dioxide	100/250
Particulate matter	100/250
Particulate matter: PM-10 emissions ²	100/250
Particulate matter: PM-2.5 emissions ²	100/250
Ozone: as volatile organic compounds	100/250
Lead (elemental)	100/250
Fluorides	100/250
Sulfuric acid mist	100/250
Hydrogen sulfide (H ₂ S)	100/250
Total reduced sulfur (including H ₂ S)	100/250
Reduced sulfur compounds (including H ₂ S)	100/250
Municipal waste combustor organics (measured as total tetra through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	100/250
Municipal waste combustor metals (measured as particulate matter)	100/250
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	100/250

Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	100/250
Any other regulated NSR contaminant	100/250

¹ 100 tpy threshold applies if the facility is one of the source categories listed in section 231-13.9, Table 9.

² condensible emissions are to be included.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-13.6 Table 6—Significant project thresholds and significant net emission increase thresholds for attainment and unclassified areas.

<i>Contaminant</i>	<i>Significant Project Threshold¹/ Significant Net Emission Increase Threshold</i>
Carbon monoxide	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
Particulate matter: PM-10 emissions ²	15 tpy
Particulate matter: PM-2.5 emissions ²	10 tpy
Ozone: as VOCs or NO _x	40 tpy
Lead (elemental)	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra through octa-chlorinated dibenzo-p-dioxin and dibenzofurans)	3.2 × 10 ⁻⁶ megagrams per year (3.5 × 10 ⁻⁶ tpy)
Municipal waste combustor metals (measured as particulate matter)	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 megagrams per year (40 tpy)
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	45 megagrams per year (50 tpy)
CFC's 11, 12, 113, 114, 115	Any increase
Halons 1211, 1301, 2402	Any increase
Any other regulated NSR contaminant	Any increase

¹ project emission potential threshold.

² condensible emissions are to be included.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-13.7 Table 7—Federal class I variance maximum allowable increase concentrations.

<i>Contaminant</i>	<i>Maximum allowable increase (micrograms per cubic meter)</i>
Particulate Matter:	
PM-10, annual arithmetic mean	17
PM-10, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
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24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

¹ condensible emissions are to be included.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-13.8 Table 8—Maximum allowable increase in SO₂ concentrations for gubernatorial variances.

*Maximum Allowable Increase
(Micrograms per cubic meter)*

<i>Period of exposure</i>	<i>Terrain areas</i>	
	<i>Below 900 ft</i>	<i>At or above 900 ft</i>
24-hr maximum	36	62
3-hr maximum	130	221

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-13.9 Table 9—Source category list.

- (a) Coal cleaning plants (with thermal dryers);
- (b) kraft pulp mills;
- (c) portland cement plants;
- (d) primary zinc smelters;
- (e) iron and steel mills;
- (f) primary aluminum ore reduction plants;
- (g) primary copper smelters;
- (h) municipal incinerators capable of charging more than 50 tons of refuse per day;
- (i) hydrofluoric, sulfuric, or nitric acid plants;
- (j) petroleum refineries;
- (k) lime plants;
- (l) phosphate rock processing plants;
- (m) coke oven batteries;
- (n) sulfur recovery plants;
- (o) carbon black plants (furnace process);
- (p) primary lead smelters;
- (q) fuel conversion plants;
- (r) sintering plants;
- (s) secondary metal production plants;
- (t) chemical process plants (excluding ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);
- (u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

- (v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) taconite ore processing plants;
- (x) glass fiber processing plants;
- (y) charcoal production plants;
- (z) fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (aa) all other source categories regulated by a standard under section 111, for which EPA has completed a rule making proceeding under section 302(j) of the act or section 112 of the act, but only with respect to those air contaminants that have been regulated for that category as of the effective date of this Part.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

