

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	ERCs for emission sources not subject to Part 201 of this Title.
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, to be used for purposes of netting, must be the same regulated NSR contaminant as the emission increase requiring the ERC.

(d) An ERC, to be used as an offset, must be the same regulated NSR contaminant as the emission increase requiring the ERC, ~~except for PM-2.5. An ERC of PM-2.5 (including its precursors SO₂ and NO_x) may be used as an offset for direct emissions of PM-2.5. In addition, direct emissions of PM-2.5 can be used to offset emissions of its precursors. These emission offsets must follow the ratio requirements of sections 231-5.5(b)(3) and 231-6.6(b)(3) of this Part.~~

(e) In areas where NO_x is a regulated precursor for ozone and PM-2.5, NO_x offsets that occurred on or after April 5, 2005 can be used to offset NO_x emissions in both ozone and PM-2.5 nonattainment areas, with the amount of offsets required determined by the higher of the applicable offset ratios.

(f) 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.

(g) 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.

(h) 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.

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

(j) 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.

(k) An ERC of PM-2.5 or SO₂ 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.

(l) 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.

(m) 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.

(n) 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.

(o) 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 application 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.

(p) 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.

(q) 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; amended adoption filed Feb. 3, 2009; amds. filed: Dec. 29, 2010 as emergency measure; March 28, 2011 as emergency measure; May 26, 2011 as emergency measure; July 19, 2011 as emergency measure; Sept. 16, 2011 as emergency measure; Sept. 15, 2011 eff. 30 days after filing.

§ 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 emissions and the subsequent potential to emit; and
 - (2) is approved 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 section 231-10.7 of this Subpart.

Historical Note

Sec. filed Jan. 20, 2009; amended adoption filed Feb. 3, 2009; amds. filed: Dec. 29, 2010 as emergency measure; March 28, 2011 as emergency measure; May 26, 2011 as emergency measure; July 19, 2011 as emergency measure; Sept. 16, 2011 as emergency measure; Sept. 15, 2011 eff. 30 days after filing. Amended (b)(1), (2), (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, MACT, or any other applicable 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, MACT, or any other applicable 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, MACT, or any other applicable 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, MACT, or any other applicable 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.

(c) For an emission source 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.

(d) Any permit modification must be processed in accordance with this Subpart.

Historical Note

Sec. filed Jan. 20, 2009; ams. filed: Dec. 29, 2010 as emergency measure; March 28, 2011 as emergency measure; May 26, 2011 as emergency measure; July 19, 2011 as emergency measure; Sept. 16, 2011 as emergency measure; Sept. 15, 2011 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.

§ 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 ERCs for emission sources not subject to Part 201 of this Title.

Applications for ERCs for emission sources not subject to Part 201 of this Title including but not limited to 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; amended adoption filed Feb. 3, 2009; ams. filed: Dec. 29, 2010 as emergency measure; March 28, 2011 as emergency measure; May 26, 2011 as emergency measure; July 19, 2011 as emergency measure; Sept. 16, 2011 as emergency measure; Sept. 15, 2011 eff. 30 days after filing.

§ 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.

