

SUBPART 231-2**REQUIREMENTS FOR EMISSION UNITS SUBJECT TO THE
REGULATION ON OR AFTER NOVEMBER 15, 1992 AND PRIOR TO
FEBRUARY 19, 2009**

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Historical Note

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§ 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.

(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) *Curtailment.* 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 Ser-

vice 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 NO_x burners, selective catalytic reduction or selective non-catalytic reduction for NO_x;

(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 data 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 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 February 19, 2009; 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.

(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; ams. filed: June 7, 1996; Sept. 22, 1998; April 3, 2000; Jan. 20, 2009; 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 (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 NO_x 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 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 NO_x 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.* (1) 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 federally-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.

(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:

- (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.

<i>Nonattainment contaminant</i>	<i>PPM</i>	<i>Significant air quality impact</i>	
		<i>Weight/volume¹</i>	
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				

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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; ams. 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.