

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, the actual rate of emissions of a regulated NSR contaminant from an emission source, as determined in accordance with the following subparagraphs:

(i) 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;

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

(iii) 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 section 201-2.1(b)(21)(iii) of this Title, 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) for NO_2 , SO_2 or PM-10; or equal to or greater than $0.3 \mu\text{g}/\text{m}^3$ (annual average) for PM-2.5.

(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.

(ii) Baseline areas pursuant to established air quality control regions (AQCR) are defined and listed in NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis.

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

(11) *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.

(12) 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 shutdown period ends for a proposed modified facility which utilizes future ERCs for netting.

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

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

(ii) 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

modification is scheduled to commence operation, as stated by the applicant in a permit application; or

(iii) 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 of complete application (as defined in section 621.2 of this Title) for the permit modification and ending with the final permit issuance date.

(14) *Creditable emission increase.* Any increase in emissions of a regulated NSR contaminant in tpy from an existing major facility, other than such an increase from any proposed modification of the existing major facility that is under review by the department, which:

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

(ii) for an existing emission source(s) is quantified as the difference between baseline actual emissions and projected actual emissions, and for a new emission source(s) is quantified based on the potential to emit of the emission source(s).

(15) *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.

(16) *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.

(17) *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.

(18) *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.

(19) *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.

(20) *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.

(21) *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.

(22) *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.

(23) *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.

(24) *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.

(25) *Major facility baseline date.* This date is:

- (i) in the case of PM-10 and SO₂, January 6, 1975;
- (ii) in the case of nitrogen dioxide, February 8, 1988; or
- (iii) in the case of PM-2.5, October 20, 2010.

(26) *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.

(27) *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.

(28) *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 (as defined in section 621.2 of this Title).

(i) The trigger date is:

- (a) in the case of PM-10 and SO₂, August 7, 1977;
- (b) in the case of nitrogen dioxide, February 8, 1988; or
- (c) in the case of PM-2.5, October 20, 2011.

(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 (as defined in section 621.2 of this Title); 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 for SO₂, NO_x, PM-10, and PM-2.5 are addressed in NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis.

(29) *Modification.* Any physical change in, or change in the method of operation of, a facility which results in a level of annual emissions (not including any emission reductions) 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 I 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 I or 40 CFR 51.166; and

(vii) any change in ownership at a facility.

(30) *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.

(31) *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. PM-2.5 precursors, SO₂ and NO_x, are treated as nonattainment contaminants in New York State's PM-2.5 nonattainment area.

(32) *NSR major modification.* Any modification of a major facility that would equal or 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 equals or 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.

(33) *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.

(34) *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.

(35) *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.

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

(37) *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.

(38) *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.

(39) *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.

(40) *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 section 201-2.1(b)(21)(iii) of this Title.

(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.

(41) *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 section 201-2.1(b)(21)(iii) of this Title, 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.

(42) *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.

(43) *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.

(44) *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.

(45) *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 mobile source subject to any regulation under title II of the Clean Air Act, such as emissions from a motor vehicle or a train.

(46) *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.

(47) *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.

(48) *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.

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

Historical Note

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