

Express Terms Summary

6 NYCRR Part 200, General Provisions

6 NYCRR Part 231, New Source Review for New and Modified Facilities

The Department of Environmental Conservation (Department) is proposing to amend Parts 200 and 231 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, entitled “General Provisions” and “New Source Review of New and Modified Facilities” respectively.

The Part 200 amendments will incorporate by reference updated versions of 40 Code of Federal Regulations (CFR) Part 51 Appendix W: Guideline on Air Quality Models of the EPA and the list of Global Warming Potentials found in 40 CFR Part 98 Table A-1.

Existing Subparts 231-1 and 231-2 will be revised to correct typographical errors.

Existing Subpart 231-3 will be revised for clarification and to correct typographical errors.

Existing Subpart 231-4 will be revised to clarify definitions of Baseline actual emissions, Baseline area, Minor facility baseline date, Net emission increase, Nonattainment contaminant, Regulated NSR contaminant, and Source reduction. Definitions for “CO₂ equivalent” and “Subject to regulation” will be added and inserted alphabetically. Subpart 231-4 will also be revised to correct a typographical error.

Existing Subpart 231-5 will be revised to remove references to inter-pollutant trading ratios to offset direct emissions of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-

2.5) precursors and replace references to NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis.

Existing Subpart 231-6 will be revised to remove references to inter-pollutant trading ratios to offset direct emissions of PM-2.5 precursors, replace references to NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis, and correct typographical errors.

Existing Subpart 231-7 will be revised to clarify the requirement to establish the potential to emit of contaminants in a permit condition and correct typographical errors.

Existing Subpart 231-8 will be revised to remove the ability to use the netting provisions for greenhouse gases and correct typographical errors.

Existing Subpart 231-9 will be revised to clarify the reporting and notification requirements for plantwide applicability limits and correct typographical errors.

Existing Subpart 231-10 will be revised to remove references to inter-pollutant trading ratios to offset direct emissions of PM-2.5 precursors, clarify that the location requirements of all programs must be satisfied when using a oxides of nitrogen (NO_x) offset for multiple programs, clarify that decreases do not need to be included in a Part 201 permit for the creation of Emission Reduction Credits (ERCs), specify that sources with a variance for Reasonably Achievable Control Technology (RACT) can only obtain ERCs based on the statutory RACT limit, remove references to replacement of emission sources, and correct typographical errors.

Existing Subpart 231-11 will be revised to update references to Part 201 and clarify the reasonable possibility provisions.

Existing Subpart 231-12 will be revised to replace references to NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis, replace the Significant Monitoring Concentration for PM-2.5 with a value of zero, add 1-hour Significant Impact Levels (SILs) for SO₂ and NO_x, clarify that impacts below the SILs are not always adequate, and correct typographical errors.

Existing Subpart 231-13 will be revised to remove references to specific PM-2.5 precursors, remove the reference to a major facility threshold for greenhouse gases, state netting is not allowed for greenhouse gases, update the table of global warming potentials, and correct typographical errors.

Revised Express Terms

6 NYCRR PART 231, New Source Review for New and Modified Facilities

Existing sections 231-1.1 through 231-1.8 remain unchanged.

Existing sections 231-1.9 through 231-1.10 are amended to read as follows:

Section 231-1.9 Table 1.

'De minimis' emission limits

'Air contaminant'	'De minimis emission limit (tons per year)'
Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
[Pariculates] <u>Particulates</u>	25
Volatile organic compounds (for ozone nonattainment areas)	40
Lead	<u>0.6</u>
Asbestos	0.007
Beryllium	0.0004
Mercury	0.1

Vinyl chloride	1
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide	10
Total reduced sulfur	10
Reduced sulfur compounds	10

Section 231-1.10 Table 2.

Significant impacts for nonattainment areas

'Air contaminant'		'Significant impact'
	'PPM'	'Weight/Volume ¹ '
Sulfur dioxide		
Annual	0.0004	1.0 $\mu\text{g}/\text{m}^3$
24-hour	0.0019	5.0 $\mu\text{g}/\text{m}^3$
3-hour	0.009	25.0 [μ/m^3] <u>$\mu\text{g}/\text{m}^3$</u>
Particulates		
Annual	–	1.0 [μ/m^3] <u>$\mu\text{g}/\text{m}^3$</u>

24-hour	–	5.0 [μm^3] <u>$\mu\text{g}/\text{m}^3$</u>
Nitrogen oxides		
Annual	0.0005	1.0 [μm^3] <u>$\mu\text{g}/\text{m}^3$</u>
Carbon monoxide		
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 mercury.

Existing sections 231-2.1 through 231-2.3 remain unchanged.

Existing section 231-2.4 is amended to read as follows:

Section 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] Title; and

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

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

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

('a') submit a list of the offset sources (facilities) from which ERCs will be used as part of the emission offsets required pursuant to section 231-2.9(b) of this Subpart. This

list must include the name and location of the facility, DEC identification number (if applicable) and the emission reduction mechanism ('i.e.', facility shutdown, emission unit shutdown, source reduction, curtailment, over control of emissions beyond an applicable limit); and

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

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

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

(1) submit a list of offset sources (facilities) from which ERCs of VOC or [Nox] 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 [than] 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.

Existing sections 231-2.5 through 231-3.4 remain unchanged.

Existing section 231-3.5 is amended to read as follows:

231-3.5 Source obligation.

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

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

(c) Any owner or operator of a facility that proposes a project that involves a physical change or change in the method of operation that the owner or operator determines would be followed by a facility emissions increase that exceeds baseline actual emissions and that equals or exceeds any of the significant project thresholds in Subpart 231-13 of this Part, table 3, 4 or 6, must notify the department in writing of the proposed project prior to implementing the change if the owner or operator determines that the project does not constitute a modification because all the emission increases are attributable to independent factors in accordance with section [231-4.1(b)(41)(i)(‘c’)] 231-4.1(b)(42)(i)(‘c’) of this Part. The notification shall include the following:

- (1) a description of the change;
- (2) the calculation of the projected emissions increase;
- (3) the proposed date of the change; and

(4) an explanation of the factual basis for the conclusion that none of the projected emission increases are attributable to the proposed project.

Existing sections 231-3.6 through 231-3.7 remain unchanged.

Existing section 231-3.8 is amended to read as follows:

231-3.8 Facility shakedown period.

Upon commencement of operation, as defined in section [231-4.1(b)(12)] 231-4.1(b)(13) of this Part, of a major facility or new or modified emission source(s) at an existing facility, the owner or operator is allowed a shakedown period for such major facility or modified emission source(s) according to the following provisions:

(a) The shakedown period shall not exceed 180 days from the date of commencement of operation. For existing facilities, each emission source included in the project may have a separate date for commencement of operation. The department may specify a shakedown period of less than 180 days in a permit.

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

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

Existing section 231-3.9 remains unchanged.

Existing section 231-3.10 through Subpart 231-4 is amended to read as follows:

231-3.10 Severability clause.

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

Subpart 231-4 Definitions

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] Code of Federal Regulations (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'), and ('e') 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 source(s) being modified. A different baseline period cannot be used for each regulated NSR contaminant.

(‘e’) For multiple emission sources shutting down or taking limits not in conjunction with a modification, a different baseline period may be used for each emission source.

(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. Facilities required to submit annual emission statements in accordance with Subpart 202-2 of this Title must use the same method for determining baseline actual emissions as was used for the approved emission statements for the time period encompassing the baseline period, unless CEM or stack test data is available. 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] available upon request to the department.

(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] 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) 'CO₂ equivalent (CO₂e)'. The sum of each of the six greenhouse gases (GHGs) multiplied by their respective global warming potentials. The global warming potentials can be found in Table 9 of Subpart 231-13 of this Part.

(~~11~~12) '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~~13) Commence(s) operation or commencement of operation.

(i) the date that a proposed new or modified facility first emits or increases emissions of any regulated NSR contaminant to which this Part applies; or

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

(~~13~~14) '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~~15) '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)]16 'Curtailement'. 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)]17 '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)]18 '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)]19 '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)]20 '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]21) '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]22) '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]23) '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~~24) '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~~25) '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~~26) '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~~27) '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~~28) '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]29) '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)30] ‘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]31) ‘Net emission increase’. The aggregate increase in emissions of a regulated NSR contaminant, other than GHGs, 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]32) ‘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.] PM-2.5 precursors are treated as nonattainment contaminants in areas within New York State that are designated as nonattainment for PM-2.5.

([32]33) '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]34) '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]35) '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]36) ‘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]37) ‘PAL contaminant’. The regulated NSR contaminant for which a PAL is established at a major facility.

([37]38) ‘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]39) ‘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]40) ‘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]41) ‘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]42) ‘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]43) ‘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]44) ‘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]45) ‘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] 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 Act as defined in paragraph (50) of this subdivision; or

[(iv) any contaminant that otherwise is subject to regulation under the Clean Air Act; except that] (v) Notwithstanding subparagraphs (i) through (iv) of this paragraph, the term regulated NSR contaminant shall not include 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]46) ‘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]47) ‘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]48) ‘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]49) ‘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.

(50) ‘Subject to regulation’. Any air pollutant that is subject to either a provision in the Act, or a nationally-applicable regulation codified by the Administrator of the US EPA in subchapter C of chapter I to Title 40 of the CFR, that requires actual control of the quantity of emissions of that pollutant, and that has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity; provided, however, that the pollutant GHGs is subject to regulation if:

(i) The facility is a new major facility for a regulated NSR contaminant other than GHGs, and also has the potential to emit 75,000 tpy CO₂e or more or an emission increase in GHGs at an existing minor facility, calculated according to the project emission potential provisions of paragraph (41) of this subdivision; or

(ii) The facility is an existing major facility for a regulated NSR pollutant other than GHGs, and also will have a NSR major modification for a regulated NSR pollutant other than GHGs, and an emissions increase in GHGs, calculated according to the project emission potential provisions of paragraph (41) of this subdivision, of 75,000 tpy CO₂e or more.

[(49) 51] ‘Surplus’. A reduction in emissions beyond levels prescribed by the most stringent applicable State or Federal emission limitation required by the act.

Existing section 231-5.1 remains unchanged.

Existing sections 231-5.2 through 231-5.3 are amended to read as follows:

231-5.2 Permit application content.

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

(a) A certification that all emission sources which are part of any major facility located in New York State and under the applicant’s ownership or control (or under the ownership or control of any entity which controls, is

controlled by, or has common control with the applicant) are in compliance, or are on a schedule for compliance, with all applicable emission limitations and standards under Chapter III of this Title.

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

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

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

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

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

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

(e) 'Emission offset information for PM-10 and PM-2.5 (including [its] applicable precursors [SO₂ and NO_x])'. The following information must be submitted at the time of the initial permit application:

(1) a list which identifies the source(s) of approved or proposed ERCs of PM-10 or PM-2.5 (including [its] applicable precursors [SO₂ and NO_x]) that will be used as required emission offsets. This list must include the name and location of the facility, DEC identification number, if applicable, and the emission reduction mechanism ('i.e.', facility shutdown, emission unit shutdown, source reduction, curtailment, over control of emissions beyond an applicable limit);

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

(3) an air quality impact evaluation in accordance with the provisions of section 231-5.5(d) of this Subpart, Subpart 231-12 of this Part, and [NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] department approved modeling procedures.

231-5.3 Permit content and terms of issuance.

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

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

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

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

(3) any applicable LAER limitation.

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

(c) 'Supplemental public notice requirements for ERCs used as emission offsets'.

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

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

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

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

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

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

(2) by the conclusion of the facility shakedown period, as identified under section 231-3.8 of this Part, for a functional replacement of an existing emission source(s).

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

Existing section 231-5.4 remains unchanged.

Existing sections 231-5.5 through 231-6.1 are amended to read as follows:

231-5.5 Emission offset requirements.

(a) 'Emission offset applicability'.

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

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

(b) 'Offset ratio'.

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

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

(3) An emission offset of PM-2.5 (including [its] applicable precursors [SO₂ and NO_x]) must at least equal (offset ratio of one to one or greater) the corresponding facility potential to emit or project emission potential of the same pollutant (subsequent to application of LAER), as appropriate, by the applicable offset ratio specified in Subpart 231-13 of this Part. A greater offset ratio may be required to provide a net air quality benefit as set forth in this section. [Inter-pollutant trading may be used for offsetting direct emissions of PM-2.5 (including its precursors SO₂ and NO_x). Inter-pollutant offset ratios are as follows: one ton PM-2.5 offsets 200 tons NO_x, one ton PM-2.5 offsets 40 tons SO₂, 200 tons NO_x offsets one ton PM-2.5 and 40 tons SO₂ offsets one ton PM-2.5. The use of NO_x and SO₂ to offset one another is not allowed.]

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

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

(2) for PM-2.5 (including [its] applicable precursors [SO₂ and NO_x]) ERCs must have physically occurred on or after April 5, 2005 but need not be contemporaneous;

(3) an ERC, or portion thereof, must be included as a condition in the permit for the proposed new or modified facility for which the reduction is used.

(d) 'Net air quality benefit and emission offset location for PM-10, or PM-2.5 (including [its] applicable precursors [SO₂ and NO_x])'. An emission offset of PM-10, or PM-2.5 (including [its] applicable precursors [SO₂ and NO_x]) must meet the following:

(1) Contribution demonstration. An emission offset may be obtained from the same nonattainment area in which a proposed new or modified facility is to be located. An emission offset may also be obtained from other nonattainment areas of equal or higher classification if emissions from such other areas contribute to a violation of the NAAQS for PM-10 or PM-2.5, as applicable, in the nonattainment area where the proposed new or modified facility is to be located. These other areas must be determined in accordance with [NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] department approved modeling procedures.

(2) Net air quality benefit demonstration. As part of a permit application, the applicant must submit an air quality impact evaluation for PM-10 and PM-2.5, as applicable, in accordance with [NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] department approved modeling procedures. The ambient air quality impact analysis must demonstrate that:

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

(ii) for PM-10 and PM-2.5, the net impact in no case exceeds an applicable significant impact level of section 231-12.6 of this Part.

(3) Interstate offsets. An emission offset of PM-10 or PM-2.5 (including [its] applicable precursors [SO₂ and NO_x]), may be obtained from areas of equal or higher classification [may be obtained from] located in another state, in accordance with [NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] department approved modeling procedures, provided that an interstate reciprocal trading agreement is in place and the requirements of paragraphs (1) and (2) of this subdivision are met.

(e) 'Ozone nonattainment and emission offset location'. [The NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] Department approved modeling procedures must be used by an applicant to find default acceptable VOC or NO_x offset source locations within New York State or to perform a case specific contribution demonstration. An emission offset of VOC or NO_x is subject to the following:

(1) Proposed new or modified facility located in an ozone nonattainment area.

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

(‘a’) the same ozone nonattainment area; or

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

(ii) Interstate offset sources. An emission offset may be obtained from [other] ozone nonattainment areas of equal or higher classification in another state, if emissions from such other areas contribute to a violation of the NAAQS for ozone in the nonattainment area where the proposed new or modified facility is to be located and an interstate reciprocal trading agreement is in place. [The NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] Department approved modeling procedures may be used by an applicant to perform a case specific contribution demonstration.

(2) Proposed new or modified facility located in an attainment area of the state within the ozone transport region. An emission offset of VOC or NO_x may be obtained from any location within the ozone

transport region within New York State. 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.

Subpart 231-6 Modifications to Existing Major Facilities in Nonattainment Areas and Attainment Areas of the State within the Ozone Transport Region

231-6.1 Applicability.

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

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

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

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

(d) 'Special applicability rules for modifications of existing major facilities in severe ozone nonattainment areas'.

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

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

Existing section 231-6.2 remains unchanged.

Existing sections 231-6.3 through 231-6.7 are amended to read as follows:

231-6.3 Permit application content.

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

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

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

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

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

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

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

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

(e) 'Emission offset information for PM-10 and PM-2.5 (including [its] applicable precursors [SO₂ and NO_x])'. The following information must be submitted at the time of the initial permit application for a NSR major modification:

(1) a list which identifies the source(s) of approved or proposed ERCs of PM-10, or PM-2.5 (including [its] applicable precursors [SO₂ and NO_x]) that will be used as required emission offsets. This list must include the name and location of the facility, DEC identification number, if applicable, and the emission reduction mechanism ('i.e.', facility shutdown, emission unit shutdown, source reduction, curtailment, over control of emissions beyond an applicable limit);

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

(3) an air quality impact evaluation in accordance with the provisions of section 231-6.6(d) of this Subpart, Subpart 231-12 of this Part, and [NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] department approved modeling procedures.

231-6.4 Permit content and terms of issuance.

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

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

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

(2) any LAER limitation.

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

(c) ‘Supplemental public notice requirements for ERCs used as an internal offset or emission offset’.

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

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

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

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

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

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

(2) by the conclusion of the facility shakedown period, as identified under section 231-3.8 of this Part, for a functional replacement of an existing emission source(s).

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

231-6.5 Lowest achievable emission rate (LAER).

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

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

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

231-6.6 Emission offset requirements.

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

(b) 'Offset ratio'.

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

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

(3) An emission offset of PM-2.5 (including [its] applicable precursors [SO₂ and NO_x]) must at least equal (offset ratio of one to one or greater) the corresponding facility potential to emit or project emission potential of the same pollutant (subsequent to application of LAER), as appropriate, by the applicable offset ratio specified in Subpart 231-13 of this Part. A greater offset ratio may be required to provide a net air quality benefit as set forth in this section. [Inter-pollutant trading may be used for offsetting direct emissions of PM-2.5 (including its precursors SO₂ and NO_x). Inter-pollutant offset ratios are as follows: one ton PM-2.5 offsets 200 tons NO_x, one ton PM-2.5 offsets 40 tons SO₂, 200 tons NO_x offsets one ton PM-2.5 and 40 tons SO₂ offsets one ton PM-2.5. The use of NO_x and SO₂ to offset one another is not allowed.]

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

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

(2) for PM-2.5 (including its precursors SO₂ and NO_x), ERCs must have physically occurred on or after April 5, 2005 but need not be contemporaneous;

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

(d) 'Net air quality benefit and emission offset location for PM-10, or PM-2.5 (including [its] applicable precursors [SO₂ and NO_x])'. An emission offset of PM-10, or PM-2.5 (including [its] applicable precursors [SO₂ and NO_x]) must meet the following requirements:

(1) Contribution demonstration. An emission offset may be obtained from the same nonattainment area in which a proposed NSR major modification is to be located. An emission offset may also be obtained from other nonattainment areas of equal or higher classification if emissions from such other areas contribute to a violation of the NAAQS for PM-10 or PM-2.5 in the nonattainment area where the proposed NSR major modification is to be located. These other areas must be determined in accordance with [NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] department approved modeling procedures.

(2) Net air quality benefit demonstration. As part of a permit application, the applicant must submit an air quality impact evaluation for PM-10 and PM-2.5, as applicable, in accordance with [NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] department approved modeling procedures. The ambient air quality impact analysis must demonstrate that:

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

(ii) for PM-10 and PM-2.5, the net impact in no case exceeds an applicable significant impact level set forth in section 231-12.6 of this Part.

(3) Interstate offsets. An emission offset of PM-10, or PM-2.5 (including [its] applicable precursors [SO₂ and NO_x]), may be obtained from areas of equal or higher classification [may be obtained from] located in another state, in accordance with [NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] department approved modeling procedures, provided that an interstate reciprocal trading agreement is in place and the requirements of paragraphs (1) and (2) of this subdivision are met.

(e) ‘Ozone nonattainment and emission offset location’. [The NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] Department approved modeling procedures must be used by an applicant to find default acceptable VOC or NO_x offset source locations within New York State or to perform a case specific contribution demonstration. An emission offset of VOC or NO_x is subject to the following:

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

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

(‘a’) the same ozone nonattainment area; or

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

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

proposed NSR major modification is to be located and an interstate reciprocal trading agreement is in place. [The NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] Department approved modeling procedures may be used by an applicant to perform a case specific contribution demonstration.

(2) Proposed NSR major modification located in an attainment area of the state within the ozone transport region. An emission offset of VOC or NO_x may be obtained from any location within the ozone transport region in New York State. 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.

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

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

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

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

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

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

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

Existing sections 231-7.1 through 231-7.2 remain unchanged.

Existing sections 231-7.3 through 231-7.5 are amended to read as follows:

231-7.3 Permit application content.

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

(a) 'Air quality impact analyses according to Subpart 231-12 of this Part' [.];

(b) 'A BACT review in accordance with section 231-7.6 of this Part' [.];

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

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

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

or

(3) any other applicable requirements identified in Subpart 231-12 of this Part, and section 231-7.4(f) of this Subpart including visibility and air quality related value (AQRV) analyses for Federal class I areas, as applicable[.];

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

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

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

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

(e) 'Additional impact analyses'.

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

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

231-7.4 General requirements.

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

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

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

(1) the concentration permitted under the national secondary ambient air quality standard; or

(2) the concentration permitted under the national primary ambient air quality standard.

(c) 'Restrictions on area classifications and redesignation'.

(1) All areas of the State are designated class II, but may be redesignated as provided in this subdivision.

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

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

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

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

(d) 'Exclusions from increment consumption'.

(1) The following concentrations must be excluded in determining compliance with the maximum allowable ambient air increment:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) ‘Requirements for sources impacting Federal class I areas’.

(1) Notice to EPA and Federal land manager. The department or the applicant, at the request of the department, shall submit a copy of the permit application and all relevant information to the EPA region 2 office and the Federal land manager within 30 days of receipt of the application.

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

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

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

(5) Federal class I variances. The owner or operator of a proposed new or modified facility may demonstrate to the Federal land manager that the emissions from the new or modified facility would have no adverse impact on the air quality related values (including visibility) of any such lands, notwithstanding

that the change in air quality resulting from emissions from the new or modified facility would cause or contribute to concentrations which would exceed the maximum allowable increases for a Federal class I area. If the Federal land manager concurs with such demonstration and so certifies, provided that the applicable requirements of this section are otherwise met, the State may issue the permit with such emission limitations as may be necessary to assure that emissions of SO₂, PM, and NO_x would not exceed the maximum allowable increases over minor source baseline concentration as listed in table 7 of Subpart 231-13 of this Part.

(6) SO₂ variance by [Governor] governor of the Federal class I area with Federal land manager's concurrence. The owner or operator of a proposed new or modified facility which cannot be approved under paragraph (4) of this subdivision may demonstrate to the governor of the Federal class I area that the new or modified facility cannot be constructed by reason of any maximum allowable increase for SO₂ for a period of 24 hours or less applicable to any Federal class I area, and that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor of the Federal class I area, after consideration of the Federal land manager's recommendation (if any) and subject to his or her concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the department will issue a permit to the new or modified facility, provided that the applicable requirements of this Subpart are otherwise met. In this instance, the SO₂ concentrations must meet the maximum allowable increase in SO₂ concentrations in table 8 of Subpart 231-13 of this Part.

231-7.5 Permit content and terms of issuance.

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

(a) the potential to emit of [a] each regulated NSR contaminant with emissions greater than the applicable significant project threshold from the proposed facility;

(b) the potential to emit of a modification at an existing non-major facility which has a project emission potential for any regulated NSR contaminant that exceeds the [major facility] significant project threshold for that contaminant; and

(c) any BACT limitations.

Existing sections 231-7.6 through 231-8.1 remain unchanged.

Existing section 231-8.2 is amended to read as follows:

231-8.2 Netting.

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

(a) 'General requirements'.

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

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

(3) Any creditable emission increase or ERC must be of the same class of regulated NSR contaminant. For example, only NO_x emissions shall be used for netting of new NO_x emissions, only PM-2.5 shall be used for netting of new PM-2.5 emissions.

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

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

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

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

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

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

(c) 'Re-evaluation of a prior net emission increase determination at a facility that was not significant'.

The facility owner or operator must reevaluate the determination of the net emission increase of a prior

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

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

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

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

Existing section 231-8.3 remains unchanged.

Existing sections 231-8.4 through 231-8.7 are amended to read as follows:

231-8.4 Permit application content.

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

(a) 'An air quality impact analyses according to Subpart 231-12 of this Part' [.];

(b) 'A BACT review in accordance with section 231-8.7 of this Subpart' [.];

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

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

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

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

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

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

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

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

(e) 'Additional impact analyses'.

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

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

231-8.5 General requirements.

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

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

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

(1) the concentration permitted under the national secondary ambient air quality standard; or

(2) the concentration permitted under the national primary ambient air quality standard.

(c) 'Restrictions on area classifications and redesignation'.

(1) All areas of the State are designated class II as identified in department policy documents, but may be redesignated as provided in this subdivision.

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

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

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

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

(d) 'Exclusions from increment consumption'.

(1) The following concentrations must be excluded in determining compliance with the maximum allowable ambient air increment:

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

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

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

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

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

plan are applicable, no such exclusion applies more than five years after the later of such effective dates.

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

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

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

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

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

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

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

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

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

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

(f) 'Requirements for sources impacting Federal class I areas:'

(1) Notice to EPA and Federal land manager. The department or the applicant, at the request of the department, shall submit a copy of the permit application and all relevant information to the EPA region 2 office and the Federal land manager within 30 days of receipt of the application.

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

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

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

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

(6) SO₂ variance by governor of the Federal class I area with Federal land manager's concurrence. The owner or operator of a [proposed new or modified] facility proposing a modification which cannot be approved under paragraph (4) of this subdivision may demonstrate to the governor of the Federal class I area that the [new or modified] modification to the facility cannot be constructed by reason of any

maximum allowable increase for SO₂ for a period of 24 hours or less applicable to any Federal class I area, and that a variance under this paragraph would not adversely affect the air quality related values of the area (including visibility). The governor of the Federal class I area, after consideration of the Federal land manager's recommendation (if any) and subject to his or her concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the department will issue a permit to the [new or modified] facility, provided that the applicable requirements of this Subpart are otherwise met. In this instance, the SO₂ concentrations must meet the maximum allowable increase in SO₂ concentrations in table 8 of Subpart 231-13 of this Part.

231-8.6 Permit content and terms of issuance.

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

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

(b) Any BACT limitations.

231-8.7 Best available control technology (BACT).

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

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

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

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

Existing sections 231-9.1 through 231-9.4 remain unchanged.

Existing section 231-9.5 is amended to read as follows:

231-9.5 Permit contents.

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

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

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

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

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

(e) 'Monitoring requirements'.

(1) General requirements.

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

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

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

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

(ii) CEMS;

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

(iv) emission factors.

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

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

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

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

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

(i) CEMS must comply with applicable performance specifications found in either 40 CFR part 60, appendix B, or 40 CFR part 75.

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

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

(i) the monitoring system must be based on current site specific data demonstrating a correlation between the monitored parameter(s) and the PAL contaminant emissions across the range of operation of the emission source; and

(ii) each monitoring system must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emission source is operating.

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

(i) all emission factors must be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors development;

(ii) the emission source must operate within the designated range of use for the emission factor, if applicable; and

(iii) if technically practicable, any facility with a significant PAL emission source that relies on an emission factor to calculate PAL contaminant emissions must conduct validation testing to determine a site specific emission factor within six months of permit issuance, unless the department determines that testing is not required.

(7) A facility owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emission source during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the permit.

(8) Notwithstanding the requirements in paragraphs (3) through (7) of this subdivision, where an owner or operator of a facility cannot demonstrate a correlation between the monitored parameter(s) and the PAL contaminant emissions rate at all operating points of the emission source, the department must include in the permit default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s). Alternatively, the department must determine that operation of the emission source during circumstances where there is no correlation between monitored parameter(s) and the PAL contaminant emissions is a violation of the PAL.

(9) Re-validation. All data used to establish the PAL contaminant must be re-validated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every five years after issuance of the PAL.

(f) 'Recordkeeping requirements'.

(1) The facility must retain a copy of all records necessary to determine compliance with any requirement of this Subpart and of the PAL, including a determination of each emission source's 12-month rolling total emissions, for five years from the date of such record.

(2) The facility must retain a copy of the following records for the duration of the PAL effective period plus five years:

(i) a copy of the permit application and any applications for revisions to the PAL; and

(ii) each annual certification of compliance pursuant to Part 201 of this Title and the data relied on for such certification.

(3) The records must be maintained on-site or at an alternative location approved by the department. Such records may be retained in an electronic format.

(g) 'Reporting and notification requirements'. Semi-annual monitoring reports and prompt deviation reports must be submitted to the department. The reports must meet the requirements in this section and Subpart 231-11 of this Part.

(1) Semi-annual report. The semi-annual report must be submitted to the department within 30 days of the end of each reporting period, and include the following:

(i) total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (f)(1) of this section.

(ii) all data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL contaminant emissions;

(iii) a list of any emission sources modified or added to the major facility during the preceding six-month period;

(iv) the number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken; and

(v) a notification of [a] the shutdown of any monitoring system stating, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emission source monitored by the monitoring system continued to operate, [, and the] The notification shall also include a calculation of the emissions of the PAL contaminant [or the number determined by method included in the permit, as provided by] according to the provisions in paragraph (e)(7) of this section.

(2) Deviation report. The major facility owner or operator must promptly submit a report of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. The deviation report must be submitted within the time limits prescribed by Part 201 of this Title and the Title V permit. A deviation report submitted in accordance with Subpart 201-6 of this Title will satisfy this reporting requirement. The report must contain, among other information required under Subpart 201-6 of this Title, identification of the owner or operator, the PAL requirement that experienced the deviation or that was exceeded, emissions resulting from the deviation or exceedance, and a signed statement by the responsible official as defined by the applicable title V permit certifying the truth, accuracy, and completeness of the information contained in the report.

(3) Re-validation results. The owner or operator must submit to the department the results of any re-validation test or method within three months after completion of such test or method.

(h) Provisions which implement the monitoring, recordkeeping, and reporting and notification requirements contained in this Subpart and any other requirements that the department deems necessary to implement and enforce the PAL.

Existing section 231-9.6 remains unchanged.

Existing sections 231-9.7 through 231-10.3 are amended to read as follows:

231-9.7 PAL renewals and expirations.

(a) 'Permit renewal where PAL is not renewed'. The following provisions set forth the requirements for an application to renew a title V permit where a PAL will expire at the end of the PAL effective period and the facility has not included a request to renew the PAL in such application. The facility must continue to comply with the PAL until such time as the department issues a renewed title V permit.

(1) Application content. In addition to any other information required pursuant to this Chapter, the title V permit application must include a proposed allowable emission limitation for each emission source. Such emission limitations must be calculated by distributing the PAL of the facility among each emission source that is subject to an emission limitation under the PAL and must be adjusted to reflect any applicable requirements that became effective during the PAL effective period if the PAL was not previously adjusted.

(2) Permit content. In addition to any other requirements of this Chapter, a title V permit issued following the expiration of a PAL shall include the following provisions:

(i) emission limits for each emission source on a 12-month rolling basis. The allowable emission limits shall be established in accordance with a distribution of the PAL that the department determines is appropriate; and

(ii) a facility must demonstrate compliance with the allowable emission limitation(s) through the use of CEMS or other monitoring systems (source testing, emission factors, etc.) as the department may approve.

(b) 'Permit renewal where a PAL is renewed'.

(1) Application deadline. The application deadlines for renewal of the title V permits in Part 201 of this Title shall govern the application to renew a PAL.

(2) Application content. The application to renew a permit with a PAL must contain the following information:

(i) the information required in section 231-9.2(a) through (c) of this Subpart;

(ii) a proposed PAL;

(iii) the sum of the potential to emit of all emission sources subject to the PAL with supporting documentation; and

(iv) any other relevant information the owner or operator submits to the department for consideration in determining the appropriate level for renewing the PAL.

(3) PAL adjustment. In determining whether and how to adjust the PAL, the department must consider the options outlined below. All adjustments must comply with subparagraph (iii) of this paragraph:

(i) if the emissions level calculated in accordance with section 231-9.4(a) through (d) of this Subpart is equal to or greater than 80 percent of the level of the existing PAL at the time of renewal, the department may renew the PAL at the same level, without considering the factors set forth in subparagraph (ii) of this paragraph; or

(ii) the department may set the PAL at a level that the department determines is more representative of the baseline actual emissions of the facility, or is more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage voluntary emissions reductions at the facility, or other factors as specifically identified by the department [;].

(iii) notwithstanding subparagraphs (i) and (ii) of this paragraph:

(‘a’) if the potential to emit of the facility is less than the PAL, the department must adjust the PAL to a level no greater than the potential to emit of the facility; and

(‘b’) the department cannot approve a renewed PAL higher than the current PAL, unless the facility has complied with the provisions of section 231-9.6(b) of this Subpart [;].

(iv) section 231-9.4(e) of this Subpart is inapplicable to the renewal of a PAL.

(4) If the compliance date for an applicable requirement occurs during the PAL effective period, and the department has not already adjusted the PAL to reflect such requirement, the PAL must be adjusted at the time of permit renewal.

Subpart 231-10 Emission Reduction Credits (ERCs)

231-10.1 General provisions.

(a) An ERC may be used in a net emission increase determination, internal offset, or as an emission offset.

(b) An ERC may be used as an internal offset or emission offset, as applicable, without time limit or restriction within New York State. In another state in the ozone transport region, an ERC may be used as an emission offset in accordance with that state's requirements if New York State has established a reciprocal trading agreement with that state.

(c) An ERC, to be used for purposes of netting, must be the same regulated NSR contaminant as the emission increase requiring the ERC.

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

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

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

(g) An ERC, or portion thereof, which was used to avoid a determination of a significant net emission increase, as an internal offset, or as an emission offset cannot subsequently be used for demonstrating attainment with ambient air quality standards or reasonable further progress in a federally approved SIP.

(h) An ERC, or portion thereof, which was used to avoid a determination of a significant net emission increase, cannot subsequently be used as an internal offset, emission offset, or in any subsequent netting determinations.

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

(j) An ERC of NO_x, PM-10, or VOC used as an emission offset or for netting, for compliance with Subpart 231-5 or 231-6 of this Part, must have physically occurred on or after November 15, 1990.

(k) An ERC of PM-2.5 or SO₂ used as an emission offset or for netting, for compliance with Subpart 231-5 or 231-6 of this Part, must have physically occurred on or after April 5, 2005.

(l) An ERC used as an internal offset for NO_x or VOC emissions must have physically occurred on or after November 15, 1990 but need not be contemporaneous.

(m) The department will approve applications for ERCs submitted on or after the effective date of this regulation on an emission source basis. Applications submitted prior to the effective date of this regulation will be processed according to the provisions of Subpart 231-2 of this Part.

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

(o) The department may approve future emission reductions only if they are designated for a specific facility. The facility seeking to establish the future emission reductions must submit an application to the department for modification of its Part 201 permit. The permit of the facility proposing to use the future emission reductions must identify the source(s) of the reductions. The permit of the facility establishing the future emission reductions is subject to modification by the department to remove the approval of the future emission reductions if the facility proposing to use the future emission reductions does not commence construction within the time period specified in this Part, or if the applicant notifies the department of its intent to abandon the proposed new or modified facility and the applicant surrenders the permit prior to commencement of operation.

(p) Emission reductions resulting from the shutdown of an unpermitted emission source which was subject to the requirement to obtain a permit pursuant to Part 201 of this Title will not be certified as ERCs.

(q) Unpermitted emission sources that are operational may be considered for ERCs in accordance with this Part subsequent to being permitted in accordance with Part 201 of this Title.

231-10.2 Determination of ERCs.

Any decrease in emissions of a regulated NSR contaminant, in tpy, which:

(a) is surplus, quantifiable, permanent, and enforceable [, and included in a Part 201 permit]; and

(b) will result or resulted from a physical change in, or a change in the method of operation of an emission source subject to Part 201 of this Title:

(1) is quantified as the difference between baseline actual emissions and the subsequent potential to emit; and

(2) is approved in accordance with the provisions of this Part; or

(c) will result or resulted from a physical change in, or a change in the method of operation of an emission source not subject to Part 201 of this Title, and is approved in accordance with the provisions of section 231-10.7 of this Subpart.

231-10.3 Applications for ERC approval.

This section applies to applications for ERCs at sources subject to Part 201 of this Title.

(a) 'Application procedures'.

(1) For approval of ERCs from a facility subject to Subpart 201-5 or 201-6 of this Title, other than a facility shutdown, the facility owner or operator must submit an application for a permit modification.

(2) For approval of ERCs from a registered facility, other than a facility shutdown, the owner or operator must apply for a State facility permit.

(3) For approval of [ERC's] ERCs as a result of shutdown of a facility subject to Subpart 201-5 or 201-6 of this Title, the facility owner or operator must submit a written request to the department to discontinue the permit.

(4) For approval of [ERC's] ERCs as a result of shutdown of a registered facility, the facility owner or operator must submit a written request to the department to discontinue the registration.

(b) 'Application content'. A permit application involving ERCs must include the following information:

(1) The signature of a responsible official or other representative authorized to act on behalf of the facility with respect to the ERCs.

(2) A complete "emission reduction credit quantification form" with supporting documentation establishing that the emission reduction is surplus, quantifiable, permanent and enforceable.

(i) Surplus. The applicant must demonstrate to the satisfaction of the department that the emission reduction for an emission source is in excess of any reduction required by RACT or MACT or any other regulations applicable to the emission source during the baseline period for the emission reduction. The determination of "surplus" is as follows:

(‘a’) For an emission reduction which physically occurred prior to the State or Federal register publication date proposing RACT, MACT, or any other applicable requirements, the applicant is eligible for the full amount of the reduction. Otherwise, the applicant is eligible only for the baseline actual emissions reflecting RACT, MACT, or any other applicable emission limits.

(‘b’) For a future reduction as defined in this Part, if the date of approval of the ERC is prior to the State or Federal Register publication date proposing RACT, MACT, or any other applicable requirements, then the applicant is eligible for the full amount of the reduction. Otherwise, the applicant is eligible only for the baseline actual emissions reflecting RACT, MACT, or any other applicable emission limits.

(‘c’) For an emission source with a source specific RACT determination, emissions in excess of the statutory RACT limit shall not be considered as surplus. In those instances, the emission source’s actual operating parameters shall be used in conjunction with the statutory RACT limit to determine the baseline actual emissions.

(ii) Quantifiable. The applicant must use a reliable basis for quantifying the reduction. Continuous emissions monitoring (CEM) data or stack test data approved by the department must be used if the facility is required to generate such data. Emission statements, EPA’s AP-42 emission factors, and fuel and solvent purchase records, with department approval, are acceptable bases for quantifying baseline actual emissions if an applicant demonstrates to the department’s satisfaction that CEM or stack test data are not available and that CEM or stack test data was not a permit requirement.

(iii) Permanent. The applicant must demonstrate to the satisfaction of the department that all emission reductions will be permanent.

(iv) Enforceable.

(‘a’) For a facility which submits a written request to the department to discontinue its permit or registration (facility shutdown) pursuant to this section, no further action is required.

(‘b’) For an emission source shutdown where the facility will continue to operate, the applicant must apply for and obtain a permit modification in accordance with this section which reflects the permanent shutdown of the emission source through a permit condition prohibiting operation of the emission source, or physically removes the emission source from the permit.

(‘c’) For an emission source which will continue to operate at the facility, the applicant must submit for department approval a monitoring, recordkeeping, and reporting strategy that will be used to demonstrate that the emission reductions are verifiable. If approvable, the department will include terms and conditions in the operating permit which implement the applicant’s strategy. If the department determines the strategy is incomplete or otherwise not approvable, the department may propose terms and conditions for the permit or as part of a proposed single source SIP revision as appropriate to ensure that the emission reductions are verifiable.

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

Existing sections 231-10.4 through 231-10.7 remain unchanged.

Existing sections 231-10.8 through 231-11.2 are amended to read as follows:

231-10.8 [Replacement and relocation] Relocation of emission sources.

[(a) ERCs for the replacement of an emission source with new similar equipment (connected to the existing stack or a new stack) must be quantified as the difference between:

- (1) the baseline actual emissions of the emission source representing the old emission source; and
- (2) the future potential to emit of the new emission source.

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

Subpart 231-11 Permit and Reasonable Possibility Requirements

231-11.1 Permit requirements for new major facilities, NSR major modifications, and netting.

(a) ‘Permit application requirements’. In addition to the application requirements under Part 201 of this Title the following information must be included in the permit application for any new major facility, NSR major modification, or facility netting out of applicability, required to obtain a permit pursuant to this Part:

(1) project description, location, design capacity, and typical operating schedule, including specifications and drawings showing its design and the plant layout, as applicable;

(2) a detailed schedule for construction, as applicable;

(3) applicable calculations and supporting documentation of potential-to-emit for a new facility, and baseline actual emissions, projected actual emissions or potential-to-emit as applicable, project emission potential and net emissions increase determination for a modified facility. The information submitted must be sufficiently detailed to allow the department to verify the emissions calculation(s) and to determine the applicability status of the source with respect to this Part. If the calculation of projected actual emissions excludes emissions which an existing emission source could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, detailed documentation of the calculation of the excluded emissions must be provided at the time of permit application in order for the exclusion of those emissions to be allowed in determining future compliance; and

(4) proposed emission monitoring, recordkeeping and reporting provisions to establish compliance with the applicable requirements of this Part.

(b) 'General permit conditions and terms of issuance'. Any new major facility, NSR major modification or facility netting out of applicability subject to this Part must comply with the requirements of section [201-6.5(a)] 201-6.4(a) of this Title and the following:

(1) within 30 days of commencement of construction, the applicant must notify the department in writing that construction has begun; and

(2) the filing of a request by the permittee for a permit modification or renewal, or of a notification by the permittee of planned changes or anticipated noncompliance does not authorize the permittee to undertake any action without department approval. The permittee shall not begin actual construction or operate a new or modified facility without department approval in accordance with this Chapter. Operation in a manner other than authorized by a permit shall be grounds for enforcement.

(c) 'Permit conditions for monitoring'. Any permit issued in accordance with this Part must include the monitoring provisions required in section [201-6.5(b)] 201-6.4(b) of this Title.

(d) 'Permit conditions for recordkeeping and reporting of compliance monitoring'. Any permit issued in accordance with this Part must include the recordkeeping and reporting of compliance monitoring provisions required in section [201-6.5(c)] 201-6.4(c) of this Title.

(e) 'Compliance certification'. Any permit issued in accordance with this Part must include the compliance certification provisions required in section [201-6.5(e)] 201-6.4(e) of this Title and, if applicable, submission of documentation that the actual measured emissions less those attributed to independent factors such as demand growth are below the permitted projected actual emissions limit.

231-11.2 Reasonable possibility requirements for insignificant modifications.

(a) The requirements of this section do not apply if potential-to-emit is used in lieu of projected actual emissions in determining the project emission potential for a proposed modification.

(b) For a modification with a project emission potential [that does not utilize the] which, when added to all emissions [exclusion allowed] excluded under section [231-4.1(b)(41)(i)(‘c’)] 231-4.1(b)(42)(i)(‘c’) of this Part, [and which] is less than 50 percent of the applicable significant project threshold in table 3, table 4 or table 6 of Subpart 231-13 of this Part, [or for a modification with a project emission potential which when added to emissions excluded in accordance with section 231-4.1(b)(41)(i)(‘c’) of this Part is less than 50 percent of the applicable significant project threshold in table 3, table 4 or table 6 of Subpart 231-13 of this Part,] the facility owner or operator, in addition to complying with any requirements under Part 201 of this Title, must maintain the following information for a minimum of five years:

(1) a description of the modification;

(2) an identification of each new or modified emission source(s) including the associated processes and emission unit;

(3) the calculation of the project emission potential for each modified emission source(s) including supporting documentation; and

(4) the date the modification commenced operation.

These recordkeeping requirements apply to exempt and trivial activities but do not affect their exempt or trivial permitting status under Subpart 201-3 of this Title.

(c) For a modification with a project emission potential which, when added to any emissions excluded in accordance with section 231-4.1(b)(42)(i)(‘c’) of this Part, [is less than 50 percent of the applicable significant project threshold in table 3, table 4 or table 6 of Subpart 231-13 of this Part, but] equals or exceeds 50 percent of

the applicable significant project threshold [when emissions excluded in accordance with section 231-4.1(b)(41)(i)(‘c’) of this Part are added and is less than the applicable significant project threshold, or for a modification with a project emission potential which equals or exceeds 50 percent of the applicable significant project threshold] in table 3, table 4 or table 6 of Subpart 231-13 of this Part and the project emission potential is less than the applicable significant project threshold, the facility owner or operator must submit an application to modify the facility permit under the minor permit provisions of Subpart 201-6 of this Title [or obtain a preconstruction permit under the provisions of Subpart 201-6 of this Title], and must:

(1) maintain the following information for a minimum of five years:

(i) a description of the modification;

(ii) an identification of each new or modified emission source(s) including the associated processes and emission unit;

(iii) the calculation of the project emission potential for each modified emission source(s) including supporting documentation; and

(iv) the date the modification commenced operation.

(2) monitor the emissions of each regulated NSR contaminant from the emission source(s) that will increase as a result of the modification, and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the modification, or for a period of 10 years following resumption of regular operations after the change if the modification increases the design capacity of or potential to emit the regulated NSR

contaminant at such emission source(s). The calculation of actual emissions must use the same methodology that was used in the application for the project; and

(3) submit a report to the department within 30 days after the end of each year during which records must be generated in accordance with paragraph (2) of this subdivision. The report must contain:

(i) the name, address, and telephone number of the major facility;

(ii) the annual emissions as calculated pursuant to paragraph (2) of this subdivision; and

(iii) a comparison of actual annual emissions to the projected actual emissions and, if applicable, an explanation as to why the actual annual emissions exceeded the projected actual emissions.

Subpart 231-12 Ambient Air Quality Impact Analysis

This Subpart sets forth the procedures and requirements for the performance of an air quality impact analysis to determine whether a new or modified facility complies with quantified air quality levels, including air quality standards, PSD increments and monitoring deminimis levels, air quality related values, and significant impact levels.

Existing section 231-12.1 remains unchanged.

Existing section 231-12.2 is amended to read as follows:

231-12.2 Modeling analysis methodologies.

(a) The ambient impact analysis must follow the procedures in the applicable guidelines at 40 CFR part 51, appendix W: Guideline on Air Quality Models of the EPA and [the NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis available from the department.] a modeling protocol which has been approved by the department. Emissions of PM-10 and PM-2.5 used in a modeling analysis for this Part must include both the filterable and [condensable]condensable fractions (see definitions of PM-10 and PM-2.5 in Part 200 of this Title).

(b) Where an air quality model specified in appendix W of 40 CFR part 51 is deemed inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific program. Written approval from the department must be obtained for any modification or substitution. In addition, use of a modified or substituted model shall be subject to public notice and opportunity for public comment, with the determination of a complete permit application, in accordance with Parts 201 and 621 of this Title.

(c) For the purposes of Subparts 231-7 and 231-8 of this Part, the owner or operator of the proposed new or modified facility must demonstrate that allowable emission increases from the proposed facility or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) would not, at a minimum, cause or contribute to air pollution in violation of:

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

(2) quantified air quality related values (AQRVs) including visibility for the applicable Federal class I areas; and

(3) any applicable maximum allowable PSD increment increase over the baseline concentration in any area, as defined in the following table:

‘Contaminant’	‘Maximum allowable increase (micrograms per cubic meter)’
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Federal Class I

Particulate matter:

PM-10, annual arithmetic mean	4
PM-10, 24-hr maximum	8
PM-2.5, annual arithmetic mean	1
PM-2.5, 24 hour maximum	2

Sulfur dioxide:

Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25

Nitrogen dioxide

Annual arithmetic mean	2.5
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Class II

Particulate matter:

PM-10, annual arithmetic mean	17
PM-10, 24-hr maximum	30
PM-2.5, annual arithmetic mean	4
PM-2.5, 24 hour maximum	9

Sulfur dioxide:

Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512

Nitrogen dioxide

Annual arithmetic mean	25
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Class III

Particulate matter:

PM-10, annual arithmetic mean	34
PM-10, 24-hr maximum	60
PM-2.5, annual arithmetic mean	8
PM-2.5, 24 hour maximum	18

Sulfur dioxide:

Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700

Nitrogen dioxide

Annual arithmetic mean	50
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For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(d) The emission rates for any existing emission sources to be used for the analysis of increment increases in paragraph (c)(3) of this section can be based on representative actual emissions instead of the allowable

emission rates, provided the maximum actual rates under representative normal operations are used for short term increments. Any increment expansions analysis for the purposes of paragraph (c)(3) of this section must use representative actual short term and annual emissions instead of the allowable emissions.

(e) For the purposes of Subparts 231-5 and 231-6 of this Part, the owner or operator of the proposed new or modified facility must demonstrate that allowable emission increases from the proposed new or modified facility would not, at a minimum, cause or contribute to air pollution in violation of any national ambient air quality standard in any [non-attainment] nonattainment area in [accord] accordance with the significance levels in section 231-12.6 of this Subpart [significance levels].

(f) For the purposes of the required net air quality benefit analysis of Subparts 231-5 and 231-6 of this Part, the owner or operator of the proposed new or modified facility must use the allowable emission increases from the proposed new or modified facility. For the impact offsetting sources, this analysis must use representative actual short term and annual emissions corresponding to the averaging times of the standards. The modeling methods for conducting the net air quality benefit analyses [are provided in NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis] must be approved by the department.

Existing section 231-12.3 remains unchanged.

Existing section 231-12.4 is amended to read as follows:

231-12.4 Exemption and waiver from onsite ('i.e.', site specific) air quality monitoring.

(a) The department may exempt a proposed new or modified facility from the requirements of section 231-12.3 of this Subpart with respect to monitoring for a particular regulated NSR contaminant, if:

(1) the emissions increase of the regulated NSR contaminant from the proposed new or modified facility would cause, in any attainment area, air quality impacts less than the following de minimis monitoring levels:

- Carbon Monoxide----- 575 $\mu\text{g}/\text{m}^3$, 8-hour average;
- Nitrogen dioxide ----- 14 $\mu\text{g}/\text{m}^3$, annual average;
- Particulate matter (PM-10)----- 10 $\mu\text{g}/\text{m}^3$, 24-hr average;
- PM-2.5 ----- [4] 0 $\mu\text{g}/\text{m}^3$, 24-hr. average;
- Sulfur dioxide ----- 13 $\mu\text{g}/\text{m}^3$, 24-hour average;
- Ozone¹ ----- see footnote
- Elemental lead ----- 0.1 $\mu\text{g}/\text{m}^3$, 3-month average;
- Fluorides ----- 0.25 $\mu\text{g}/\text{m}^3$, 24-hour average;
- Total and reduced sulfur ----- 10 $\mu\text{g}/\text{m}^3$, 1-hour average;
- Hydrogen sulfide ----- 0.2 $\mu\text{g}/\text{m}^3$, 1-hour average; or

(2) the concentrations of the regulated NSR contaminant in the area that the facility would affect are less than the concentrations listed in paragraph (1) of this subdivision.

(b) In cases where the source impacts are above the de minimis monitoring levels of paragraph (a)(1) of this section, the department may waive the requirements of section 231-12.3 of this Subpart with respect to monitoring for a particular regulated NSR contaminant for which an applicant makes an acceptable showing that:

¹ No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of NO_x or volatile organic compounds subject to Subpart 231-7 or Subpart 231-8 may be required to gather ambient air quality data according to the provisions of section 231-12.3.

(1) representative existing ambient air monitoring data exists in the affected area and is of the quality and nature which demonstrates the current conditions of the area’s air quality; or

(2) representative ambient air monitoring data exists from a prior time period which can be demonstrated to be conservative (‘i.e.’ higher) in establishing the current conditions of the area’s air quality.

Existing section 231-12.5 remains unchanged.

Existing sections 231-12.6 through 231-12.7 are amended to read as follows:

231-12.6 Significant impact levels in nonattainment areas.

For the purposes of Subparts 231-5 and 231-6 of this Part, a new or modified facility will be considered to cause or contribute to a violation of a national ambient air quality standard when such new or modified facility would, at a minimum, exceed the following significant impact levels (SILs) at any locality that does not or would not meet the applicable national standard:

Regulated NSR Contaminant	Annual Average	Short Term Averaging Times (hours)			
		24	8	3	1
SO ₂	1.0 µg/m ³	5 µg/m ³		25 µg/m ³	<u>7.8 µg/m³</u>
PM-10	1.0 µg/m ³	5 µg/m ³			
PM-2.5	0.3 µg/m ³	1.2 µg/m ³			

NO _x *	1.0 µg/m ³				<u>7.5 µg/m³</u>
CO			500 µg/m ³		2000 µg/m ³

* For the purposes of this table, NO₂ shall be the subset of NO_x that is modeled

231-12.7 Significant impact levels for facilities located in attainment areas.

For the purposes of an impact analysis in support of provisions of Subparts 231-7 and 231-8 of this Part, the significant impact levels defined in section 231-12.6 of this Subpart will serve to determine whether a new or modified source will have a significant air quality impact or a contribution to potential standards violation or PSD increment exceedances in both the attainment area of the proposed project and in any adjacent [non-attainment] nonattainment areas. The levels in section 231-12.6 of this Subpart apply in all attainment areas in the State for the specific NSR contaminant and serve as the required modeling demonstration to show insignificant impacts for that contaminant. A showing that the maximum impacts from the proposed new or modified facility for any regulated NSR contaminant are below the lesser of these significant impact levels or the difference between the NAAQS and the background concentration for that regulated NSR contaminant will be deemed adequate as the required impact analysis to demonstrate that the source will not contribute to a standards violation or PSD increment exceedance for that regulated NSR contaminant. However, such a demonstration will not exclude the performance of any other required impact analysis to satisfy other applicable provisions of Subparts 231-5 to 231-8 of this Part, including the modeling for air quality related values in Federal class I areas.

Existing sections 231-12.8 through 231-13.1 remain unchanged.

Existing section 231-13.2 is amended to read as follows:

231-13.2 - Table 2 - Major facility thresholds and offset ratios for PM nonattainment areas

Area/Contaminant Classification	Major Facility Threshold (tpy)	Offset Ratio
Moderate		
PM-10 ¹	100	At least 1:1
No classification		
PM-2.5 ¹	100	At least 1:1
[PM-2.5 Precursors]		
[SO ₂]	[100]	[At least 1:1]
[NO _x]	[100]	[At least 1:1]

¹ – both the filterable and [condensable]condensable fractions are to be included (see definitions of PM-10 and PM-2.5 in Part 200 of this Title).

Existing section 231-13.3 remains unchanged.

Existing sections 231-13.4 through 231-13.6 are amended to read as follows:

231-13.4 - Table 4 - Significant project thresholds, significant net emission increase thresholds, and offset ratios for PM nonattainment areas

Area/Contaminant Classification	Significant Project Threshold (tpy) ²	Significant Net Emission Increase Threshold (tpy)	Offset Ratio
Moderate			
PM-10 ¹	15	15	At least 1:1
No classification			

PM-2.5 ¹	10	10	At least 1:1
[PM-2.5 Precursors]			
[SO ₂]	[40]	[40]	[At least 1:1]
[NO _x]	[40]	[40]	[At least 1:1]

¹ – both filterable and [condensable]condensable fractions are to be included (see definitions of PM-10 and PM-2.5 in Part 200 of this Title).

² - project emission potential threshold.

231-13.5 - Table 5 - Major facility thresholds for attainment and unclassified areas

Contaminant	Major Facility Threshold (tpy) ¹
Carbon monoxide	100 / 250
Nitrogen oxides	100 / 250
Sulfur dioxide	100 / 250
Particulate matter	100 / 250
Particulate matter: PM-10 emissions ²	100 / 250
Particulate matter: PM-2.5 emissions ²	100 / 250
Ozone: as VOCs or NO _x	100 / 250
Lead (elemental)	100 / 250
Fluorides	100 / 250
Sulfuric acid mist	100 / 250
Hydrogen sulfide (H ₂ S)	100 / 250
Total reduced sulfur (including H ₂ S)	100 / 250

Reduced sulfur compounds (including H ₂ S)	100 / 250
Municipal waste combustor organics (measured as total tetra through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	100 / 250
Municipal waste combustor metals (measured as particulate matter)	100 / 250
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	100 / 250
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	100 / 250
[Greenhouse gases]	[100 / 250 and 100,000 ³]
Any other regulated NSR contaminant	100 / 250

¹ - 100 tpy threshold applies if the facility is one of the source categories listed in section 201-

2.1(b)(21)(iii)(‘a’) through (‘z’) of this Title.

² – both filterable and [condensable]condensable fractions are to be included (see definitions of PM-10 and PM-2.5 in Part 200 of this Title).

[³ measured as CO₂ equivalents.]

231-13.6 - Table 6 - Significant project thresholds and significant net emission increase thresholds for attainment and unclassified areas

Contaminant	Significant Project Threshold ^{1/} Significant Net Emission Increase Threshold
Carbon monoxide	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
Particulate matter: PM-10 emissions ²	15 tpy
Particulate matter: PM-2.5 emissions ² <u>Precursors:</u> <u>NO_x</u> <u>SO₂</u>	10 tpy <u>40 tpy</u> <u>40 tpy</u>
Ozone: as VOCs or NO _x	40 tpy
Lead (elemental)	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra through octa-chlorinated dibenzo-p-dioxin and dibenzofurans)	3.2 x 10 ⁻⁶ megagrams per year (3.5 x 10 ⁻⁶ tpy)

Municipal waste combustor metals (measured as particulate matter)	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 megagrams per year (40 tpy)
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	45 megagrams per year (50 tpy)
Greenhouse gases	Any increase and 75,000 tpy ^{3,4}
Any other regulated NSR contaminant	Any increase

¹ – project emission potential threshold.

² – both filterable and [condensable]condensable fractions are to be included (see definitions of PM-10 and PM-2.5 in Part 200 of this Title).

³ measured as CO₂ equivalents.

⁴ – values only represent the Significant Project Threshold as netting is not allowed for greenhouse gases.

231-13.7 - Table 7 - Federal class I variance maximum allowable increase concentrations

Contaminant	Maximum allowable increase (micrograms per cubic meter)
Particulate Matter:	
PM-10, annual arithmetic mean ¹	17
PM-10, 24-hr maximum ¹	30

PM-2.5, annual arithmetic mean ¹	4
PM-2.5, 24 hr maximum ¹	9
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

¹ – both filterable and [condensable] condensable fractions are to be included (see definitions of PM-10 and PM-2.5 in Part 200 of this Title).

Existing section 231-13.8 remain unchanged.

Existing section 231-13.9 is amended to read as follows:

231-13.9 Table 9 – Global warming potential values for calculating CO₂ equivalents.

Greenhouse Gas	Global Warming Potential
CO ₂	1
CH ₄	[21] <u>25</u>
N ₂ O	[310] <u>298</u>
SF ₆	[23,900] <u>22,800</u>
Hydrofluorocarbons (HFC)	[12 to 11,700 ¹] <u>12 to 14,800¹</u>
Perfluorocarbons (PFC)	[6,500 to 9,200 ¹] <u>6,288 to 17,700¹</u>

¹ see [74 FR 56395-56396, Table A-1,] Table A-1 to Subpart A of 40 CFR Part 98 for specific values of HFC and PFC (see Table 1, section 200.9 of this Title).

Express Terms

6 NYCRR Part 200, General Provisions

Existing sections 200.1 through 200.8 remain unchanged.

Existing section 200.9, Table 1 is amended to read as follows:

Regulation	Referenced material	Availability
231-2.1(b)(24)(iii)	Further Continuing Appropriations Act of 1985, 42 U.S.C. Section 5903d (December 19, 1985)	**
231-2.1(b)(31)(i)	Clean Air Act, Title IV, 42 U.S.C. Section 7651, as amended by Pub. L. 101-549 (November 15, 1990)	**
231-2.2(j)(1)	Clean Air Act, U.S.C. Section 7511a(f), as amended by Pub. L. 101-549 (November 15, 1990)	**
231-2.11(a)(2)(iii)	Clean Air Act, 42 U.S.C. Section 7511a(b), (c), and (g), as amended by Pub. L. 101-549 (November 15, 1990)	**
231-3.1	Clean Air Act 42 U.S.C. Part C and Part D of Subchapter I as amended by Public Law 101-549 (November 15, 1990)	**
[231-3.4(a)] <u>231-3.3(a)</u>	Clean Air Act 42 U.S.C. Section 7511a(f) as amended by Public Law 101-549 (November 15, 1990)	**
[231-3.4(c)(2)] <u>231-3.3(c)(2)</u>	Clean Air Act 42 U.S.C. Section 107 as amended by Public Law 101-549 (November 15, 1990)	**
[231-3.7(b)] <u>231-3.6(b)</u>	Clean Air Act 42 U.S.C. Section 165(c) as amended by Public Law 101-549 (November 15, 1990)	**
231-4.1(b)(3)(i)	40 CFR Part 60 (July 1, 2006)	*

	40 CFR Part 61 (July 1, 2006)	*
231-4.1(b)(4)(i)(c)	40 CFR Part 63 (July 1, 2006)	*
	40 CFR Part 51.165(a)(3)(ii)(G) (July 1, 2006)	*
231-4.1(b)(5)	Clean Air Act 42 U.S.C. Section 107 as amended by Public Law 101-549 (November 15, 1990)	**
231-4.1(b)(5)(i)	Clean Air Act 42 U.S.C. Section 107 as amended by Public Law 101-549 (November 15, 1990)	**
231-4.1(b)(9)	Clean Air Act 42 U.S.C. as amended by Public Law 101-549 (November 15, 1990)	**
	Clean Air Act 42 U.S.C. Section 7411 or 7412 as amended by Public Law 101-549 (November 15, 1990)	**
[231-4.1(b)(27)(ii)(a)] <u>231-4.1(b)(29)(ii)(a)</u>	Clean Air Act 42 U.S.C. Section 7407 as amended by Public Law 101-549 (November 15, 1990)	**
[231-4.1(b)(28)(iii)] <u>231-4.1(b)(30)(iii)</u>	Clean Air Act 42 U.S.C. Section 125 as amended by Public Law 101-549 (November 15, 1990)	**
[231-4.1(b)(28)(v)(a)] <u>231-4.1(b)(30)(v)(a)</u>	40 CFR Part 52.21 (July 1, 2006)	*
	40 CFR Part 51, Subpart I (July 1, 2006)	*
	40 CFR Part 51.166 (July 1, 2006)	*
[231-4.1(b)(28)(v)(b)] <u>231-4.1(b)(30)(v)(b)</u>	40 CFR Part 52.21 (July 1, 2006)	*
[231-4.1(b)(28)(vi)] <u>231-4.1(b)(30)(vi)</u>	40 CFR Part 52.21 (July 1, 2006)	*
	40 CFR Part 51, Subpart I (July 1, 2006)	*

	40 CFR Part 51.166 (July 1, 2006)	*
[231-4.1(b)(43)(i)] <u>231-4.1(b)(45)(i)</u>	Clean Air Act 42 U.S.C. as amended by Public Law 101-549 (November 15, 1990)	**
[231-4.1(b)(43)(ii)] <u>231-4.1(b)(45)(ii)</u>	Clean Air Act 42 U.S.C. Section 111 as amended by Public Law 101-549 (November 15, 1990)	**
[231-4.1(b)(43)(iii)] <u>231-4.1(b)(45)(iii)</u>	Clean Air Act 42 U.S.C. Title VI as amended by Public Law 101-549 (November 15, 1990)	**
[231-4.1(b)(43)(iv)] <u>231-4.1(b)(45)(iv)</u>	Clean Air Act 42 U.S.C. as amended by Public Law 101-549 (November 15, 1990)	**
	[Clean Air Act 42 U.S.C. Section 112 as amended by Public Law 101-549 (November 15, 1990)]	[**]
	[Clean Air Act 42 U.S.C. Section 112(b)(2) as amended by Public Law 101-549 (November 15, 1990)]	[**]
	[Clean Air Act 42 U.S.C. Section 112(b)(3) as amended by Public Law 101-549 (November 15, 1990)]	[**]
	[Clean Air Act 42 U.S.C. Section 108 as amended by Public Law 101-549 (November 15, 1990)]	[**]
<u>231-4.1(b)(45)(v)</u>	<u>Clean Air Act 42 U.S.C. Section 112 as amended by Public Law 101-549 (November 15, 1990)</u>	<u>**</u>
	<u>Clean Air Act 42 U.S.C. Section 112(b)(2) as amended by Public Law 101-549 (November 15, 1990)</u>	<u>**</u>
	<u>Clean Air Act 42 U.S.C. Section 112(b)(3) as amended by Public Law 101-549 (November 15, 1990)</u>	<u>**</u>

	<u>Clean Air Act 42 U.S.C. Section 108 as amended by Public Law 101-549 (November 15, 1990)</u>	<u>**</u>
[231-4.1(b)(44)] <u>231-4.1(b)(46)</u>	Clean Air Act 42 U.S.C. Title II as amended by Public Law 101-549 (November 15, 1990)	**
[231-4.1(b)(45)(ii)] <u>231-4.1(b)(47)(ii)</u>	Clean Air Act 42 U.S.C. Section 7407 as amended by Public Law 101-549 (November 15, 1990)	**
[231-4.1(b)(48)] <u>231-4.1(b)(51)</u>	Clean Air Act 42 U.S.C. as amended by Public Law 101-549 (November 15, 1990)	**
231-7.3(d)(3)	40 CFR Part 51.100(ii) (July 1, 2006)	*
231-7.4(c)(3)	40 CFR Part 51.166 (July 1, 2006)	*
231-7.4(e)(1)	40 CFR Part 51.100(ii) (July 1, 2006)	*
231-8.4(d)(3)	40 CFR Part 51.100(ii) (July 1, 2006)	*
231-8.5(c)(3)	40 CFR Part 51.166 (July 1, 2006)	*
231-8.5(e)(1)	40 CFR Part 51.100(ii) (July 1, 2006)	*
231-9.5(e)(4)(i)	40 CFR Part 60, Appendix B (July 1, 2006)	*
231-12.2(a)	40 CFR Part 51, Appendix W: Guideline on Air Quality Models of the EPA ([July 1, 2006] <u>July 1, 2018</u>)	*
231-12.2(b)	40 CFR Part 51, Appendix W: Guideline on Air Quality Models of the EPA ([July 1, 2006] <u>July 1, 2018</u>)	*
231-12.3(f)	40 CFR Part 58, Appendix B (July 1, 2006)	*
231-13.9	[74 FR 56395-56396, Table A-1, (October 30, 2009)] <u>40 CFR Part 98, Table A-1 to Subpart A (July 2018)</u>	[+++] <u>*</u>

Existing section 200.10 remains unchanged.

6 NYCRR Part 200, General Provisions

6 NYCRR Part 231, New Source Review for New and Modified Facilities

Regulatory Impact Statement Summary

The New York State Department of Environmental Conservation (Department) is revising 6 NYCRR Parts 231, New Source Review (NSR) for New and Modified Facilities, and 200, General Provisions (collectively, Part 231), in order to conform to federal NSR rule requirements and related court rulings. On October 12, 2011, the Department submitted a revised State Implementation Plan (SIP) to the United States Environmental Protection Agency (EPA) that included revisions to Part 231 based on 2008 and 2010 amendments to the federal NSR rule. On June 1, 2016, EPA indicated in its SIP approval letter that certain portions of Part 231 required revision before they could be included in New York's SIP¹.

Accordingly, the Department is revising Part 231 to conform to changes in the federal NSR rule, including changes to NSR applicability based on emissions of greenhouse gases (GHGs) and certain monitoring and impact assessment requirements for particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5).

The Department is also revising Part 231 to address EPA's comments relating to the listed Global Warming Potentials (GWPs), references to dispersion modeling guidance, and the use of oxides of nitrogen (NO_x) offsets for ozone and PM-2.5. Lastly, this proposed rule will make clarifying changes and fix minor

¹ Memo from John Filippelli, Director of the Clean Air and Sustainability Division in EPA's region 2 office, to Steven Flint, Acting Director of the Division of Air Resources, dated June 1, 2016 (June 1, 2016 SIP approval letter)

typographical errors. Once the rule is adopted, the revisions will be submitted to EPA for approval into New York's SIP.

STATUTORY AUTHORITY

The statutory authority for these regulations is found in the New York State Environmental Conservation Law (ECL) sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105.

LEGISLATIVE OBJECTIVES

Articles 1, 3 and 19 of the ECL set the overall legislative policy of reducing air pollution and providing clean air for the citizens of New York, as well as authorize the Department to adopt and enforce regulations to meet State and federal legislative objectives.

The federal Clean Air Act (Act or CAA) and its amendments are aimed at improving the quality of the Nation's air. The Act directs EPA to adopt public health- and welfare-based National Ambient Air Quality Standards (NAAQS) and requires states to develop SIPs which prescribe the measures needed to attain the NAAQS. The Act also mandates that SIPs contain a permitting program and a procedure to review new or modified air pollution sources.

On November 17, 2010, EPA approved New York's NSR program and delegated authority to the

Department to implement and enforce the program. The Department implements the NSR program under 6 NYCRR Part 231, which includes requirements for Prevention of Significant Deterioration (PSD) attainment area sources and Nonattainment New Source Review nonattainment area sources.

To meet the legislative objectives of the State and ensure that New York's NSR program remains consistent with the requirements of the Act, federal implementing regulations, and related court rulings, the Department is revising Part 231 as detailed below.

NEEDS AND BENEFITS

The Department is undertaking this rulemaking in response to EPA's June 1, 2016 SIP approval letter which indicated that portions of Part 231 required revision. Once these revisions are adopted through this rulemaking, Part 231 will be consistent with federal NSR rules - which will allow EPA to grant full approval of the State's Part 231 SIP approval request. The following paragraphs outline the various provisions of Part 231 that will be revised in this rulemaking.

Greenhouse Gases

On June 23, 2014, the U.S. Supreme Court issued a decision in *Utility Air Regulatory Group v. EPA*² which held that EPA may not require a stationary source to obtain an NSR or Title V permit solely on the basis of its GHG emissions (EPA refers to these types of sources as "GHG-only" sources). The Court also held that

² *Utility Air Regulatory Group v. EPA, et al.*, 134 S.Ct. 2427 (U.S. Sup.Ct. June 23, 2014).

EPA may continue to require limitations on a source's GHG emissions, based on the application of Best Available Control Technology (BACT), if the source is required to have a PSD permit anyway due to emissions of other pollutants (EPA refers to these types of sources as "anyway" sources).

In response to the *Utility Air Regulatory Group v. EPA* decision, EPA issued a Guidance Memorandum³ for the interim processing of federal PSD and Title V permits. EPA stated that it will no longer apply or enforce those PSD and Title V federal regulatory provisions, or EPA-approved SIP provisions invalidated by the Court pertaining to "GHG-only" sources. EPA stated that it would continue to require "anyway" sources to apply BACT to their GHG emissions and will continue to use the 75,000 tons per year (tpy) significance threshold as its *de minimis* level for BACT applicability. On October 15, 2014, the Department issued a discretionary enforcement letter⁴ in accordance with the *Utility Air Regulatory Group v. EPA* decision and EPA's July 24, 2014 Guidance Memorandum.

Consistent with the Guidance Memorandum, EPA finalized rulemakings on May 7, 2015⁵ and August 19, 2015⁶ to allow EPA and delegated authorities to rescind Title V and PSD permits for facilities and modifications that were major only for GHGs. EPA also removed the major source applicability threshold for PSD of 100,000 tpy of carbon dioxide equivalents in the August 19, 2015 rulemaking.

³ See, *Next Steps and Preliminary Views on the Application of Clean Air Act Permitting Programs to Greenhouse Gases Following the Supreme Court's Decision in Utility Air Regulatory Group v. EPA*, EPA Memorandum from Janet G. McCabe, Acting Assistant Administrator, Office of Air and Radiation, and Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance, to EPA Regional Administrators (July 24, 2014).

⁴ https://www.dec.ny.gov/docs/legal_protection_pdf/discretionenforce16.pdf, October 15, 2014, revised August 9, 2016
https://www.dec.ny.gov/docs/air_pdf/discretionenforce16.pdf

⁵ <https://www.govinfo.gov/content/pkg/FR-2015-05-07/pdf/2015-10628.pdf>

⁶ <https://www.govinfo.gov/content/pkg/FR-2015-08-19/pdf/2015-20501.pdf>

In accordance with the Supreme Court ruling and attendant changes to the federal rule, the Department is revising Part 231 to remove the applicability of NSR to a stationary source when the source's major source status is based solely on its GHG emissions. Similarly, the Department is revising the applicability of NSR to modifications at existing major facilities so that a modification is not considered a major modification under Part 231 based solely on its GHG emissions.

Inter-Pollutant Trading Ratios

On July 21, 2011, EPA issued its memorandum "Revised Policy to Address Reconsideration of inter-pollutant Trading Provisions for Fine Particles (PM-2.5)". That memorandum states that the preferred trading ratios set forth in EPA's May 16, 2008 final rule were no longer acceptable without a suitable demonstration that the ratios will not cause a violation in the specific nonattainment area. As a result, the Department is revising Part 231 to remove the EPA's preferred PM-2.5 inter-pollutant trading ratios for NO_x and sulfur dioxide in accordance with the EPA memorandum.

Significant Impact Levels and Significant Monitoring Concentration for PM-2.5

In another Court decision, *Sierra Club v. EPA*⁷, the U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded to EPA two portions of the PSD regulation regarding PM-2.5. The decision requires EPA to remove the provision that automatically exempts sources from CAA requirements if projected impacts are below Significant Impact Levels (SILs) for PM-2.5 or allows sources to avoid a one-year

⁷ *Sierra Club v EPA, et al.*, 705 F3d458 (US Ct App Dist DC, January 22, 2013).

preconstruction air quality continuous monitoring requirement using a Significant Monitoring Concentration (SMC) for PM-2.5. The Department is revising Part 231 to conform to draft guidance issued by EPA on May 20, 2014, in order to comply with the Court's remand. In particular, the Department is replacing the SMC for PM-2.5 with a value of zero. Also, the Department reviewed EPA's draft guidance regarding PM-2.5 SILs and determined that the values included in Part 231 are still valid and no revisions are necessary.

Global Warming Potentials

In accordance with EPA's Part 231 SIP approval letter, the Department is also updating references to GWPs under Table 9 of Subpart 231-13 to match EPA's current list (See Table A-1, Subpart A of 40 CFR Part 98).

DEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis

Also, in accordance with EPA's SIP approval letter, the Department is revising Part 231 to remove existing references to NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis since the document can be changed without EPA review and, therefore, automatically approved into the New York SIP.

Use of NO_x Offsets as Precursors to both Ozone and PM-2.5

To further address EPA's SIP approval letter, the Department is revising Part 231 to clarify that a facility must meet all applicable location requirements to use NO_x offsets in areas of New York State that are designated nonattainment for both ozone and PM-2.5 in section 231-5.5 or 231-6.6.

COSTS

Regulated industries are already required to obtain permits, keep records, submit reports, and comply with the provisions of Parts 201 and 231. Any increase in burden on regulated industries under this proposal is expected to be minor. The costs associated with incremental increases in activities already performed at facilities to comply with permitting regulations are also expected to be minimal.

The economic impacts will not apply to small businesses due to the nature of the regulation. The proposed regulation applies to major facilities and modifications to existing minor facilities that, in and of themselves, would exceed major source thresholds.

The impact to publicly owned facilities (State and local government owned), by the proposed changes to the NSR regulations, will be minimal. Most publicly owned facilities are minor in nature and would not be required to apply advanced emission control technologies. Modifications at most of the publicly owned facilities would likely be minor and not trigger the applicability to NSR.

LOCAL GOVERNMENT MANDATES

The adoption of the proposed amendments to Part 231 are not expected to result in any additional burdens on State or local governments beyond those currently incurred to comply with the requirements of the existing NSR process under Subpart 201-6 and Part 231. The proposed amendments do not constitute a mandate

on State and local governments. NSR requirements apply equally to every entity that owns or operates a source that proposes a project with emissions greater than the applicability thresholds of Part 231.

PAPERWORK

The proposed amendments to Part 231 are not expected to entail any significant additional paperwork for the Department, industry, or State and local governments beyond that which is already required to comply with the Department's existing permitting program under Subpart 201-6 and existing NSR regulations under Part 231.

DUPLICATION

This proposal is not intended to duplicate any other federal or State regulations or statutes. The proposed revisions to Part 231 will conform the regulation to the federal requirements and attendant court decisions.

ALTERNATIVES

No other reasonable alternatives exist regarding the issues identified by EPA. In order for Part 231 to be approved into New York's SIP, the changes outlined in EPA's SIP approval letter must be included in this rulemaking. Failure to comply with EPA's request may result in EPA imposing a Federal Implementation Plan with the necessary changes included.

FEDERAL STANDARDS

The proposed revisions to Part 231 are consistent with federal NSR standards.

COMPLIANCE SCHEDULE

The proposed revisions do not create new compliance requirements or the need for a compliance schedule. The regulation will take effect 30 days after final publication in the State Register. Permits for new facilities and permit modifications for existing facilities will continue to be addressed upon submittal of a permit application by the facility owner and reviewed by the Department in accordance with applicable law.

6 NYCRR Part 200, General Provisions

6 NYCRR Part 231, New Source Review for New and Modified Facilities

Revised Regulatory Impact Statement

The New York State Department of Environmental Conservation (Department) is revising 6 NYCRR Parts 231, New Source Review (NSR) for New and Modified Facilities, and 200, General Provisions (collectively, Part 231), in order to conform to federal NSR rule requirements and related court rulings. On October 12, 2011, the Department submitted a revised State Implementation Plan (SIP) to the United States Environmental Protection Agency (EPA) that included revisions to Part 231 based on 2008 and 2010 amendments to the federal NSR rule. On June 1, 2016, EPA indicated in its SIP approval letter that certain portions of Part 231 required revision before they could be included in New York's SIP¹.

In accordance with EPA's June 1, 2016 SIP approval letter and related court rulings, the Department is revising Part 231 to conform to changes in the federal NSR rule, including changes to NSR applicability based on emissions of greenhouse gases (GHGs) and certain monitoring and impact assessment requirements for particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5). On May 5, 2011, the Department petitioned² EPA Region 2 to designate all of New York State in attainment with the 2006 PM-2.5 National Ambient Air Quality Standards (NAAQS), and EPA correspondingly approved the petition in a final rulemaking³ on December 31, 2012. While the entire State is currently in attainment for PM-2.5, this proposed rulemaking will update the PM-2.5 nonattainment provisions in Part 231 where needed and

¹ Memo from John Filippelli, Director of the Clean Air and Sustainability Division in EPA's region 2 office, to Steven Flint, Acting Director of the Division of Air Resources, dated June 1, 2016 (June 1, 2016 SIP approval letter)

² <https://www.regulations.gov/document?D=EPA-R02-OAR-2012-0504-0003>

³ <https://www.govinfo.gov/content/pkg/FR-2012-12-31/pdf/2012-31214.pdf>

keep them in the rule in the event that a portion of New York State becomes classified as nonattainment for PM-2.5 in the future.

The Department is also revising Part 231 to address EPA's comments relating to the listed Global Warming Potentials (GWPs), references to dispersion modeling guidance, and the use of oxides of nitrogen (NO_x) offsets for ozone and PM-2.5. Lastly, this proposed rule will make clarifying changes and fix minor typographical errors. Once the rule is adopted, the revisions will be submitted to EPA for approval into New York's SIP.

STATUTORY AUTHORITY

The statutory authority for these regulations is found in the New York State Environmental Conservation Law (ECL) sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105.

Section 1-0101. This section outlines the policy declaration for the Department as it relates to the conservation, improvement and protection of New York State's environment and natural resources, including the control of "air pollution, in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well-being." Section 1-0101 further states that it is the policy of the State to coordinate its environmental plans, functions, powers, and programs with those of the federal government and other regions to manage air resources such that the State may fulfill its responsibility as trustee of the environment for present and future generations. This section also provides that it is the policy of the State to foster, promote, create, and maintain an environment where man and nature thrive in harmony by providing that

care is taken with air resources shared between states.

Section 3-0301. This section states that it is the responsibility of the Department to carry out the environmental policy of the State. In order to carry out that mandate, section 3-0301(1)(a) gives the Commissioner the authority to “[c]oordinate and develop policies, planning and programs related to the environment of the State and regions thereof...” Section 3-0301(1)(b) instructs the Commissioner to promote and coordinate management of, among other things, air resources “to assure their protection, enhancement, provision, allocation and balanced utilization consistent with the environmental policy of the State and take into account the cumulative impact upon all such resources in making any determination in connection with any license, order, permit, certification or other similar action or promulgating any rule or regulation, standard or criterion.” ECL section 3-0301(1)(i) charges the Commissioner with promoting and protecting the air resources of New York State, including providing for the prevention and abatement of air pollution. Section 3-0301(2)(a) gives the Commissioner the authority to adopt rules and regulations in order to implement the provisions of the ECL. Section 3-0301(2)(g) allows the Commissioner to enter and inspect air pollution sources and verify compliance. Section 3-0301(2)(m) grants the Commissioner the authority to “adopt such rules, regulations, and procedures as may be necessary, convenient, or desirable to effectuate the purposes of this chapter.”

Section 3-0303. This section requires that the Department formulate and, from time to time, revise a statewide environmental plan for the management and protection of the quality of the environment and the natural resources of the State. In formulating this plan and any revisions, the Department is required to conduct public hearings, cooperate with other departments, agencies and government officials, and any other interested parties, and obtain assistance and data as may be necessary from any department, division, board, bureau,

commission or other agency of the State or political subdivision or any public authority to enable the Department to carry out its responsibilities.

Section 19-0103. This section provides a declaration of the State's policy regarding air pollution. "It is declared to be the policy of the State of New York to maintain a reasonable degree of purity of the air resources of the State...and to that end to require the use of all available practical and reasonable methods to prevent and control air pollution." In carrying out this policy, the Department is required to balance public health and welfare, industrial development within the State, the propagation and protection of the State's flora and fauna, and the protection of personal property and other resources of the State. To that end, the Department is required to use all available practical and reasonable methods to prevent and control air pollution in the State.

Section 19-0105. This section defines the purpose of Article 19 of the ECL, "to safeguard resources of the State from pollution" consistent with the policy stated in section 19-0103 and in accordance with other provisions of Article 19.

Section 19-0107. This section provides definitions to be used in the application of the requirements of Article 19 of the ECL.

Section 19-0301. Section 19-0301(1)(a) states that the Department has the power to "[f]ormulate, adopt and promulgate, amend and repeal codes and rules and regulations for preventing, controlling or prohibiting air pollution in such areas of the State as shall or may be affected by air pollution..." Section 19-0301(1)(b) further states that the Department has the power to "[i]nclude in any such codes and rules and regulations provisions

establishing areas of the State and prescribing for such areas (1) the degree of air pollution or air contamination that may be permitted therein, (2) the extent to which air contaminants may be emitted to the air by any air contamination source...” Section 19-0301(2)(a) states that it is the duty and responsibility of the Department to prepare and develop a comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution that recognizes various requirements for different areas of the State.

Section 19-0302. This section states that permit applications, renewals, modifications, suspensions and revocations are governed by rules and regulations adopted by the Department, and that permits issued may not include performance, emission or control standards more stringent than any standard established by the Act or EPA unless such standards are authorized by rules or regulations.

Section 19-0303. This section states that a code, rule or regulation or any amendments or repeal thereof will not be adopted until after a public hearing is held and may not become effective until filed with the Secretary of State. The Department may also recognize differences between the State’s air quality areas in its rulemaking activities. In addition, this section outlines procedures for adopting any code, rule or regulation that contains a requirement that is more stringent than the Act or regulations issued pursuant to the Act by the EPA.

Section 19-0305. This section authorizes the Department to enforce codes, rules and regulations promulgated in accordance with Article 19 of the ECL. In addition, section 19-0305(2)(j) authorizes the Department to consider the approval or disapproval of permit applications for the installation of air contamination sources and air emission control equipment.

Sections 71-2103 and 71-2105 set forth the civil and criminal penalty provisions for violations of Article 19.

LEGISLATIVE OBJECTIVES

Articles 1, 3 and 19 of the ECL set the overall legislative policy of reducing air pollution and providing clean air for the citizens of New York, as well as authorize the Department to adopt and enforce regulations to meet State and federal legislative objectives.

In 1970, Congress created the Clean Air Act (Act or CAA) to provide for a more effective program to improve the quality of the Nation's air. The Act directs EPA to adopt public health- and welfare-based NAAQS and requires states to develop implementation plans known as SIPs which prescribe the measures needed to attain the NAAQS. The 1970 CAA also mandates that SIPs contain a permitting program and a procedure to review new or modified air pollution sources.

In 1977, the CAA was again amended to create the NSR program to help prevent the significant degradation of air quality and attain and maintain the NAAQS. The 1977 amendments established requirements for states to identify areas that do not meet (or attain) the NAAQS; these are designated as "nonattainment" areas. Areas that attain the NAAQS are designated as "attainment" areas, and areas where the State has insufficient information to determine attainment are designated "unclassifiable". The NSR program consists of two parallel preconstruction review programs: one for new or modified major sources located in "nonattainment" areas, referred to as the Nonattainment New Source Review (NNSR) program; and another for

new or modified major sources located in “attainment” areas, known as the Prevention of Significant Deterioration (PSD) program.

On November 17, 2010, EPA approved New York’s NSR program and delegated authority to the Department to implement and enforce the program. See, US EPA, *Approval and Promulgation of Implementation Plans; New York Prevention of Significant Deterioration of Air Quality and Nonattainment New Source Review*, 75 Fed. Reg. 70140 (November 17, 2010). Under the EPA-approved NSR program, the Department is the sole permitting authority for NSR purposes in New York State, with EPA retaining its general oversight authority. The Department implements the NSR program for new or modified air pollution sources under 6 NYCRR Part 231, which includes requirements for PSD attainment area sources and NNSR nonattainment area sources.

To meet the legislative objectives of the State and ensure that New York’s NSR program remains consistent with the requirements of the Act, federal implementing regulations, and related court rulings, the Department is revising Part 231 as detailed below.

NEEDS AND BENEFITS

The Department is undertaking this rulemaking in response to EPA’s June 1, 2016 SIP approval letter which indicated that portions of Part 231 required revision. Once these revisions are adopted through this rulemaking, Part 231 will be consistent with federal NSR rules - which will allow EPA to grant full approval of the State’s Part 231 SIP approval request. The following paragraphs outline the various provisions of Part 231 that will be revised in this rulemaking.

Greenhouse Gases

On June 23, 2014, the U.S. Supreme Court issued a decision in *Utility Air Regulatory Group v. EPA*⁴ which held that EPA may not require a stationary source to obtain an NSR or Title V permit solely on the basis of its GHG emissions (EPA refers to these types of sources as “Phase 2” or “GHG-only” sources). The Court also held that EPA may continue to require limitations on a source’s GHG emissions, based on the application of Best Available Control Technology (BACT), if the source is required to have a PSD permit anyway due to emissions of other pollutants (EPA refers to these types of sources as “Phase 1” or “anyway” sources). Even in these situations, however, the Court held that the anyway source must emit more than a *de minimis* amount of GHGs, which the courts had not defined.

In response to the *Utility Air Regulatory Group v. EPA* decision, EPA issued a Guidance Memorandum⁵ on July 24, 2014, to address the interim processing of federal PSD and Title V permits. EPA stated that it will no longer apply or enforce those PSD and Title V federal regulatory provisions, or EPA-approved SIP provisions invalidated by the Court. In other words, “GHG-only” sources are no longer required to comply with those permitting requirements. Additionally, EPA stated that it would continue to require “anyway” sources to apply BACT to their GHG emissions. Finally, EPA stated that, excepting clarification by the D.C. Circuit, it will continue to use the 75,000 tons per year (tpy) significance threshold as its *de minimis* level for BACT

⁴ *Utility Air Regulatory Group v. EPA, et al.*, 134 S.Ct. 2427 (U.S. Sup.Ct. June 23, 2014).

⁵ See, *Next Steps and Preliminary Views on the Application of Clean Air Act Permitting Programs to Greenhouse Gases Following the Supreme Court’s Decision in Utility Air Regulatory Group v. EPA*, EPA Memorandum from Janet G. McCabe, Acting Assistant Administrator, Office of Air and Radiation, and Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance, to EPA Regional Administrators (July 24, 2014).

applicability. On October 15, 2014, the Department issued a discretionary enforcement letter⁶ in accordance with the *Utility Air Regulatory Group v. EPA* decision and EPA's July 24, 2014 Guidance Memorandum.

Consistent with the Guidance Memorandum, EPA finalized rulemakings on May 7, 2015⁷ and August 19, 2015⁸ to allow EPA and delegated authorities to rescind Title V and PSD permits for facilities and modifications that were major only for GHGs. EPA also removed the major source applicability threshold for PSD of 100,000 tpy of carbon dioxide equivalents (CO₂e) in the August 19, 2015 rulemaking.

In accordance with the Supreme Court ruling and attendant changes to the federal rule, the Department is revising Part 231 to remove the applicability of NSR to a stationary source when the source's major source status is based solely on its GHG emissions. Similarly, the Department is revising the applicability of NSR to modifications at existing major facilities so that a modification is not considered a major modification under Part 231 based solely on its GHG emissions.

Currently, Table 5 of Subpart 231-13 lists the major source threshold for GHGs as 100/250 tpy by mass and 100,000 tpy of CO₂e. To conform to the federal rule and the Supreme Court ruling, the Department will remove the GHG entry from that table. Table 6 of Subpart 231-13 also includes an applicability threshold for GHG; however, this entry will remain because it is still applicable to modifications with emission increases greater than the other contaminant entries in that table. While the definition of major stationary source or major

⁶ https://www.dec.ny.gov/docs/legal_protection_pdf/discretionenforce16.pdf, October 15, 2014, revised August 9, 2016
https://www.dec.ny.gov/docs/air_pdf/discretionenforce16.pdf

⁷ <https://www.govinfo.gov/content/pkg/FR-2015-05-07/pdf/2015-10628.pdf>

⁸ <https://www.govinfo.gov/content/pkg/FR-2015-08-19/pdf/2015-20501.pdf>

source or major facility in Part 201 (Permits and Registrations) contains similar language to Table 5 of Subpart 231-13, the Department will revise Part 201 in a separate rulemaking.

Inter-Pollutant Trading Ratios

On July 21, 2011, EPA issued its memorandum “Revised Policy to Address Reconsideration of inter-pollutant Trading Provisions for Fine Particles (PM-2.5)”. That memorandum states that the preferred trading ratios set forth in EPA’s May 16, 2008 final rule were no longer acceptable without a suitable demonstration that the ratios will not cause a violation in the specific nonattainment area. As a result, the Department is revising Part 231 to remove the EPA’s preferred PM-2.5 inter-pollutant trading ratios for NO_x and sulfur dioxide (SO₂) in accordance with the EPA memorandum. In particular, the Department will remove from Part 231 the inter-pollutant trading ratios of 200 tons of NO_x for 1 ton of direct PM-2.5 and 40 tons of SO₂ for 1 ton of direct PM-2.5. Since New York is in attainment with the NAAQS for PM-2.5, the inter-pollutant trading ratios will not be replaced in this rulemaking.

Significant Impact Levels and Significant Monitoring Concentration for PM-2.5

In another Court decision, *Sierra Club v. EPA*⁹, the U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded to EPA two portions of the PSD regulation regarding PM-2.5. The D.C. Circuit ruling requires EPA to remove the provision that automatically exempts sources from CAA requirements if projected impacts are below Significant Impact Levels (SILs) for PM-2.5 or allows sources to avoid a one-year preconstruction air quality continuous monitoring requirement using a Significant Monitoring Concentration (SMC) for PM-2.5. Since both the SILs and SMC from the federal rules are incorporated into the Department’s

⁹ *Sierra Club v EPA, et al.*, 705 F3d458 (US Ct App Dist DC, January 22, 2013).

Subpart 231-12, the Department is revising Part 231 to conform to draft guidance, issued on May 20, 2014, by Stephen Page, Director of EPA's Office of Air Quality Planning and Standards, to the EPA Regional Air Directors, in order to comply with the Court's remand. According to the draft guidance, "permitting authorities may no longer rely on the SMCs for PM-2.5..." since the Court decision concluded that PM-2.5 SMCs were inconsistent with the CAA. Therefore, the Department is replacing the SMC for PM-2.5 with a value of zero. Also, the Department reviewed EPA's draft guidance regarding PM-2.5 SILs and determined that the values included in Part 231 are still valid and no revisions are necessary.

Global Warming Potentials

In accordance with EPA's Part 231 SIP approval letter, the Department is also updating references to the currently listed GWPs. Table 9 of Subpart 231-13 contains a list of GWP multiplication factors that was promulgated in 2009. This rulemaking will update the Department's GWP list to match EPA's current list (See Table A-1, Subpart A of 40 CFR Part 98, under EPA's Mandatory Greenhouse Gas Reporting rule).

DEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis

Also, in accordance with EPA's SIP approval letter, the Department is revising Part 231 to remove existing references to NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis. In its letter, EPA expressed concerns about the incorporation of the guidance document in various portions of Part 231 since guidance documents can be changed without EPA review and, therefore, automatically approved into the New York SIP.

Use of NO_x Offsets as Precursors to both Ozone and PM-2.5

To further address EPA's SIP approval letter, the Department is revising Part 231 to clarify that a facility must meet all applicable location requirements to use NO_x offsets in areas of New York State that are designated nonattainment for both ozone and PM-2.5. As currently written, subdivision 231-10.1(e) establishes a date after which NO_x offsets can be used for both programs. However, as EPA states in its SIP approval letter, the offsets must also comply with applicable location requirements for offsets of both ozone and PM-2.5 in section 231-5.5 or 231-6.6. Therefore, to address EPA's SIP approval letter, the Department is adding language to subdivision 231-10.1(e) to make clear that a facility must meet all applicable location requirements to use NO_x offsets in those areas of the State that are designated nonattainment for both ozone and PM-2.5.

COSTS

Regulated industries are already required to obtain permits, keep records, submit reports, and comply with the provisions of Parts 201 and 231. Any increase in burden on regulated industries under this proposal is expected to be minor. The costs associated with incremental increases in activities already performed at facilities to comply with permitting regulations are also expected to be minimal.

The economic impacts will not apply to small businesses due to the nature of the regulation. The proposed regulation applies to major facilities and modifications to existing minor facilities that, in and of themselves, would exceed major source thresholds.

The impact to publicly owned facilities (State and local government owned), by the proposed changes to the NSR regulations, will be minimal. Most publicly owned facilities are minor in nature and would not be

required to apply advanced emission control technologies. Modifications at most of the publicly owned facilities would likely be minor and not trigger the applicability to NSR.

LOCAL GOVERNMENT MANDATES

The adoption of the proposed amendments to Part 231 are not expected to result in any additional burdens on State or local governments beyond those currently incurred to comply with the requirements of the existing NSR process under Subpart 201-6 and Part 231. The proposed amendments do not constitute a mandate on State and local governments. NSR requirements apply equally to every entity that owns or operates a source that proposes a project with emissions greater than the applicability thresholds of Part 231.

PAPERWORK

The proposed amendments to Part 231 are not expected to entail any significant additional paperwork for the Department, industry, or State and local governments beyond that which is already required to comply with the Department's existing permitting program under Subpart 201-6 and existing NSR regulations under Part 231.

DUPLICATION

This proposal is not intended to duplicate any other federal or State regulations or statutes. The proposed revisions to Part 231 will conform the regulation to the federal requirements and attendant court decisions.

ALTERNATIVES

No other reasonable alternatives exist regarding the issues identified by EPA. In order for Part 231 to be approved into New York's SIP, the changes outlined in EPA's SIP approval letter must be included in this rulemaking. Failure to comply with EPA's request may result in EPA imposing a Federal Implementation Plan with the necessary changes included.

FEDERAL STANDARDS

The proposed revisions to Part 231 are consistent with federal NSR standards.

COMPLIANCE SCHEDULE

The proposed revisions do not create new compliance requirements or the need for a compliance schedule. The regulation will take effect 30 days after final publication in the State Register. Permits for new facilities and permit modifications for existing facilities will continue to be addressed upon submittal of a permit application by the facility owner and reviewed by the Department in accordance with applicable law.

6 NYCRR Part 200, General Provisions

6 NYCRR Part 231, New Source Review for New and Modified Facilities

Job Impact Statement

NATURE OF IMPACT:

The New York State Department of Environmental Conservation (Department) is revising 6 NYCRR Parts 200 and 231. The proposed rulemaking revisions will apply statewide. The amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State.

The Department is undertaking this rulemaking in order to conform to federal New Source Review (NSR) rule requirements and related court rulings. On October 12, 2011, the Department submitted a revised State Implementation Plan (SIP) to the United States Environmental Protection Agency (EPA) that included revisions to Part 231 based on 2008 and 2010 amendments to the federal NSR rule. On June 1, 2016, EPA indicated in its SIP approval letter that certain portions of Part 231 required revision before they could be included in New York's SIP¹.

The revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State, including the major NSR requirements related to Lowest Achievable Emission Rate, Best Available Control Technology, modeling requirements, and emission offsets.

¹ Memo from John Filippelli, Director of the Clean Air and Sustainability Division in EPA's region 2 office, to Steven Flint, Acting Director of the Division of Air Resources, dated June 1, 2016 (June 1, 2016 SIP approval letter)

As a result of this rulemaking, emissions of Greenhouse Gases (GHGs) alone will not trigger NSR permitting requirements. GHGs will only be subject to NSR if the new or modified facility is subject to the Prevention of Significant Deterioration provisions and the GHGs emissions increase is greater than the significant project threshold found in Table 6 of Subpart 231-13. The list of Global Warming Potentials in Table 9 of Subpart 231-13 will also be updated to match EPA's current list in their Mandatory Greenhouse Gas Reporting rule, 40 CFR Part 98 Table A-1. The specified precursors for particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5) will be removed and replaced with generic references to applicable precursors and the Significant Monitoring Concentration for PM-2.5 will be replaced with a value of zero. Many of the significant requirements are not changing: new or modified major facilities will still have to undertake applicability reviews and in appropriate cases submit permit applications and undertake control technology reviews. These revisions will also correct existing typographical errors identified after the previous Part 231 rulemaking was completed and clarify specific sections of existing Part 231. The Department does not anticipate that any of the proposed rule revisions would adversely affect jobs or employment opportunities in the State.

CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED:

Due to the nature of the proposed amendments to Part 231 as discussed above, no measurable negative effect on the number of jobs or employment opportunities in any specific job category is anticipated.

REGIONS OF ADVERSE IMPACT:

This rulemaking applies statewide and there are no regions of the State where the proposed revisions would have a disproportionate adverse impact on jobs or employment opportunities. The existing NSR requirements are not being substantially changed from those that currently exist.

MINIMIZING ADVERSE IMPACT:

The proposed rulemaking revisions as described above are not expected to create adverse impacts on existing jobs or promote the development of any new employment opportunities. The proposed revisions will not alter the way the current regulations are implemented.

6 NYCRR Part 200, General Provisions

6 NYCRR Part 231, New Source Review for New and Modified Facilities

Revised Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED:

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 200 and 231. The proposed rulemaking will apply statewide and all rural areas of New York State will be affected. The Department is undertaking this rulemaking in order to conform to federal New Source Review (NSR) rule requirements and related court rulings. On October 12, 2011, the Department submitted a revised State Implementation Plan (SIP) to the United States Environmental Protection Agency (EPA) that included revisions to Part 231 based on 2008 and 2010 amendments to the federal NSR rule. On June 1, 2016, EPA indicated in its SIP approval letter that certain portions of Part 231 required revision before they could be included in New York's SIP¹.

The revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State. The revisions leave intact the major NSR requirements for application of Lowest Achievable Emission Rate or Best Available Control Technology as appropriate, modeling, and emission offsets. As a result of this rulemaking, emissions of Greenhouse Gases (GHGs) alone will not trigger NSR permitting requirements. GHGs will only be subject to NSR if the new or modified facility is subject to the Prevention of Significant Deterioration provisions and GHGs emissions are greater than the significant project threshold found in Table 6 of Subpart 231-13. The list

¹ Memo from John Filippelli, Director of the Clean Air and Sustainability Division in EPA's region 2 office, to Steven Flint, Acting Director of the Division of Air Resources, dated June 1, 2016 (June 1, 2016 SIP approval letter)

of Global Warming Potentials in Table 9 of Subpart 231-13 will also be updated to match EPA's current list in their Mandatory Greenhouse Gas Reporting rule, 40 CFR 98 Table A-1. The specified precursors for particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5) will be removed and replaced with generic references to applicable precursors and the Significant Monitoring Concentration for PM-2.5 will be replaced with a value of zero. Many of the significant requirements are not changing: new or modified major facilities will still have to undertake applicability reviews and in appropriate cases submit permit applications and undertake control technology reviews. These revisions will also correct existing typographical errors identified after the previous Part 231 rulemaking was completed and clarify specific sections of existing Part 231. The Department does not anticipate that any of the proposed rule revisions would adversely affect rural areas in the State.

COMPLIANCE REQUIREMENTS:

There are no specific requirements in this rulemaking which apply exclusively to rural areas of the State. As described above, the revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State. As such, the professional services that will be needed by any facility located in a rural area are not anticipated to significantly change from the type of services which are currently required to comply with NSR requirements.

COSTS:

Regulated industries are already required to obtain permits, keep records, submit reports and comply with the provisions of Parts 201 and 231. Any increase in burden on regulated industries under this proposal is expected to be minor. The costs associated with incremental increases in activities already performed at

facilities to comply with permitting regulations are also expected to be minimal. No specific additional costs will be incurred by rural areas of the State.

MINIMIZING ADVERSE IMPACT:

The proposed rulemaking revisions as described above are not expected to create significant adverse impacts on rural areas. The proposed revisions will not alter the way the current regulations are implemented.

RURAL AREA PARTICIPATION:

The Department held a stakeholder webinar on March 27, 2019 to present the proposed changes to the public and regulated community. The Department also provided residents of rural areas of the State the opportunity to submit comments during the public comment period.

6 NYCRR Part 200, General Provisions

6 NYCRR Part 231, New Source Review for New and Modified Facilities

Revised Regulatory Flexibility Analysis for Small Business and Local Governments

EFFECTS ON SMALL BUSINESS AND LOCAL GOVERNMENTS:

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 200 and 231. The proposed rulemaking will apply statewide. The Department is undertaking this rulemaking in order to conform to federal New Source Review (NSR) rule requirements and related court rulings. On October 12, 2011, the Department submitted a revised State Implementation Plan (SIP) to the United States Environmental Protection Agency (EPA) that included revisions to Part 231 based on 2008 and 2010 amendments to the federal NSR rule. On June 1, 2016, EPA indicated in its SIP approval letter that certain portions of Part 231 required revision before they could be included in New York's SIP¹.

The revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State. The revisions leave intact the major NSR requirements for application of Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) as appropriate, modeling, and emission offsets. As a result of this rulemaking, emissions of Greenhouse Gases (GHGs) alone will not trigger NSR permitting requirements. GHGs will only be subject to NSR if the new or modified facility is subject to the Prevention of Significant Deterioration provisions and GHGs emissions are greater than the significant project threshold in Table 6 of Subpart 231-13. The list of Global Warming Potentials in Table 9 of Subpart 231-13 will also be updated to match EPA's

¹ Memo from John Filippelli, Director of the Clean Air and Sustainability Division in EPA's region 2 office, to Steven Flint, Acting Director of the Division of Air Resources, dated June 1, 2016 (June 1, 2016 SIP approval letter)

current list in their Mandatory Greenhouse Gas Reporting rule, 40 CFR Part 98 Table A-1. The specified precursors for particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5) will be removed and replaced with generic references to applicable precursors and the Significant Monitoring Concentration for PM-2.5 will be replaced with a value of zero. Many of the significant requirements are not changing: new or modified major facilities will still have to undertake applicability reviews and in appropriate cases submit permit applications and undertake control technology reviews. These revisions will also correct existing typographical errors identified after the previous Part 231 rulemaking was completed and clarify specific sections of existing Part 231. The Department does not anticipate that any of the proposed rule revisions would adversely affect small businesses or local governments in the State.

COMPLIANCE REQUIREMENTS:

There are no specific requirements in this rulemaking which apply exclusively to small businesses or local governments. As described above, the revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State. Accordingly, these requirements are not anticipated to place any undue burden of compliance on small businesses and local governments. This proposed rulemaking is not a mandate on local governments. It applies to any entity that owns or operates a source that proposes a project with emissions greater than the applicability thresholds of this regulation.

PROFESSIONAL SERVICES:

The professional services for any small business or local government that is subject to Part 231 are not anticipated to significantly change from the type of services which are currently required to comply with NSR

requirements. The need for consulting engineers to address NSR applicability and permitting requirements for any new major facility or major modification proposed by a small business or local government will continue to exist.

COMPLIANCE COSTS:

Regulated industries are already required to obtain permits, keep records, submit reports and comply with the provisions of Parts 201 and 231. Any increase in burden on regulated industries under this proposal is expected to be minor. The costs associated with incremental increases in activities already performed at facilities to comply with permitting regulations are also expected to be minimal.

The economic impacts will not apply to small businesses due to the nature of the regulation. The proposed regulation applies to major facilities and modifications to existing minor facilities that, in and of themselves, would exceed major source thresholds.

The impact to publicly owned facilities (State and local government owned), by the proposed changes to the NSR regulations, will be minimal. Most publicly owned facilities are minor in nature and would not be required to apply advanced emission control technologies. Modifications at most of the publicly owned facilities would likely be minor and not trigger the applicability to NSR.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed revisions do not substantially alter the requirements for subject facilities as compared to those requirements that currently exist. The revisions leave intact the major NSR requirements for application of LAER or BACT as appropriate, modeling, and emission offsets. Therefore, the Department believes there are no additional economic or technological feasibility issues to be addressed by any small business or local government that may be subject to the proposed rulemaking.

MINIMIZING ADVERSE IMPACT:

The proposed rulemaking revisions as described above are not expected to create significant adverse impacts on any small business or local government. The proposed revisions will not alter the way the current regulations are implemented.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department held a stakeholder webinar on March 27, 2019 to present the proposed changes to the public and regulated community. The Department also provided small businesses and local governments the opportunity to submit comments during the public comment period.

Assessment of Public Comments

6 NYCRR Part 200, General Provisions,

6 NYCRR Part 231, New Source Review for New and Modified Facilities

Comment 1: The newly added section 231-4.1(b)(4)(i)(e) provides clarifications related to the determination of baseline actual emissions for multiple emission sources that had shutdown at a facility, but which are not part of a proposed modification. While, it is not clearly stated, it's the understanding of the Environmental Protection Agency (EPA) that in this newly added section, the New York State Department of Environmental Conservation (Department) meant to refer to those emission sources which shut down (i.e., decreased their emissions) during the contemporaneous period of a certain proposed modification. This new clause should be revised to add language to clarify that it also applies to (1) multiple emissions sources that decrease their emissions by means other than shutdowns, and (2) multiple emission sources that increase their emissions during the contemporaneous period of a certain proposed modification. (Commenter 1)

Response to Comment 1: The proposed changes to the definition of baseline actual emissions were intended to clarify that as long as the facility is not proposing a modification, baseline period determinations are completely independent. Since it is possible that multiple emission sources could take limits on their emissions simultaneously, the definition has been revised to not be exclusively for shutdown sources. The magnitude of an emission increase is determined when the increase occurs. Therefore, no revisions to the definition of baseline actual emissions is required for emission increases.

Comment 2: The newly added section 231-4.1(b)(11) needs to be clearer as to how carbon dioxide (CO₂) equivalents should be calculated. (Commenter 1)

Response to Comment 2: The proposed definition of CO₂ equivalent (CO₂e) was moved from Part 200 where it was added in 2011. Since there have been no issues implementing the definition, no changes will be made now.

Comment 3: We recommend adding a definition for greenhouse gases (GHGs) under Subpart 231-4.

(Commenter 1)

Response to Comment 3: The term Greenhouse Gases is not specific to Part 231 and is defined at section 200.1(cu).

Comment 4: The newly added section at 231-4.1(b)(50)(i), which establishes the applicability criteria when GHGs emissions at a new major facility would be subject to regulation, should be revised by removing the reference to the calculation of emission increases in accordance with the project emission potential provisions of paragraph 41 since that is only applicable to existing sources. (Commenter 1)

Response to Comment 4: Existing minor facilities are covered by subparagraph (i) of the subject to regulation definition and are allowed to use project emission potential for calculating emission increases. The definition has been revised to state that that portion of the definition pertains to existing minor facilities.

Comment 5: Based on EPA's review, the language in section 231-8.7(a) could be interpreted to mean that a proposed modification must equal or exceed the significant net emission increase first and then Best Available Control Technology (BACT) applies to each emission source within that proposed modification. However, a proposed modification that would result in a significant net emissions increase, could include both, emission sources that increase their emissions, and emission sources that decrease their emissions. (Commenter 1)

Response to Comment 5: Only sources that increase emissions are part of the modification. A source that decreases emissions can be used in a netting analysis but would not be considered part of the modification and not subject to the requirement to install BACT.

Comment 6: Section 231-8.7(a) provides that in case of GHGs, BACT applies if the proposed modification experiences a significant emission increase, but it doesn't require a significant net emission increase. The Department should clarify whether its intention is to apply BACT to GHGs without a significant net emission increase in GHGs. (Commenter 1)

Response to Comment 6: The Department's intention is to apply BACT for GHGs for projects that increase GHG emissions by more than the significant project threshold of 75,000 tons and also result in another contaminant being subject to the Prevention of Significant Deterioration (PSD) regulation. Since netting requires a ton per year limit and increases of GHGs less than 75,000 tons per year do not meet the definition of subject to regulation, it is the Department's determination that GHGs are not subject to netting. Otherwise, a permit condition would be required limiting a contaminant that does not meet the definition of regulated NSR contaminant. Also, revised section 231-8.2 states our intention to not allow netting for GHGs.

Comment 7: EPA recommends revising Part 231 to be clear that particulate matter less than 2.5 micrometers (PM-2.5) nonattainment provisions would only apply when New York State or a portion of the State will become nonattainment for PM-2.5. (Commenter 1)

Response to Comment 7: The applicability of the Department's nonattainment NSR regulation is based on the definition of nonattainment area at section 200.1(av). Any changes to nonattainment designations will be made to that definition.

Comment 8: The revised section 231-9.5 (g)(v) 'Reporting and notification requirements' provision of the proposed Part 231 deleted this clause: "or the number determined by method included in the permit, as provided by." Given that the deletion appears to be inconsistent with the requirements at 40 CFR §52.21(aa)(14)(i)(f), please provide the rationale for the deletion. (Commenter 1)

Response to Comment 8: The requirements have not changed. The provision to use a method included in the permit is found in section 231-9.5(e)(7) which is referenced in section 231-9.5(g)(v). It was determined that repeating that requirement was unnecessary.

Comment 9: EPA recommends including a definition for the term "RACT [Reasonably Available Control Technology] variance" which is used in the newly added provision at section 231-10.3(c) or indicate other New York air regulations that define the term RACT variance. (Commenter 1)

Response to Comment 9: The term "RACT variance" has been replaced with a reference to a source specific RACT determination in 231-10.3(b)(2)(i)(c).

Comment 10: Two scenarios or provisions where there is a reasonable possibility that a project that is not part of a major modification (where an insignificant modification occurs), which were included in the State Implementation Plan (SIP) approved Part 231 version, were removed from the proposed revised Part 231 version. Thus, please provide a justification for removing the two provisions, and a demonstration that the revised section 231-11.2 of the proposed Part 231 is at least as stringent as the federal PSD regulations. (Commenter 1)

Response to Comment 10: The applicability of the reasonable possibility requirements has not changed. The prior version of section 231-11.2(b) stated that it was applicable to a modification that did not exclude emissions and was less than 50 percent of the threshold or to a modification that did exclude emissions and, when those emissions were added to the project's emissions, was less than 50 percent of the threshold. In either case, it is only applicable if emissions are less than 50 percent of the threshold. Therefore, there is no need to distinguish the two scenarios. Thus, only one scenario was proposed that covered both projects that exclude emissions and those that do not. The language in section 231-11.2(c) was revised in a similar way.

Comment 11: EPA would like to bring to the Department's attention that the PM-2.5 annual average Significant Impact Level (SIL) value of $0.3 \mu\text{g}/\text{m}^3$ has been modified by EPA for attainment areas. However, in 2013, due to a lawsuit from the Sierra Club, the D.C. Circuit vacated and remanded in part the PM-2.5 SIL. EPA thereafter did more evaluation and analyses and recommended a value of $0.2 \mu\text{g}/\text{m}^3$ for the annual SIL. An April 17, 2018 guidance document from EPA notes that States may use other values up to $0.3 \mu\text{g}/\text{m}^3$.

(Commenter 1)

Response to Comment 11: The Department is aware of the April 17, 2018 guidance and has determined that the PM-2.5 SIL value of $0.3 \mu\text{g}/\text{m}^3$ is still valid for New York State.

Comment 12: The proposed Part 231 does not include a SIL for ozone. However, since in practice New York State does not have any ozone attainment areas (due to the ozone transport region) it may not be relevant at this time. (Commenter 1)

Response to Comment 12: The Department agrees that a SIL for ozone is not relevant until such time that ozone is treated as an attainment contaminant in New York State.

Comment 13: Regarding the added text in section 231-12.7 “Significant impact levels for facilities located in attainment areas” of the proposed Part 231 that says, “the lesser of” and “or the difference between the NAAQS [National Ambient Air Quality Standard] and background concentration for that regulated NSR [New Source Review] contaminant” are incorrect and should be removed. The text was correct without the additions. (Commenter 1)

Response to Comment 13: It is the Department’s determination that ambient concentrations should remain below the NAAQS whenever possible. Therefore, since a project’s maximum impact could be below an applicable SIL but still cause an ambient concentration greater than the NAAQS when added to the background concentration, the proposed revision was added to guard against this possibility.

Comment 14: Table 5 of section 231-13.5 should include a major facility threshold for GHGs of 75,000 tpy of CO₂e, so that it will be consistent with section 231-4 (b)(50) ‘Subject to regulation’ that states that a new major facility with a potential to emit of 75,000 tpy of CO₂e, which is major for a regulated NSR contaminant other than GHGs, is major for GHGs. (Commenter 1)

Response to Comment 14: Since GHGs alone are no longer considered in determining if a facility or project is subject to PSD, there is no representative major facility threshold for GHGs. Once one regulated NSR contaminant exceeds an applicable threshold in section 231-13.5, emissions for all other regulated NSR contaminants are compared to the values in section 231-13.6 which includes the 75,000 ton threshold for GHGs.

Comment 15: Based on our review, Part 231 does not establish that 40 tpy of sulfur dioxide (SO₂) or oxides of nitrogen (NO_x) represent significant emissions or significant net increases for PM-2.5 emissions. Thus Part 231 should be revised to address this issue. (Commenter 1)

Response to Comment 15: Section 231-13.6 Table 6 has been revised to list SO₂ and NO_x as precursors to PM-2.5 with 40 tpy thresholds.

Comment 16: While the term potential to emit is used in several places within Part 231, there is no definition of potential to emit included in Part 231. We recommend either including a potential to emit definition in Subpart 231-4 or referring to other New York State regulations which include such definition. (Commenter 1)

Response to Comment 16: The term potential to emit is not specific to Part 231 and is defined at section 200.1(b).

Comment 17: While Part 231 refers to “project threshold” and “significant project threshold” in several places, Part 231 does not define these terms. We recommend revising Subpart 231-4 by including definitions for “project threshold” and “significant project threshold”. (Commenter 1)

Response to Comment 17: Tables in Subpart 231-13 are included for the various significant project thresholds and are referenced throughout Part 231. The Department has determined that no additional definitions are necessary.

Comment 18: Part 231 refers to the following terms: emission source, existing emission source, and new emission source in various provisions; however, it appears that these terms were not defined in Part 231.

(Commenter 1)

Response to Comment 18: The term emission source is not specific to Part 231 and is defined at section 200.1(f). The terms existing and new do not have any special meaning for Part 231. If a source is at the facility prior to a modification, it is existing; if it is added in a modification, it is new. Similarly, if a facility is already permitted, it is existing; if it has never been permitted, it is new.

Comment 19: Based on our review, the criteria at 40 CFR § 52.21(b)(23)(iii) related to Class I areas was omitted from, both, the SIP approved Part 231 version and proposed Part 231 revisions. The Department should add this provision to Part 231 or provide justification why this provision should not be included in Part 231.

(Commenter 1)

Response to Comment 19: There are no Class I areas located within 10 kilometers of New York State. Therefore, that provision is not applicable.

Commenters

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Environmental Protection Agency