

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

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Historical Note

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

§ 231-8.1 Applicability.

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

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

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

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

Historical Note

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

§ 231-8.2 Netting.

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

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

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

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

Historical Note

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§ 231-8.3 Pre-application analysis.

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

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§ 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;

(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(c) of this Subpart.

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

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

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§ 231-8.5 General requirements.

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

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

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

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

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

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

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

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

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

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

(i) concentrations attributable to the increase in emissions from facilities which have converted from the use of petroleum products, natural gas, or both by reason of an order in

effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding Federal legislation) over the emissions from such facilities before the effective date of such an order;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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§ 231-8.6 Permit content and terms of issuance.

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

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

Historical Note

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

§ 231-8.7 Best available control technology (BACT).

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

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

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

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

Historical Note

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