

over a discrete period of time, measured in units of mass (usually tons). The generating source would be responsible for verifiably documenting the amount of DER's it had produced, and DER's would have to be measured through a valid quantification protocol.

To generate DER's, a source would first determine its baseline, which reflects what the source would have emitted during the generation period absent its DER generation strategy. In general, this would be determined by referring to either the emissions level that would be allowed by current law, or the facility's emissions that would have occurred based on recent actual emissions rates. After the baseline was ascertained, measurements would be taken and calculations would be made to determine the amount of DER's that resulted from the specific action taken to reduce emissions. This process must follow a valid quantification protocol developed in one of several ways as indicated below. The protocol would take into account an individual source's characteristics (e.g., rates of VOC and NO<sub>x</sub> production, continuous or batch processes, etc.) and monitoring capabilities. A source could choose to follow a protocol that had been found to be previously acceptable, or it could forge a new protocol following criteria that EPA will issue in protocol guidance.

The generator would quantify its reduction by factoring relevant source-specific information into the quantification protocol to determine the amount of DER's generated. The generator must document DER's in a format that would allow enforcement authorities to verify them, to determine the user's compliance and, where necessary, to enforce in cases of invalid DER's. Once generated, DER's could be used at any later time for compliance with an eligible VOC or NO<sub>x</sub> emissions reduction requirement. Like other emissions allowances recognized under the Act, they would not be the holder's property, but instead would be a limited authorization to emit the designated amount of emissions.

After a DER had been generated, the source generating the DER's would submit a Notice and Certification of Generation to the State where the generation had taken place. This notice must contain a certification, made under penalty of law, as to the accuracy of certain information, including:

- (a) The name and location of the source that reduced emissions;
- (b) The discrete time period over which the emissions reductions occurred;

- (c) The amount of emissions reductions that occurred during the ozone season and the amount of reductions that occurred during other parts of the year;

- (d) The unique identification number for each ton of DER's created;

- (e) The emissions quantification protocols that were used to calculate and document the emissions reductions;

- (f) Information on existing requirements, if any, to which the generator source is subject; and

- (g) A signature of an authorized individual who is certifying under penalty of law that the above information is accurate and complete.

Certain actions described in the rule would not create DER's, such as:

- (a) Facility shutdowns;
- (b) Temporary or permanent production curtailments;
- (c) Emissions reductions resulting from modifying or discontinuing any activity that is otherwise illegal;
- (d) Emissions reductions that occur as the result of any applicable Federal or State requirement including compliance with MACT, BACT, LAER, and NSPS requirements, or emission reductions relied on by the State for meeting the ozone NAAQS; and
- (e) Actions that occurred prior to the start of the relevant 1995 ozone season.

## 2. Using DER's for Compliance

Once DER's were generated, they could be transferred to any party for use to comply with eligible requirements. Anyone could hold, purchase and sell DER's. Intermediaries could act as DER brokers to further facilitate the market process. Any source could use DER's to cover eligible compliance obligations. Common uses for DER's might be: (a) To comply with specified NO<sub>x</sub> and VOC emissions limits; (b) to cover emissions increases that currently are commonly legitimized by variances; or (c) as offsets under an EPA-approved major new source review regulation.

A source that desired to use DER's for compliance purposes over a specified period must determine the amount of DER's it would need. Thus, the source must estimate its DER requirement through a valid emission quantification protocol, similar to the process described for DER generation, except that the user source must project its underlying activity rate for the use period. The source must retire 10 percent of the DER's it uses; thus it must purchase a fraction more than it needed for compliance purposes in order to help ensure that the flexibility and economic benefits of the open market trading program would also produce a

public health protection gain in each future year.

In order for a user source to use DER's for compliance purposes, that source must own such DER's before the applicable date for compliance. The user must notify its State at least 30 days prior to its first actual use of DER's of its intentions to use such DER's. This notice would not obligate the notifying source to use the specified DER's. The notice would give the State the opportunity, if it wished, to begin inspecting the validity of the DER's before they are used.

The source must "true-up" its original DER need estimate by using the appropriate protocol to determine its DER compliance requirement during or after the period in which DER's would be applied. When a source had actually used specific DER's, it must file a Notice and Certification of Use along with its regular compliance reports to the State no less often than once every year. This notice would become part of the documentation that the State would rely upon to verify that the user had met its compliance obligations.

The model OMTR would prohibit certain DER uses. Such prohibitions include: (a) To avoid penalties or enforcement actions by obtaining DER's after the fact of noncompliance; (b) for netting or other means to avoid NSR/PSD requirements; (c) to meet Act section 111 and 129 NSPS, LAER, BACT or MACT requirements; and (d) to meet requirements for motor vehicle emissions standards, reformulated gasoline, Reid vapor pressure standards, clean fueled fleets, employer trip reduction programs, or vehicle inspection and maintenance programs.

## 3. Time and Place Use Limitations

By definition, DER's must be used at a time after their generation. This is known as intertemporal trading. Intertemporal trading could occur, within the same ozone season, from one ozone season to a later one, or from the ozone season to a non-ozone season. However, DER's generated during a time outside of the ozone season could not be used to comply with any emission reduction obligations during the ozone season.

User sources must also comply with certain geographic restrictions to ensure that the new geographic distribution of emissions created by trading would not interfere with a State's obligation to maintain air quality or reach attainment of the ozone smog standard in a timely manner. Due to differences in the role of natural emissions and in how VOC and NO<sub>x</sub> react to form ozone, the