

proposed model rule places different geographic limitations on VOC and NO<sub>x</sub>.

Under the model rule as proposed herein, VOC reductions generated outside any ozone nonattainment area may not be used for compliance inside any nonattainment area. NO<sub>x</sub> emissions generated outside a SIP's modeling domain (as defined by urban airshed modeling) may not be used for compliance inside the modeling domain. These limitations could be relaxed in some but not all State-specific OMTR applications due to an area's unique meteorology. If a State submitted appropriate justification, EPA would consider and expeditiously review any area-specific variations on the model rule's geographic limitations.

Consistent with these geographical limitations, interstate trading and use of DER's would be allowed and encouraged, so long as the relevant States had entered into agreements that allowed such transactions. Participating States must provide for an interstate DER tracking system so the States could protect against DER's being used more than once.

#### 4. Reporting, Recordkeeping, and Public Availability

Sources must keep adequate and accurate records so as to ensure that the DER's are real, quantified, surplus and verifiable. In addition to the records they must create themselves, users would be expected to have pertinent records of DER generation from the generator to prove they held valid DER's. The user source then must hold such records for a minimum of 5 years after the DER's are used.

The notices that are submitted to the State must be made available to the public by the State under the appropriate State law regarding public access to such documentation. This requirement applies equally to both title V and non-title V sources. This will allow the public to monitor specific transactions and contribute to public confidence in the open market system.

#### 5. Market Participants

Both sources that have and do not have title V operating permits could, and are encouraged to, participate in the open market trading program, especially as DER generators. One of the benefits of the open market program is that small stationary sources and mobile sources that are not subject to title V requirements could contribute to reducing overall pollution levels in an area. The Notice of Intent to Use and the Notice and Certification of Use must be filed with any applicable operating permit.

#### 6. Protocol Development and Approval

One key to integrity in the operation of an open market system is accurate quantification of the amount of surplus DER's created, and accurate quantification of the amount of DER's needed to meet compliance obligations. For the program to be adequately enforceable by State and Federal authorities, these measurements or calculations require emissions quantification protocols that could be recognized by the State and the EPA for use in the open market program. All DER generation and use activities must be documented through the use of DER quantification protocols that either have been approved by EPA, or that correspond to EPA guidance on acceptable protocols. Typically, a protocol would specify the measurement methods, monitoring methods, calculation procedures, and documentation requirements for estimating or measuring emissions for both the source's discrete reduction strategy and its baseline. All protocols must include methods that are credible and replicable.

EPA-approved protocols could come into existence in two ways. First, EPA intends to issue EPA-approved protocols for a number of reduction strategies. Second, EPA would work together with States and industries to jointly review and approve quantification protocols for a variety of source types. As a separate action, EPA also plans to issue guidance on the development of an acceptable protocol. This guidance would lay out specific criteria that must be met by a protocol developed by a generator or user which had not already been approved by EPA. The EPA intends to issue this guidance by the time the model rule is finalized.

#### 7. Enforcement

The user source would be responsible for complying with all applicable requirements, and therefore would bear the burden of demonstrating that the DER's it relied on were real, surplus, in sufficient quantity to meet its compliance obligation, came from an appropriate place and season, and met all other applicable requirements of the rule. The user would be subject to enforcement proceedings for insufficient or invalid DER holdings. The DER user, not the State, would bear the burden of proof that the amount of DER's purchased were sufficient to cover its compliance obligation including the environmental discount, and that the DER use met all applicable requirements of this rule.

From a compliance and enforcement standpoint, a lack of adequate and credible recordkeeping would be equivalent to a lack of creditable DER's. As stipulated in the Act, each violation (emissions limit or recordkeeping) would be subject to maximum penalty of \$25,000 per day. Criminal sanctions could also apply as allowed under law. In assessing penalties, EPA enforcement policy does take into account the nature and degree of violation when determining what is an appropriate enforcement action.

#### 8. Program Audit

At least once every 3 years, the State would be required to audit their open market trading program to evaluate the program's performance. The audit would include, but would not be limited to, an examination of the program's effects on requirements for rate of progress (ROP) and timely attainment (credits used compared to credits generated in a given year or ozone season), and the effects of reconciliation measures that might have been taken as a result of previous audit findings.

If the audit indicated a problem with implementing this rule, then the State must consider initiating measures to reconcile the problem. Possible reconciliation measures would include, but would not be limited to: (a) Enhancing monitoring requirements; (b) increasing the environmental benefit component of DER use, or limiting the use of DER's to compensate for the difference between actual emissions and the reductions needed to reach attainment; (c) implementing additional technology-specific emissions reductions; (d) increasing penalties, or (e) restricting trading.

The EPA would also perform a national audit based on the compilation of State audit reports and if necessary, would revise the open market program in accord with the audit's findings.

### III. Discussion of Issues

This section provides more detail on the provisions of the OMTR and issues surrounding the development of an open market trading system and requests public comment on several issues. This section also discusses elements of the proposed model rule that States could modify to meet their unique needs. The EPA recognizes that States may develop variations on this rule that are better suited to specific local air pollution problems, and EPA will be flexible with respect to approving a variation to the model rule if the State provides an adequate and reasonable justification.