

season by an activity approved as an ERC could not, however, be used as DER's.

#### 4. Prohibited Generation Activities

##### *a. Shutdowns & Production*

*Curtailments.* Under the proposed model rule, DER's would be generated by actions that reduce the rate of emissions of a source per unit of production. Typically, these actions would consist of installing control equipment, making process changes, or changing fuels or other inputs so as to reduce emissions per unit of production. The proposed model rule would not allow shutdowns or production curtailments to generate DER's.

Many participants in stakeholder meetings have argued that shutdowns and curtailments would not be undertaken, or hastened, to generate DER's (i.e., they would have happened anyway). The EPA has no evidence at this time that shutdowns and curtailments would occur earlier on account of the economic benefit derived from generating DER's. Shutdowns and curtailments generally occur due to economic conditions, and they do not result in an improved efficiency of emissions per product. In addition, EPA is concerned that for major sources under emissions rate limits, economic-related curtailments could be used to generate DER's with no requirement to offset higher emissions through use of DER's during full production boom periods. Therefore, EPA believes that in general, allowing DER's to be generated from shutdowns and curtailments could lead to increased emissions from sources using DER's without real, additional reductions having been made by DER generators.

As noted previously, a major purpose of this proposed rule would be to promote innovative approaches to controlling and preventing air pollution, involving the full range of major, minor, area, and mobile source sectors. The EPA believes banking of DER's created from shutdowns could provide a massive supply of inexpensive DER's that would inhibit investment by others in measures that actually reduce emissions per unit of production from sources that continue in operation. The EPA believes this glut of DER's from actions that would have otherwise occurred and that produced no additional reductions could also lead to emissions spikes and therefore jeopardize compliance with underlying Act requirements for attainment of the ozone standard.

In addition to concerns about the effect of shutdowns on attainment, EPA

is also concerned with load-shifting that could occur when sources shut down. If small sources (e.g. gas stations or print shops) reduce emissions by shutting down, their economic activity will likely be picked up by new or existing sources in the same areas. Since emissions created by increased operating rates by other existing sources are not limited, and since new small sources are not subject to an offset or cap requirement, the net effect of allowing shutdowns to generate DER's would be to increase overall emissions.

The EPA does recognize some situations in which DER's generated from activities that appear to be shutdowns and curtailments might be consistent with an open market system. For example, for mobile sources, reductions in use levels should be allowed to generate DER's if such reductions occur in the context of a formal plan to shorten or obviate trips and are generated with an appropriate emission quantification protocol. Such use level reductions would not be considered curtailments. An example of a program that could reduce motor vehicle use levels is an employee commute option that generates emissions reductions beyond what might be required for an area under section 182(d)(1)(B) of the Act.

Another example would be the early automobile retirement program known as scrappage. The EPA does not consider mobile source scrappage to be a shutdown, and scrappage programs would be allowed to generate DER's under the proposed rule. This would be acceptable because scrappage programs conforming to EPA guidance actually would achieve earlier retirement of old, high-emission vehicles than would otherwise occur.

In the process of developing this rule, a number of industry and State groups offered other examples where shutdowns and curtailments might be consistent with an open market system. One example is the concept of allowing DER's to be generated from shutdowns and curtailments when such reductions can be captured within a "closed loop" of existing and new sources. Facilities that replace small boilers with a central energy source and thus create fewer emissions might create a net environmental benefit through small boiler shutdowns. This differs from the more common shutdown case, where a facility closes and the production load could shift to another unrelated source. In general, establishing conditions by which closed loop or other potentially beneficial shutdowns could be considered in the open market program would add complexity to the proposed

rule and still might be problematic with respect to the intent of the rule as outlined above. The EPA requests comments on language that would allow for acceptable, environmentally benign or beneficial exceptions to the common shutdown circumstances.

The EPA is also interested in public comment on whether a State that has an approved attainment demonstration or maintenance plan that does not rely on emission reductions from shutdowns and curtailments may permit such shutdowns and curtailments to generate DER's. In such cases, EPA believes that the use of DER's generated from shutdowns and curtailments would not jeopardize attainment, since the SIP would already contain enough emission reductions from other sources to satisfy the attainment demonstration requirement of the Act. Thus, it might be appropriate to allow States to credit emission reductions from shutdowns and curtailments.

On the other hand, except where shutdowns are used for new source offsets, air quality improves as sources shut down. Shutdowns are already available as offsets for new sources. In the major new source offset program, Congress decided that encouraging continued economic development in nonattainment areas by allowing emission reductions from shutdowns to offset new source emissions was worth the sacrifice of the natural improvement in air quality that results from sources that shut down. If existing sources are allowed to relax otherwise applicable emission limits by using DER's generated from shutdowns and curtailments, States would be giving up this built-in air quality improvement. The EPA believes that allowing DER's to be generated from shutdowns could be inconsistent with Congress' intent to encourage economic development, since the value of DER's generated from shutdowns would be expected, on the margin, to encourage sources to shutdown. The EPA is interested in comment from the public on this matter.

In the event that shutdowns and curtailments were allowed to generate DER's in areas with approved attainment demonstrations or maintenance plans that do not rely on such reductions, EPA requests comment on the period of time into the future that a shutdown source would be allowed to continue generating credit. The EPA also requests comment on the effect that allowing DER's to be generated from shutdowns and curtailments would have on incentives for owners and operators of existing, ongoing sources to invest in innovative pollution control or prevention measures. The EPA also