

officer must certify under penalty of law that the information in this notice was true, accurate and complete, based upon information and belief formed after reasonable inquiry. Based on receipt of this notice, the State could conduct compliance determinations and inspections to ensure that the source had met all of its obligations through the use of DER's. This notice is essential for the purposes of compliance assurance and enforcement.

No action would be required by the State when it received a notice, other than to make it publicly available as discussed below. The Notice and Certification of Generation and the Notice and Certification of Use, however, would be the State and Federal authorities' main compliance and enforcement tools for generators and users of DER's.

To lessen the paperwork burden on sources, the information in each of the proposed notices has been reduced to the minimum necessary. However, the source would be required to keep full records of all of the documentation associated with the generation and/or use of DER's at their facility.

4. Notice of Intent to Generate Rejected

The EPA has considered creating a Notice of Intent to Generate which would be filed before any generation activity, but prefers not to require it in the model OMTR. Proponents advocated the notice so as to provide the State with advance notice of the time period over which DER's would be generated and the method that would be used to generate them ("Emission Reduction Credit Demonstration Project," Phase II, Volume I; Final Report, April 1995). Proponents cited reasonable justifications for such a notice. The notice could provide some preemptive assurances against invalid DER generation, and hopefully could result in a higher level of scrutiny which would lead to a system with enhanced environmental integrity. However, EPA believes this benefit is outweighed by the resource burden required to be placed on each participating source and State, since the notification is, by definition, a non-binding assertion of intent that some facilities may and will ultimately decide not to follow. Although the model OMTR would not require a Notice of Intent to Generate, a State may decide that in its particular case that the benefits of the notice outweigh the burdens. Therefore, EPA would approve specific OMTR's that require this notice.

5. Public Availability of Information

Adopting the model rule into the SIP would replace the need for single-source SIP revisions. Such SIP revisions, however, serve the purpose of providing the public with notification of each proposed trade. Without some other vehicle for public notice, the public would not be aware of DER trades. The EPA believes public confidence is essential to the success of the open market program. Members of the public have a legally recognized role in compliance assurance and enforcement through the citizens suit provisions under section 304 of the Act. The public must have fair access to the information related to DER generation and use activity.

The proposed model rule would require the State to make all of the notices received available to the public. For sources with a title V permit, the information must be filed with or attached to the permit and made available where the permit is available. For non-title V sources, the State would make the notices available in a similar manner to the title V sources. Facility documentation that is not included in, but supports the information in, the notices must be made available through the State's "freedom of information" or other laws, if applicable, relating to the public's access to a source's compliance documentation.

The EPA is concerned that not all States will have laws that allow the documentation underlying the notices to be reasonably accessed by the public if it is not submitted to the State along with the required notices. The Agency considered a range of requirements that would facilitate the public availability of such documentation. At one end of the range, the Agency considered a rule requirement for sources to make the documentation available to the public upon request. At the other end of the range, the Agency considered a rule requirement that all source documentation be submitted to the State along with the required notices so that the State could make the information available. A middle ground option would require sources to submit the underlying documentation to the State, but waive the requirement if the source agreed to make the documentation available to the public upon request. The Agency requests comment on the appropriate way to ensure that the public has reasonable access to a source's compliance documentation without unreasonably burdening either the source or the State.

F. Federally Enforceable Operating Permits

The purpose of the title V program, codified in 40 CFR Part 70, is to ensure effective implementation of all applicable requirements of the Act for those sources subject to a Federally enforceable operating permit. The title V program rules impose various important administrative and procedural provisions (e.g., permit fees, opportunity for public participation). The title V program does impose a limited number of requirements relevant to source operation that supplement the applicable requirements of the Act in order to enhance their implementation. For example, a source's title V permit must specify methods for monitoring and certifying compliance, and must address these if the applicable requirement fails to otherwise provide them. The provisions of the Part 70 rule that provide for individual source emissions trading under permit-specific caps and for trading under a SIP are currently the subject of rulemaking.

If adopted into a State's SIP, the provisions of the OMTR become part of the underlying requirements reflected in a source's operating permit. Therefore, changes in a source's operating permit language are not necessary for the source to participate in the open market program. However, for the benefit of both the source and the public, language that specifically addresses the ability of the source to comply with applicable requirements through emissions trading could appear in the permit. The EPA intends to issue permit writing guidance that would include language on open market trading that could be incorporated into individual permits.

G. DER Registries

Open marketplace participants would require access to information that enabled them to make accurate and informed decisions about the supply, demand, quality and expense of DER's. This information could be efficiently transferred among participants through one or more registries that sent and received relevant DER information. Registries should provide convenient and inexpensive public access, should not interfere with the ability of "small" market players to participate, and should help assure that specific DER's are not used more than once.

Comprehensive, high-quality information should be readily available at reasonable cost to all participants and the public. Such information might include: DER source listings, generator source type, location, contact name of DER holder or holder's agent, DER