2. Rate of Progress (ROP) Requirements

ROP requirements must be met in nonattainment areas. Section 182(b)(1)(A) of the Act, applicable to ozone nonattainment areas classified as Moderate or higher, provides that the SIP—

shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under this Act.

Section 171(l), applicable to all nonattainment areas, contains a similar requirement. Section 182(b)(1)(A) further requires a 15 percent reduction in VOC by the end of 1996. Section 182(c)(2)(B), applicable to areas classified Serious and higher, generally requires a 9 percent reduction in VOC or NO_X for each 3 year period thereafter, until attainment.

An area's success in meeting ROP requirements depends on many factors, including growth rate, rule adoption schedule, and control effectiveness. In many cases, trading would clearly not impact ROP: for example, in areas not covered by ROP programs; in areas trading NO_X emissions and affected by VOC-only ROP programs; for same pollutant trades within a single nonattainment area; and for trades involving emissions reduction from sources in one nonattainment area over one ozone season. In addition, where the SIP's nonattainment area reductions were greater than ROP requirements, VOC trading within that margin would not affect ROP and, thus, would be acceptable. In general, EPA believes that an audit program should be part of a State's ROP planning, because, like attainment planning, it may be affected by trades under an OMTR. The intertemporal aspect of trades, as well as trades across nonattainment areas, raise the possibility that under certain circumstances, trading could jeopardize ROP.

The EPA has made use of a computer model which allows a rough approximation of the impact of intertemporal trades on attainment and ROP plans, under various simplified assumptions about overall market activity and some alternative policy choices. As discussed above with respect to attainment planning, hypothetical circumstances may arise in which large quantities of DER's are generated in year 1 and used in year 2, or generated in one area and used in a neighboring area, to a degree that interferes with reduction targets in year 2 or in the neighboring area.

However, for much the same reasons discussed above with respect to attainment planning, EPA believes it reasonable to assume that intertemporal trading will not be of the magnitude necessary to interfere with the 1996 and subsequent ROP targets. For the same reasons, EPA believes it reasonable to assume that OMTR trading will not cause annual emissions spikes that may interfere with the section 182(b)(1)(A) requirement concerning annual reductions as necessary to attain. In any event, EPA believes that even if annual "spikes" were likely to occur as a result of an OMTR program, this requirement should be interpreted in light of the purpose of the OMTR, which is to encourage early reductions in exchange for an opportunity to trade the DER's so generated. If year 2 emissions are higher than in year 1 because DER generation causes emission reductions to occur a year early, EPA would not conclude that DER use interfered with the section 182(b)(1)(A) requirement. The EPA invites comment on its analysis and conclusions concerning ROP.

3. RACT

Act section 182(b)(2) requires a SIP revision implementing RACT for VOC sources for ozone nonattainment areas classified as "moderate" and higher. Section 182(f)(1) imposes the same requirement on NO_X sources. The Act does not define RACT; instead, EPA defines RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762 (1979)). VOC RACT has traditionally been met on a 24-hour basis unless the State has shown that a longer averaging time is needed because of recordkeeping difficulties or control infeasibility. Many RACT rules adopted by States include emissions rate limits based on daily or 30 day averaging times.

For many years, EPA has interpreted RACT as a performance standard, which normally manifests itself as an emissions limitation based on a particular control technology, as opposed to a requirement for the technology itself. The EPA has applied RACT on an aggregate basis in the EIP rule, so that some sources may meet RACT limits through averaging (59 FR 16706 (1994)). However, under the model OMTR, DER's that were generated before a RACT compliance deadline could be used after the deadline. This raises the possibility that stationary sources subject to RACT requirements, in the aggregate, would not meet their otherwise applicable SIP

RACT limits in the period after the RACT compliance deadline.

The EPA believes that it has the discretion to define "reasonable available control technology" to allow intertemporal averaging that may occur around a RACT compliance deadline under the OMTR. In the EIP rule, EPA considered air quality factors in determining whether stationary sources subject to RACT could emit at levels higher than levels otherwise deemed RACT if the excess emissions were more than offset by reductions among non-RACT sources. The EPA concluded that this system was consistent with the definition of RACT because the higher emissions levels of the RACT sources would be considered to be reasonable in light of the exceptional environmental benefits of the additional offsetting reductions.

A comparable analysis applies in the case of the OMTR. The OMTR would encourage early reductions by both RACT and non-RACT sources in year 1. In year 2, DER use might cause higherthan-current RACT levels of emissions. However, because DER generation would have provided early environmental benefits in year 1, and because 10 percent of the DER's used in year 2 would be retired for environmental benefit, EPA could conclude that the emissions levels in year 2 continue to reflect RACT.

J. Enforcement Issues

1. Calculation of Violations

The proposed rule provides for the calculation of violation days as consecutive days with a DER shortfall after first taking into account all valid DER's. This standard is applicable when emissions or emissions rates are measured on a daily basis. For example, if a source exceeds its emissions rate for 10 days and can demonstrate that it held sufficient DER's to cover its emissions overages for only the first 5 days, the source would be subject to penalties for the last 5 days. In circumstances when sources use a longer period of time for measuring emissions (e.g., a 30 day average period), violation days would be calculated based on the number of days of the measurement period for which there is any DER shortfall. For example, if a source measured emissions over a 30 day period and it was determined to have had a shortfall of DER's beginning any day during the measurement period, the enforcement action and penalty calculation would be for 30 days of violations. The EPA believes that this would encourage market participants to develop better, more accurate emissions measurement methods that will enable