

EPA is considering whether open market trading programs should contain safeguards (beyond the continued requirement to meet section 112 standards) to reduce the chance that a facility using off-site DER's in lieu of meeting otherwise applicable VOC limits, would have higher HAP emissions than if it directly met the VOC limits with on-site controls.

Overall, EPA believes that open market trading programs would encourage quicker reductions of VOC emissions, including HAP's that are VOC's, by reducing the cost of Act control requirements and providing incentives for early reductions. This could reduce aggregate risks from toxic air emissions.

At the facility-specific level, however, results may not be geographically uniform. For example, if a facility emits VOC's that are toxic air pollutants, and buys DER's to satisfy a RACT requirement, the facility's emissions of air toxics would be higher than if the facility had installed controls. Conversely, if the facility chooses to make extra emissions reductions and sell them as DER's, toxic emissions from the facility should be lower than without trading.

The EPA has considered several options for dealing with potential changes in toxics emissions as a result of open market trading. The first option would require all sources participating in the open market system to disclose to the public when DER generation or use would cause HAP increases (or forgone decreases), and that States should retroactively study the effect of open market VOC trading on aggregate and facility-specific hazardous air pollutant emissions.

A second option would be for EPA to prohibit a source from using a DER for RACT compliance if the effect would be to increase hazardous air pollutant emissions.

A third option would require States to include in their programs some mechanism to prevent trades that could pose significant toxics concerns, with the mechanism to be determined by the State. Such mechanisms could include screening assessments to provide an indication of whether health or environmental risks from a facility might increase significantly, or a fuller risk assessment. As a variation of this option, a requirement for sources to notify the public of HAP increases due to trades could be among the options available to a State.

The fourth option would be for EPA to leave to State discretion the issue of whether State programs should include restrictions, disclosure, or other

safeguards to ensure that toxic emissions changes are acceptable. The EPA could issue guidance on ways to determine whether a VOC trade should be considered unacceptable due to toxics impacts.

The EPA has decided to propose a disclosure requirement which might serve many purposes. Citizens who live near a facility could use the information to determine whether the trade posed a health concern. In many instances, this information may be reassuring, where perceived HAP emissions were larger than actual amounts. The State could also use disclosed information to help ascertain whether to use State regulatory authorities to curb any HAP increases (or to ensure attainment of expected decreases).

Many facilities already are subject to annual toxic release inventory reporting required by the Emergency Planning and Community Right-to-Know Act of 1986 and Pollution Prevention Act of 1990. These reports include estimates of annual emissions of all but eight of the 189 hazardous air pollutants listed under section 112 of the Act. Using the same methodologies it uses for toxic release inventory (TRI) reporting, the facility could estimate HAP emissions with and without DER generation or use. DER generators would include this information in their generation certification notices submitted to the State. DER users would include the information in their notice of intent to use DER's and in their post-use compliance certifications. As described in other sections of this preamble, the rule would require States to make these notices available to the public.

Some commentors have expressed concern that a toxic pollutant disclosure requirement would stigmatize the use of DER's with the detrimental effect of "chilling" the use of DER's and discourage market participation. These commentors have further argued that plant-specific fluctuations in HAP emissions resulting from the generation and use of DER's are not likely to be significant, and that they will in most cases be below the level of Federal and State regulatory concern. Toxic emissions that do not fall below this level are already (or will be soon) regulated under Section 112 of the Act. The EPA solicits comments as to whether it should balance this concern against the potential lack of knowledge about toxic pollutant emissions changes.

The EPA seeks comment on all aspects of this possible disclosure requirement. The Agency seeks comment on the suitability of TRI emissions estimation methodologies for the purposes of this rule. In addition,

EPA seeks comment on alternative ways to estimate the difference in emissions of each HAP that would result from DER use or generation, especially for facilities not subject to TRI.

The EPA is also soliciting comments on the approach that States should take in studying the effects of open market VOC trading on the aggregate level of risk from air toxics, and on such risks from individual facilities. Depending on the results, the study could either allay concerns of significant increases in risk, or suggest a need for changes in open market trading or air toxics programs. One component of this study might be to evaluate the information that would be available as a result of the proposed disclosure requirement.

N. Impact of OMTR on Related Programs and Policies

1. Emission Trading Policy Statement

The final Emission Trading Policy Statement (ETPS), published in the **Federal Register** on December 4, 1986 provides a general framework for EPA-approvable emission trading. This policy requires that all reductions used in trades be enforceable, permanent, surplus and quantifiable. This policy provides guidance for States to develop model trading rules that would allow specific two-source trades without source-specific SIP revisions, as well as approval criteria for trades submitted as source-specific SIP revisions. The OMTR does not change the requirements of the ETPS, or the types of emissions trading that can occur under the ETPS.

2. Economic Incentive Program Rule and Guidance

The EPA's most recent policy on emissions trading is embodied in the Economic Incentive Program (EIP) rules that were promulgated on April 7, 1994. The 1990 Amendments of the Act required EPA to promulgate EIP rules for certain areas that must implement an EIP as part of their ozone and carbon monoxide attainment strategy. These rules also serve as guidance for all other areas that choose to develop and implement EIP's. The types of trading programs envisioned in the EIP are emissions limiting strategies (such as RECLAIM), market-response strategies, and directionally-sound strategies. The model rule proposed here would establish the ground rules for one type of market-response strategy, namely open market emissions trading of ozone precursor emissions. The model rule proposed today in no way limits the use of other strategies.