

construction of a major new source of air pollution or a large increase of emissions at an existing source does not interfere with the attainment demonstration and does not delay timely achievement of the ambient air quality standards. There are four substantive requirements imposed upon owners or operators of major projects, as set forth in part 203. The first of these is the imposition of Lowest Achievable Emission Rate (LAER) or for certain existing sources, Best Available Control Technology (BACT) on emissions of the nonattainment pollutant from the major project. Appropriate limits are established on a case by case basis in the permitting process. The second requirement is that the emissions of the nonattainment pollutant from a major project must be accompanied by emission offsets from other sources in the nonattainment area. This assures that the total emissions of the nonattainment pollutant will remain within the levels accommodated by the State's attainment demonstration. The third requirement is compliance by other sources in the State which are under common ownership or control with the person proposing the project. The final requirement is an analysis of alternatives to the particular project, to determine whether the benefits of the project outweigh the environmental and social costs.

The amendments to 35 Ill. Adm. Code 203 are intended to better track the language of sections 182(c)(6), (7), and (8) of the CAA, and to make other revisions consistent with this effort. These changes deal with how one determines whether a proposed change at a source is a major modification. Tracking the language of these sections more closely allows Illinois to better accommodate EPA guidance on interpretation of these provisions of the CAA. In particular, Illinois has amended part 203 so that it does not conflict with EPA's "Notice of Proposed Rulemaking, Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR)," 61 FR 38249 (July 23, 1996). One topic addressed by EPA in this 1996 proposed rulemaking was sections 182(c)(6), (7) and (8) of the CAA (61 FR 38298-38302).

When the EPA finalizes its NSR rulemaking establishing guidance on these sections of the CAA, Illinois' NSR rules will have to be reevaluated. The Illinois EPA has committed to undertaking such a review of Illinois' NSR rules upon final EPA NSR rulemaking (Illinois EPA comments filed to the Pollution Control Board, November 6, 1997).

### What Is the Legal Basis of the Changes That EPA Is Approving?

The statutory basis for the changes to part 203 is sections 182(c)(6), (7) and (8) of the CAA. These provisions establish criteria for determining the applicability of nonattainment NSR for modifications in serious and severe ozone nonattainment areas.

### The De Minimis Rule: Section 182(c)(6) of the CAA

The "*de minimis* rule," section 182(c)(6) of the CAA, specifies the basic approach for determining whether proposed modifications in serious and severe ozone nonattainment areas are subject to nonattainment NSR. In these areas, the determination whether a project at a source is a major modification must consider other projects at the source over the last five calendar years. If the sum of the particular projects' emissions of an ozone precursor, (e.g., volatile organic material), and increases and decreases in emissions from other "contemporaneous" projects is significant, i.e., more than a "*de minimis*" threshold of 25 tons per year, the particular project is major and subject to the requirements of NSR. The State of Illinois has adopted this provision and is making no changes to it. (Refer to 35 Ill. Adm. Code 203.209(b)).

In addition, Illinois had adopted NSR rules that restricted the role of contemporaneous emission decreases at a source in certain circumstances. In particular, Illinois' NSR rules allowed applicability of NSR to be triggered for a discrete operation, unit or other pollutant emitting activity irrespective of decreases elsewhere at the source, if a proposed project would result in a significant increase in emissions at such operation or unit. For this purpose, other emission increases and decreases at the discrete operation or unit during the contemporaneous time period could be considered, but not decreases elsewhere at the source. As a result, projects with significant increases in emissions at individual units or operations could trigger nonattainment NSR even if the overall net change in emissions at a source was not significant. This was a consequence of Illinois' historic interpretation of the language of sections 182(c)(7) and (8) of the CAA.

The various amendments to 35 Ill. Adm. Code part 203, which EPA is approving, remove provisions that could trigger NSR applicability for individual units or operations in the manner explained above. The amendments also

make related changes to the rules. These amendments allow Illinois to follow the proposed interpretation of section 182(c)(6), (7) and (8) of the CAA published by EPA in the **Federal Register** in July 1996. By making the language of 35 Ill. Adm. Code part 203 more consistent with the language of the CAA, Illinois can accommodate EPA's published interpretation. As stated above, the Illinois EPA has committed to reevaluate part 203 upon EPA finalization of its federal rules establishing guidance on these sections of the CAA.

### Special Rules for Modifications: Sections 182(c)(7) and (8) of the CAA

Section 182(c)(7) and (8) of the CAA are the "Special Rule for Modifications of Sources Emitting Less Than 100 Tons" and the "Special Rule for Modifications of Sources Emitting 100 Tons or More." These provisions contain additional applicability provisions for major modifications in serious and severe ozone nonattainment areas. In general, they provide that a discrete operation, unit, or other pollutant emitting activity at a source with a significant emission increase (i.e., more than a *de minimis* increase) shall be considered a major modification unless the owner or operator of the source elects to offset the emissions from other operations, units, or activities within the source at an internal offset ratio of 1.3 to 1. If a source elects to provide internal offsets, a proposed modification may be excused from some or all of the NSR requirements. Illinois' NSR rules at 35 Ill. Adm. Code 203.207 and 203.301 generally provided and continue to provide the relief offered by sections 182(c)(7) and (8) of the CAA. However, as explained above, provisions were also included in Illinois' NSR rules that allowed a major modification to be triggered by proposed increases in emissions at an individual emission unit.

The interpretation of section 182(c)(7) and (8) of the CAA published by EPA in 1996 recognizes that a source may not have enough emissions decreases to internally "net out" an entire proposed modification to 25 tons or less so that the modification is *de minimis*. However, where a proposed modification involves more than one discrete unit, the source may have sufficient creditable internal decreases that could be applied at a 1.3 to 1 offset ratio against the emissions increase at particular units. In such circumstances, sections 182(c)(7) and (8) of the CAA function to allow a source to use creditable internal decreases that are