

insufficient to avoid nonattainment NSR for an entire project to still avoid NSR requirements for certain units involved in a major modification. Illinois has made changes to its NSR rules so as to be able to follow this interpretation.

#### **Review of Individual Amendments to Illinois' NSR Rules**

The first change made by Illinois was to revise 35 Ill. Adm. Code 203.207(d), the applicability criteria for major modifications in serious and severe ozone nonattainment areas. The amendment better follows the wording of section 182(c)(6) of the CAA. Accordingly, 35 Ill. Adm. Code 203.207(d) no longer provides that changes at a discrete operation or unit can be subject to NSR when the source as a whole would not experience a *de minimis* increase in emissions as a result of the proposed modification.

A related change was made to 35 Ill. Adm. Code 203.206(d), a provision in the applicability criteria for major sources dealing with reconstruction of a source. Illinois deleted this provision, which allowed reconstruction of a source to be treated as a major new source. This provision applied in Illinois when changes at an individual operation or unit could trigger nonattainment NSR independent of emission decreases elsewhere at the source. This provision is no longer considered relevant by Illinois under the amended NSR rules with source-wide netting of contemporaneous emissions increases and decreases available to determine whether a proposed project would be a major modification.

Illinois also made a related change to 35 Ill. Adm. Code 203.207(c)(1), in the applicability criteria for major modifications. Illinois deleted the specific exclusion for replacements since the term reconstruction was no longer available to govern this exclusion.

Illinois added 35 Ill. Adm. Code 203.207(e) and revised 35 Ill. Adm. Code 203.301(e) to better follow the language of section 182(c)(7) of the CAA, the "Special Rule for Modifications of Sources Emitting Less Than 100 Tons." As allowed by this special rule for modifications at smaller sources, Illinois' NSR rules do not apply the requirements of nonattainment NSR to a discrete operation or unit involved in a major modification for which the source elects and is able to provide internal offsets at a ratio of 1.3 to 1. In addition, major modifications at these smaller major sources are only required to comply with Best Available Control

Technology, rather than the Lowest Achievable Emission Rate.

Finally, Illinois added 35 Ill. Adm. Code 203.301(f), replacing previous 35 Ill. Adm. Code 203.301(e)(2), to better follow the language of section 182(c)(8) of the CAA, the "Special Rule for Modifications of Sources Emitting 100 Tons or More." As allowed by this special rule, for modifications at larger major sources, Illinois' NSR rules do not apply the LAER requirement of nonattainment NSR to a discrete operation or unit involved in a major modification for which the source elects and is able to provide internal offsets at a ratio of 1.3 to 1.

#### **What Is the Impact of These Changes on the Emissions Reductions Market System (ERMS)?**

The ERMS, which is codified in 35 Ill. Adm. Code Part 205, is a program adopted by Illinois for the Northeastern Illinois ozone nonattainment area to reduce emissions of volatile organic material (VOM) from major stationary sources. Illinois' amendments to 35 Ill. Adm. Code 203 may have an effect on the calculation of certain sources' baselines and allocations of allotment trading units (ATUs) under the ERMS. ERMS required subject sources to determine their baseline levels of volatile organic material emissions. Generally, sources receive annual allotments of ATUs equivalent to their baseline emissions less 12%. At the end of each calendar year, sources "turn in" ATUs in an amount not less than their volatile organic material emissions during the preceding ozone season. When a source's emissions exceed its allotment of ATUs, the source must buy ATUs from other sources that have been able to reduce their emissions below their allotments.

Under the amendments to 35 Ill. Adm. Code 203, a source that has a modification to a discrete unit would have the option to net out on a source-wide basis which would mean that the modification would not be subject to requirements of NSR. This would allow sources to potentially have a larger baseline under ERMS because they are now subject to less stringent requirements pursuant to nonattainment NSR.

This final rule is not anticipated to significantly effect the ERMS baselines that have already been set. Those baselines were set generally using the average of the two seasonal allotments periods with the highest VOM emissions during 1994, 1995, and 1996. The sources that set their baselines under this requirement did so prior to the approval of this rule change and

were processed according to the rules that applied at that time. Any change requested by a source to its baseline would entail a significant revision to the source's CAAPP permit and can be evaluated on an individual basis.

#### **What Is Involved in This Final Action?**

EPA is approving a requested revision to Illinois SIP affecting the nonattainment NSR rules at 35 Ill. Adm. Code 203, submitted on August 31, 1998. 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. Tracking of these sections more closely allows Illinois to accommodate EPA guidance these provisions of the CAA.

#### **Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in