

District's rules and may be subject to enforcement by the District or EPA even if the District is otherwise required to make up for this shortfall through the offset tracking system.

Major sources (and major modifications) should therefore ensure that the emission reductions used to satisfy offset requirements meet federal creditability criteria.⁹ The one potential exception is with regard to the federal requirement to determine the surplus value of an emission reduction at time of use. Rule 2201 allows the surplus value to be determined at the time the ATC for an emission reduction or the application for an emission reduction credit (ERC) is deemed complete. Rule 2201, section 3.2.2. With our final approval of the District tracking system, EPA will allow the District to forgo the federal surplus adjusting requirement and sources will be able to rely on emission reductions EPA might otherwise not consider surplus. This flexibility, however, is only available for sources covered by the District's tracking system. The tracking system only covers permits for sources with ATC applications that were not deemed complete before August 20, 2001. *See* Rule 2201, section 7.3.1. *Sources with ATC applications deemed complete before August 20, 2001 must meet all federal creditability criteria including the requirement that the surplus value of emission reductions be discounted at time of use (i.e., at time ATC is issued).*

Because the criteria for determining the creditability of an emission reduction will continue to be important both for sources seeking permits and for the District in implementing the tracking system,¹⁰ the following sections discuss particular creditability issues that have recently been raised by the District and others.

d. What are the requirements for being an enforceable emissions reduction?

CAA sections 173(a) and (c)(1), require emission reductions to be federally enforceable before a construction permit may be issued, and in effect and enforceable by the time a new or modified source commences operation. EPA has explained that the District can make emission reductions

enforceable by modifying the permit for the source reducing emissions or by obtaining SIP approval of the rules that result in the emission reduction. EPA has also explained that while the emission reduction need not occur before the new or modified source commences operation, the specific emission reduction credits to be used by the source under review must be identified and enforceable before the authority to construct may be issued. *See* 57 FR at 13553; *see also* Memo from John S. Seitz, Dir. OAQPS to Regional Air Dirs (June 14, 1994) ("Offsets Required Prior to Permit Issuance"). Thus, even though the emissions reduction may not have occurred by the time the ATC is issued (e.g., the revised permit does not call for the source to actually reduce emissions until a later date), the new or modified source must identify the source of the emissions reduction to be used to meet the offset requirements, must provide an opportunity for review of the proposed emission reduction credits and, once the ATC is issued, cannot change the emission reduction credits unless a new ATC is proposed identifying the new emission reduction credits to be relied upon.

e. What kinds of emission reductions may be creditable?

Section 7.2.2.2 of Rule 2201 allows the District to include in the annual equivalency demonstration, "the surplus value of additional creditable emission reductions that have not been used as offsets and have been banked or have been generated as a result of permitting actions." These unused "additional credits" may include emission reductions from a number of actions. Examples of such additional credits include emission reductions used to meet offset requirements by non-major sources and the 10 percent Air quality Improvement Deduction applied under section 4.12 of Rule 2201 for newly banked credits.¹¹ This section addresses a few other issues the District has raised regarding the creditability of other actions that might be considered to generate "additional credits."

The central issue for determining the creditability of a particular action often will be whether the reduction is surplus. The surplus requirement derives from section 173(c)(2) of the Act, which provides, "Emission reductions otherwise required by this Act shall not be creditable as emissions reductions for purposes of any such

offset requirement." To be creditable, a particular emission reduction must not be required by the Act or otherwise relied upon to meet a requirement of the Act. Thus, District requirements that are more stringent than an express requirement of the Act may generate surplus credits as long as the emission reductions are not relied upon elsewhere to comply with a requirement of the Act (e.g., to achieve the National Ambient Air Quality Standards (NAAQS)).¹²

The emission reductions must also be real and quantifiable—actual emissions to the air must be reduced. Paper reductions (*i.e.*, changes in a source's permitted emissions that do not require actual emissions to decrease) are not creditable. Likewise, rules that limit the increase in emissions do not generate real, quantifiable reductions in emissions. For example, the District BACT requirements for modifications to existing non-major sources may generate emission reductions where the control requirement results in actual emissions reductions as compared to pre-modification emission levels. By contrast, BACT requirements for new non-major sources cannot generate emission reduction credits because there has been no reduction in actual emissions (instead actual emissions have increased).

It is not possible for EPA to predict the various potential claims that will be made for emission reduction credits. Even for the examples described in this section and in the TSD, case-specific facts may affect the analysis on creditability. It is therefore critical for the District to raise specific questions to EPA so that these issues can be resolved on a case-by-case basis.

f. Are pre-1990 emission reductions creditable?

Pre-1990 emission reduction credits pose particular problems under each of the criteria for creditability because of the age of these credits. Information on their generation may be missing, making it difficult to verify the quantity of emission reductions and ensure their continued enforceability. These problems, however, can be overcome if

⁹ The District's amendments to Rule 2201 reiterate these criteria in section 7.1.5. These criteria derive directly from the offset requirements of the CAA section 173(c). *See* 1994 Seitz Memo; *see also* 51 FR 43814 (Dec. 4, 1986) ("Emissions Trading Policy Statement"). As such, EPA will interpret the District requirement in accordance with our federal policy and guidance on creditability.

¹⁰ Section 7.1.5 of Rule 2201 expressly notes that the creditability of a given emission reduction included in the annual demonstration may be subject to EPA review.

¹¹ These additional credits must of course meet the creditability criteria described herein. This is expressly required by Rule 2201, section 7.4.1.1. The 1999 TSD provides additional discussion on the availability of these additional credits.

¹² The District has asked whether implementation of District rules that are not yet in the SIP could be counted as generating an ERC. Such rules, used to generate innovative offsets, must satisfy EPA requirements for Economic Incentive Programs (*see* EPA's guidance document entitled, "Improving Air Quality with Economic Incentive Programs" (January 2001)). EPA would not consider as creditable, emission reductions achieved through early implementation of rules that do not meet these requirements. In addition, any credits generated through these programs must continue to meet the basic criteria for creditability (e.g., permanent, surplus, quantifiable and enforceable).