

detailed records are available to support the required findings on creditability. The more difficult issues are related to the requirement that emission reductions be surplus.

The basic purpose of the surplus requirement is to avoid "double counting" emission reductions. Double counting can occur where emission reductions are the result of, or would have been achieved by, controls expressly required by the Act or controls used to satisfy requirements of the Act. Double counting can also occur if credit for emission reductions is claimed where the State's planning actions do not recognize that the reduced emissions existed in the first place. This is especially a concern for emission reductions that occurred long ago.

To avoid potential double counting, EPA has issued guidance on how emission reductions should be discounted at the time of use and the planning assumptions an area must make to allow the use of pre-1990 credits to meet NSR offset requirements. The 1992 "General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990" ("General Preamble") describes the planning requirements of the Act as amended in 1990. 57 FR 13498 (April 16, 1992). The General Preamble addresses the issue of pre-1990 (or "pre-enactment") emission reductions and how areas need to ensure the use of these does not conflict with planning. The two types of planning actions that need to reflect the use of pre-1990 credits are Rate of Progress (ROP) plans and attainment demonstrations. *See id.* at 13508–509 and 13552–54; *see also* 1994 Seitz Memo.

Section 172(c)(2) requires implementation plans for nonattainment areas to include provisions requiring reasonable further progress toward attainment. The 1990 Amendments added specific reduction requirements necessary to satisfy the general reasonable further progress requirement. For example, ozone areas classified as moderate nonattainment and above must achieve a 15-percent reduction in volatile organic compound (VOC) emissions from 1990 baseline levels within six years of enactment of the CAA Amendments. CAA section 182(b)(1). Ozone areas classified as serious and above must, in general, achieve an additional 3-percent reduction every three years thereafter until the attainment date. CAA section 182(c)(2)(B).

Because the baseline for measuring reasonable further progress is the level of actual emissions from anthropogenic

sources in 1990, pre-1990 emission reductions generally are not included in the baseline. Thus, to avoid giving credit for reductions that the baseline already reflects, pre-1990 credits must be "added back." The General Preamble explains that the required emission reductions necessary to meet reasonable further progress (e.g., 15 percent from 1990 levels) must be net of growth and net of any pre-1990 emission reduction credits the area plans to allow for use as offsets. 57 FR at 13508–509. This means that the controls identified to achieve the target level of emissions (e.g., 85 percent of the baseline levels) must also achieve reductions to offset growth and the addition of any pre-1990 emission reduction credits the area wishes to make available.¹³

There are different ways that areas can include pre-1990 credits in ROP plans. EPA has explained, "A State may choose to show that the magnitude of pre-1990 ERC's (in absolute tonnage) was included in the growth factor, or the State may choose to show that it was not included in the growth factor, but in addition to anticipated growth." 1994 Seitz Memo. Under either approach, the quantity of pre-1990 credits added to or included in the growth factor must be distinguishable and identifiable. *Id.* If the addition of pre-1990 credits cannot be distinguished from general growth, EPA will not be able to determine whether the growth factor used in the plan is reasonable or to compare the actual use of pre-1990 credits to the cap assumed in the plan.¹⁴

Pre-1990 credits must also be accounted for in an area's attainment demonstration. 57 FR 13509 and 13553; *see also* 1994 Seitz Memo. In addition to demonstrations of reasonable further progress, the Act requires areas to

¹³ For example, assume the 1990 baseline emissions level is 100 tons per year (tpy) and the area anticipates 10 percent growth and wishes to make available 5 tpy of pre-1990 credits. In order to achieve the target level of 85 tpy (i.e., 15 percent reduction of baseline emissions), the ROP plan will need to identify controls that will achieve 30 tpy of reduction—15 tpy to demonstrate reasonable further progress, 10 tpy to offset growth and 5 tpy to offset the use of pre-1990 credits. This obviously is an overly simplistic example and is intended only to show how these concepts relate to one another.

¹⁴ EPA addressed similar concerns in its 1986 Emissions Trading Policy Statement. 51 FR 43814 (Dec. 4, 1986). In that guidance, EPA described the need to distinguish between shutdowns to be used to generate credits to meet offset requirements and shutdowns built into assumptions on growth. We explained, "In all cases where net turnover reductions have been quantified and relied on as part of attainment demonstrations, states which seek to grant shutdown credit for use in trading must be prepared to show clearly and unequivocally on the basis of SIP documents or tracking that the credit has not been double-counted or otherwise relied on for SIP planning purposes."

submit a demonstration that the SIP, as revised, will provide for attainment of the NAAQS by the applicable attainment date ("attainment demonstration"). *See, e.g.,* CAA section 182(c)(2)(A) (attainment demonstration required for serious ozone nonattainment areas). Attainment demonstrations, in very general terms, require areas to use modeling or other approved analytical techniques to determine the level of emissions required to achieve the NAAQS and to provide projections of emissions inventories to show how the area will control sources to achieve the necessary level of emissions. Because new and modified major sources are required to offset their emissions increases by obtaining emission reductions from other sources, there should be no net effect on emissions inventories from construction or modification of a major source *if the emissions reduced are included in the inventory*. This means pre-1990 emissions reductions, which would otherwise not be included in inventories of emissions in 1990 and beyond, must be added back into the area's inventories as if these emissions were still in the air in order to be used as offsets and ensure no net effect on emission inventories. *See* 62 FR at 13509 and 13553; *see also* 1994 Seitz Memo.

There are multiple ways that these pre-1990 emissions can be included in the inventories. The simplest would be to include a line item for the emissions to be added for use as potential offsets. No matter what approach an area uses, the demonstration must clearly identify these emissions so that the reasonableness of the approach can be evaluated and the actual use of these pre-1990 credits can be compared to the assumptions in the demonstration.

To date, SJVUAPCD has failed to adequately account for the use of pre-1990 emission reduction credits in its planning activities. As a result, EPA does not consider these reductions to be surplus creditable reductions that can be used to meet federal offset requirements within the District.

The San Joaquin Valley was originally classified as moderate for the PM-10 NAAQS following enactment of the 1990 Clean Air Act Amendments. The District submitted a moderate area plan in December 1991, but this plan was never approved by EPA and, in any event, did not support the use of pre-1990 credits by including these credits in the plan's inventories as emissions in the air. On January 8, 1993, EPA reclassified the San Joaquin Valley as serious for PM-10. 58 FR 3334. The attainment deadline for serious PM