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sources which emit or have the potential to emit at least 100 tpy of any nonattainment pollutant or lesser amounts in certain nonattainment areas) anywhere in a nonattainment area, in accordance with section 173 of the Act.6 In nonattainment areas, a presumption exists that emissions increases resulting from new and modified major stationary sources will adversely affect the area; thus, in lieu of a complete air quality impact analysis (including ambient monitoring), emissions reductions (offsets) from existing sources must be obtained in order to mitigate the ambient impacts resulting from the potential emissions from the proposed new source, or net emissions increase from a proposed major modification to an existing source (e.g., section 173(c) of the Act).

Under the nonattainment NSR program (40 CFR 51.165(a)), EPA uses significant emissions rates (expressed in tons per year) for pollutant applicability purposes to determine whether a modification of an existing major stationary source will result in a significant net emissions increase (\$51.165(a)(1)(x)). For the same reasons described in section V.C of this preamble, EPA does not now intend to propose to revise the significant emissions rate for SO₂ commensurate with the 5-minute SO₂ NAAQS proposed in the part 50/53 document. Public comment is requested as to whether the existing 40 tpy significant emissions rate needs to be revised if EPA promulgates the proposed 5-minute SO₂ standard.

Major new or modified sources locating in the nonattainment area will be required to meet the lowest achievable emission rate, obtain emissions offsets, and satisfy other applicable requirements under section 173 of the Act. With implementation of a new 5-minute NAAQS, these requirements may be addressed by existing permit programs for those areas already designated nonattainment for SO₂ and meeting the nonattainment NSR requirements under section 173 of the Act. However, for those States without the appropriate nonattainment NSR program, the State would need to develop and implement such a program for any newly designated nonattainment areas resulting from a new 5-minute NAAQS for SO₂.

g. Contingency Measures. Section 172(c)(9) of the amended Act defines contingency measures as measures that become effective without further action by the State or EPA, upon determination by EPA that the area has failed to: (1) Make reasonable further progress, or (2) attain the SO₂ NAAQS by the applicable statutory deadline.

For current SO₂ programs, EPA interprets "contingency measures" to mean that the State agency has a comprehensive program to identify sources of violations of the SO₂ NAAQS and to undertake an aggressive followup for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of revised SIP's. The rationale for this interpretation as presented in the General Preamble (57 FR 13547) is the following. The EPA interprets the contingency measure provisions as primarily directed at general programs which can be undertaken on an areawide basis. First, for some criteria pollutants, the analytical tools for quantifying the relationship between reductions in emissions and resulting air quality improvements remain subject to significant uncertainties, in contrast with procedures for pollutants such as SO₂ and its current NAAQS. Second, emission estimates and attainment analyses can be strongly influenced by overly optimistic assumptions about control efficiency and rates of compliance for many small sources. In contrast, controls for the current SO₂ NAAQS are well understood and are far less prone to uncertainty. Since SO₂ control measures are by definition based upon what is directly and quantifiably necessary to attain the SO₂ NAAQS, it would be unlikely for an area to implement the necessary emissions control yet fail to attain the NAAQS.

However, for the proposed 5-minute SO₂ NAAQS, EPA will need to interpret requirements for contingency measures different from those for the current NAAQS, due to the nature of sources and emissions that EPA considers likely to cause violations. As opposed to the current NAAQS, which can rely on dispersion models to predict attainment of the NAAQS, the State and Local agencies cannot reliably predict that attainment will be achieved even with proper implementation of a control program. It is possible that even with the control equipment operating properly, violations may persist. In other words, there may be overly optimistic assumptions about control efficiencies and emission rates. Therefore, contingency measures for the proposed 5-minute NAAQS will require

more than aggressive follow-up for compliance and enforcement as allowed for the current SO_2 NAAQS. As an example, if the cause of the SO_2 violations is due to control equipment failure, a SIP may require a more rigorous maintenance schedule. If further violations occur due to continued failures of the control equipment, then the contingency measures may need to invoke a more frequent inspection/maintenance program of the control equipment or even installation of backup control equipment.

E. SIP Processing Requirements

1. SIP Completeness

Section 110(k)(1) required EPA to promulgate minimum criteria that any SIP submittal must meet. The EPA proposed an initial set of completeness criteria at 56 FR 23826 (May 24, 1991) and finalized them at 56 FR 42216 (August 26, 1991). Those notices describe the procedures for assessing whether a SIP submittal is complete and, therefore, adequate to trigger the Act requirement that EPA review and take action on the submittal. The completeness criteria provide a procedure and criteria that enable States to prepare adequate SIP submittals and enable EPA reviewers to promptly screen SIP submittals, identify those that are incomplete, and return them to the State for corrective action without having to go through rulemaking. The EPA intends to use the completeness criteria as amended in 40 CFR part 51, appendix V, to determine completeness of SIP submittals as required under section 110(k)(1)(B).

2. Approval/Disapproval of Plan

The Act as amended in 1990 allows for EPA to make full and partial approvals and disapprovals under section 110(k)(3) and conditional approvals under section 110(k)(4) of SIP submittals. In meeting the requirements under section 110(k)(3) and (4), EPA intends to follow the guidance for processing SIP submittals issued in the memo from Calcagni to the Regional Air Division Directors dated July 9, 1992.

3. Sanctions and Other Consequences of SIP Deficiencies

The EPA intends to use sanctions consistent with the following stated policies and regulations as provided for by the Act in sections 110(m) and 179 for the imposition of sanctions in the event that EPA finds that a State did not make a required SIP submission (in whole or in part), finds that a State did not submit a complete submission,

⁶For purposes of the nonattainment NSR requirements under part D of title I of the Act, "major stationary source" is defined as any stationary source which emits, or has the potential to emit, 100 tpy (or lesser amounts in certain nonattainment areas) of any nonattainment pollutant (see, e.g., sections 182(c–e), 189(b)(3), and 302(j) of the Act).