

- Must ensure reliable results, and that they must ensure that repeated application of the protocol obtains results equivalent to EPA-approved test methods;
- Must be replicable, that is, the protocol ensures that different users will obtain the same or equivalent results in calculating the amount of emissions and/or emissions reductions.

These EIP guidelines also specify that trading programs need to include monitoring, recordkeeping, and reporting provisions to provide adequate information for determining a source's compliance with the program. Adequate monitoring, recordkeeping and reporting procedures have several key attributes, including representativeness (characteristic of the source category and available monitoring techniques), reliability, replicability, frequency (that is, the monitoring is sufficiently repeated within the compliance period), enforceability (that is, the monitoring is independently verifiable), and timeliness.

*Public comments.* Comments on this provision were generally supportive of the notion that stringent protocols are needed to ensure the integrity of the "currency" for the trading program. Consistent with this view, one commenter representing electric utilities recommended that non-utility sources need to employ emissions quantification protocols that are equivalent to those of electric utilities. In the WRAP's comments, a few changes to the regulatory language were recommended. Some comments expressed concerns that the proposal did not provide enough flexibility in the use of quantification protocols.

The WRAP comments recommended that the proposal be modified to state:

For source categories with sources in more than one State submitting an implementation plan under this section, each State must use protocols that are "sufficiently rigorous and comparable to ensure that emissions in the region are measured in a reliable and a consistent manner."

The WRAP believed that the terms "sufficiently rigorous and comparable" were preferable to the word requirement of the "same" methodology for each State. The WRAP also sought clarification that the proposed language in 40 CFR 51.309(h)(4)(iii) requiring that "the protocols must provide consistent approaches for all sources within a given source category" would not limit the WRAP States' and Tribes' ability to establish different monitoring requirements within source categories

based on established criteria such as the size of an emission unit. For example, the WRAP comments noted that it may be appropriate to require the use of a CEMS on a large industrial boiler while using emission factors for a smaller boiler that is used as a backup unit.

Finally, the WRAP expressed concerns that this provision should provide for the use of flexible monitoring options that make sense for this particular trading program. Because smaller sources are anticipated to have greater difficulty meeting stringent monitoring requirements, the WRAP's market trading forum (MTF) is considering adopting more flexible monitoring provisions for these smaller sources. For smaller sources, the MTF goals are:

- To provide assurances that the milestone goals will still be met,
- To ensure that data are sound and reliable,
- To obtain data that are consistent with the assumptions of the Annex, and
- To ensure the integrity of the trading program.

While these MTF discussions are still in the preliminary stages, the WRAP comments seek assurance from EPA that the final rule will allow consideration of different approaches.

Another commenter noted that emission quantification protocols are continually evolving and becoming more refined. This commenter expressed concerns that if improved protocols, different from those used to establish the baseline, are used to determine steady and continuing progress and if the program is triggered, this could have the effect of penalizing sources for developing and using improved protocols. This commenter noted that EPA should not create a disincentive to such innovation. The commenter believed that if the quantification protocols remain static for SO<sub>2</sub> measurements until the program is triggered, at which time sources will be required to implement different reduction programs, then sources will be better able to adapt to the more precise measurements resulting from new quantification protocols. This commenter also believed that as a result, the sources will be able to factor in the need, if any, for greater reductions resulting from improved quantification protocols.

*Final rule.* The EPA has retained the language as proposed. The EPA believes that it is important to retain the requirement that sources in similar categories use the same method for determining emissions under the trading program. The EPA wishes to

clarify that this does not preclude the MTF from making distinctions within a given category regarding the appropriate technique for determining emissions. However, we believe that it is important that any such distinctions be done consistently to ensure that the same methods are being used for similar sources.

The EPA does not believe that the proposed rule discourages innovation in the development of monitoring techniques. For the "pre-trigger" portion of the program, that is, the time period before a trading program, the program specifically provides for adjustments to the milestones to ensure that changes in monitoring techniques are appropriately considered.

### 3. Enforcement Penalties

*Proposed rule.* The proposed rule required that the backstop trading program include specific enforcement penalties to be applied if the emissions from a source exceed the allowances held by the source. In the preamble, EPA noted that the Annex provides for two types of automatic penalties when excess emissions occur:

- The automatic surrender of two future-year allowances for every ton of excess emissions, and
- A financial penalty (\$5000 per ton, indexed to inflation from the year 2000) deemed to exceed the expected cost of allowances by a factor of three to four.

In addition, the proposed rule required that in establishing enforcement penalties, the State or Tribes must ensure that:

- When emissions from a source in the program exceed the allowances held by the source, each day of the year is a separate violation, and
- Each ton of excess emissions is a separate violation.

*Public comments.* The WRAP and a number of industry group commenters objected to the proposed requirements that when emissions from a source in the program exceed the allowances held by the source, each day of the year be considered a separate violation and that each ton of excess emissions be considered a separate violation. First, the WRAP and some industry comments asserted that the maximum penalty is punitive, and cannot be justified for a program that has been established to meet a welfare-based regional goal. Second, commenters believed that because this provision involved greater case-by-case judgments than the penalties in the Annex, the provision could lead to inconsistencies between the various State and tribal agencies.