EPA'S DRAFT CONTINGENCY MEASURES GUIDANCE

MWAQC-TAC

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Metropolitan Washington
Council of Governments

Draft Contingency Measures Guidance Background

- Last month, EPA released Draft Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter

- A notice of availability and public comment period was subsequently published in the Federal Register on March 23

- EPA has provided a 30-day period for public comment. Comment deadline is April 24.

Draft Contingency Measures Guidance Background

- The draft guidance focuses on three aspects of CM guidance that the EPA is revising or updating, for which EPA is seeking input:
  1. The guidance addresses the method that air agencies should use to calculate the EPA-recommended amount of emissions reductions that CMs should provide.
  2. The guidance provides recommendations for an infeasibility justification, for an air agency to use if it cannot identify feasible CMs in a sufficient quantity to produce the recommended amount of CM emission reductions.
  3. The guidance changes the recommended time period within which reductions from CMs should occur, which the EPA generally recommended to be one year, but which the EPA is now recommending be changed to 2 years if there are insufficient CMs available to achieve the recommended amount of emissions reductions within 1 year.

Summary of EPA's Existing Approach to Contingency Measures

1. CMs must be conditional and prospective, not already implemented. For this same reason, EPA cannot approve "excess" or "surplus" emissions reductions from already required and implemented control measures as meeting the CM requirement. Thus, for example, additional emissions reductions that will occur each year as a result of mobile source fleet turnover, whether from federal or state requirements, cannot constitute CMs, because they are the result of regulatory requirements that are already implemented and the emissions reductions will occur regardless of whether there is, or is not, any future CM triggering event.

Summary of EPA's Existing Approach to Contingency Measures

2. CMs cannot be control measures that states are required to adopt and implement to meet other legal requirements. They cannot be control measures that the state is required to impose to meet other CAA requirements including, but not limited to, nonattainment plan requirements, such as RACM/RACT, or best available control measures or best available control technology (BACM/BACT), or most stringent measures (MSM), and cannot be measures the state otherwise relies upon to meet RFP or for attainment in the modeled attainment demonstration. States are separately required to meet those other requirements and, by definition, CMs are required to be measures that will provide emissions reductions over and above what the state is required to impose to meet all other separate obligations under the CAA.

Summary of EPA's Existing Approach to Contingency Measures

3. CMs should achieve emissions reductions equal to or greater than OYW of RFP for the nonattainment area and the NAAQS at issue, as projected in the nonattainment plan. States may meet this OYW requirement to satisfy the CM requirement through one or more control measures; individual measures do not need to provide this amount of reductions in isolation but can be combined with other measures in order to achieve OYW of RFP and thus be deemed a valid CM. CMs (one or more measures) that achieve less than OYW may be sufficient, with a reasoned justification for the lower amount.

Summary of EPA's Existing Approach to Contingency Measures

4. CMs should take effect within 60 days, and with no further significant action by the state or EPA, following an EPA notification to the state of a failure to meet RFP or a failure to attain.

Summary of EPA's Existing Approach to Contingency Measures

5. The emissions reductions from the CMs should generally occur in the year following the determination of failure to meet RFP or failure to attain, i.e., during the period that the state and EPA should be addressing the deficiency that triggered the CMs through a new SIP submission, as appropriate.

Summary of EPA's Existing Approach to Contingency Measures

6. CMs may be measures that apply to sources outside the designated NAA (unlike other nonattainment plan requirements such as RACM/RACT), so long as there is an adequate technical demonstration showing that the emissions reductions from the CMs would provide the necessary air quality benefit within the NAA.

Summary of EPA's Existing Approach to Contingency Measures

7. It is permissible, but not necessary, for a state to specify that certain CMs are for RFP failure only or for failure to attain only. If specified in this way, however, the state must ensure that adequate CMs are in place for each triggering event; this could result in the need for additional measures if a state elects to differentiate between CMs in this way.

EPA's Previous Approach to Contingency Measures

3. CMs should achieve emissions reductions equal to or greater than OYW of RFP for the nonattainment area and the NAAQS at issue, as projected in the nonattainment plan. States may meet this OYW requirement to satisfy the CM requirement through one or more control measures; individual measures do not need to provide this amount of reductions in isolation but can be combined with other measures in order to achieve OYW of RFP and thus be deemed a valid CM. CMs (one or more measures) that achieve less than OYW may be sufficient, with a reasoned justification for the lower amount.

OYW of RFP vs. OYW of progress

- OYW of RFP: For ozone, annual RFP is essentially defined as 3 percent of the base year Emissions Inventory (EI) anthropogenic emissions. For PM, annual RFP is the average annual reductions between the anthropogenic emissions from the base year EI and the projected attainment year EI (i.e., the projected attainment inventory for the nonattainment area).
- **"Declining inventory/increasing percentage effect associated with OYW of RFP"**
- OYW of progress (calculated the same way for ozone and PM): by determining the average annual reductions between the base year EI and the projected attainment year EI, determining what percentage of the base year EI this amount represents, then applying that percentage to the projected attainment year EI to determine the amount of reductions needed to ensure ongoing progress if CMs are triggered.

Calculating OYW of Progress

- To calculate EPA's recommended amount of CM reductions using the OYW of progress approach, air agencies would determine the percentage of the base year EI the annual rate of reductions represents, then apply that percentage to the attainment projected EI. (This is similar to how the percentage is already determined for PM2.5 precursors, because RFP for PM is not a fixed percentage). States should perform this calculation separately for both ozone precursors, VOC and NOx. This would ensure that the state develops CMs to achieve reductions related to the reductions of the precursors that are needed for the area to attain, regardless of whether the approach is being applied for PM or for ozone.

$$\frac{(base\ year\ EI - attainment\ year\ EI)}{(attainment\ year - base\ year)} \div base\ year\ EI \times attainment\ year\ EI = OYW\ of\ Progress$$

Reasoned Justification for Less Than OYW of Progress

- If, after adequately evaluating additional control measures, the air agency is unable to identify and adopt feasible CMs that would reduce emissions by an amount sufficient to meet the OYW of progress recommendation, then it may be appropriate for the air agency to submit CMs that result in less than that amount, using the reasoned justification approach.
- EPA anticipates that a demonstrated lack of feasible measures would be a reasoned justification for adopting CMs that only achieve a lesser amount of emission reductions. To justify a lesser amount of emissions reductions based on infeasibility, an air agency would need to provide EPA with an adequate explanation and documentation that there are not additional feasible CMs that could achieve the recommended full OYW of progress amount.

Reasoned Justification for Less Than OYW of Progress

- EPA notes that a key factor affecting the availability of feasible measures to be CMs in a given nonattainment area is the degree to which the air agency has (1) already implemented all feasible measures, or (2) already included all feasible measures in the state's SIP to meet other control strategy requirements for implementation no later than the attainment date.
- These air agencies may be justified in adopting and submitting CMs that would result in less than OYW of progress, if they have identified and evaluated all potentially applicable measures, have adopted the feasible measures necessary to expeditiously attain the relevant NAAQS, have determined that the remaining feasible measures are insufficient to achieve OYW of progress, and have adequately demonstrated these points in their submission to EPA.

EPA's Previous Approach to Contingency Measures

5. The emissions reductions from the CMs should generally occur in the year following the determination of failure to meet RFP or failure to attain, i.e., during the period that the state and EPA should be addressing the deficiency that triggered the CMs through a new SIP submission, as appropriate.

CM Implementation Period

- EPA continues to believe that 1 year is generally the appropriate timeframe for CMs to achieve reductions because of the intended purpose of CMs to provide emissions reductions to bridge the gap between the failure and the subsequent corrective action.
- However, it is also possible that an air agency lacking sufficient feasible CMs that it could implement to provide emissions reductions within 1 year could, upon accounting for reductions in the second year, come closer to reaching – or potentially fully reach – OYW of progress.
- EPA believes in this case that, rather than exclude measures that are feasible as CMs because they would not result in sufficient emissions reductions in the first year after triggering, it is preferable for air agencies to consider and include these as CMs in their SIP submissions. The air agency should provide an adequate explanation of why the reductions could not be achieved within the first year and how much additional time is needed (up to one additional year).

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