

# EPA FINAL GUIDANCE – NONATTAINMENT AREA SIP CONTINGENCY MEASURES

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# Introduction & Background

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- EPA published its final guidance on December 3, 2024, to assist air agencies in preparing contingency measures for including in ozone and particulate matter nonattainment area SIPs.
- Contingency measures (CMs) are emissions control requirements that are part of a SIP and take effect after an area fails to attain the standard for any criteria pollutant by an applicable attainment date or fails to make reasonable further progress toward attainment. These measures are required as part of the Part D of Title I of the Clean Air Act.
- The guidance reviews the statutory provisions of sections 172(c)(9) and 182(c)(9) of the CAA, which require states to include specific measures as CMs in their attainment plans for nonattainment areas in general and serious and above areas respectively. It also discusses prior EPA guidance and court decisions that have influenced the current approach to CMs.

# Key Focus Areas

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1. Emissions Reductions Requirements - Historically, the EPA recommended that CMs provide reductions equivalent to "one year's worth" (OYW) of reasonable further progress (RFP). However, the new guidance shifts to an attainment-focused approach, recommending that CMs achieve approximately "one year's worth of progress" (OYW of progress). This new metric is calculated based on the attainment projected inventory rather than the initial base year inventory. The calculation involves determining the annual percentage reduction needed to attain the NAAQS and applying this percentage to the attainment projected inventory.
2. Identification and Assessment of Potential CMs - The guidance provides recommendations for how air agencies can identify and assess potential CMs. It addresses situations where an air agency cannot identify feasible CMs that achieve OYW of progress. In that case, it should prepare a reasoned justification. This justification should document the efforts made to identify candidate measures and explain why certain measures were deemed infeasible. The justification should include detailed analyses of the technological and economic factors considered.

# Key Focus Areas

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3. Timing of Emissions Reductions – Previously, the EPA recommended that CMs achieve reductions within one year of a triggering event. The new guidance extends this period, allowing for reductions to occur within up to two years of the triggering event. This change acknowledges that some measures may require more time to achieve the necessary reductions. EPA continues to recommend that CMs take effect within 60 days of a triggering event, with minimal administrative actions needed to initiate implementation.

# Other Issues

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- Potential control measures as contingency measures - EPA notes that a contingency measure that requires accelerated implementation of an otherwise already required control measure (e.g, RACT/RACM or RFP in attainment plan) as a result of a triggering event could still be a valid CM, if appropriately structured.
- What constitutes taking effect “without any further action” in the CM context – EPA acknowledged that although the statutory language of section 172(c)(9) and section 182(c)(9) provides that CMs must take effect “without further action by the State or the Administrator,” the Agency considers this language to allow certain “minimal” actions by the state to implement the measures. For example, the EPA noted that actions such as notification of affected sources subject to the triggered CM might be appropriate, whereas additional rulemaking or legislative action by the state to implement the CM would not be.

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