U.S. EPA is developing updated Contingency Measure Guidance in response to a recent court decision in the AIR case.[[1]](#footnote-2) Below is a potential approach that U.S. EPA may want to consider. The approach would rely on long-standing guidance, but also provide options to areas where additional emission reductions are not reasonably available.

**Key Observations on Contingency Measures post-AIR Case**

* Court only requires reasonable explanation for change in policy.
* Significantly changed circumstances since 1992 Contingency Measure Guidance:
  + Progressively more stringent NAAQS and multiple NAAQS at same time making additional emission reductions scarce, especially from stationary sources.
  + Sources under federal control playing major and increasing role.
  + States have achieved very substantial emission reductions.
* Some areas cannot develop contingency measures meeting 1992 guidance requirement to achieve one year’s worth of emission reductions; the law does not require the impossible
  + Unintended consequence of current approach – areas must withhold control measures from their attainment strategy to use as contingency measures. This is contrary to the requirement to attain as expeditiously as practicable. EPA should provide contingency measures for federal sources.

**Potential Options to Supplement Existing Guidance – these provide an off-ramp from existing guidance; proceed to Option B if area cannot meet Option A target**

*Supplemental Option A: Alternative Emission Reduction Target*

* Calculate alternative target from inventory in attainment year rather than base year.
* Subtract emissions in attainment year contributed by federal sources and upwind areas.
* Option only available if area has submitted a RACT/RACM demonstration.
* Single contingency measure could serve for multiple NAAQS.

*Supplemental Option B: Multi-Factor Analysis to Establish Area-Specific Emissions Reduction Target*

* Area would establish individual emission reduction target, subject to U.S. EPA approval, if it is unreasonable to achieve one year’s worth of reductions because additional reductions are extremely scarce Factors to consider include:
  + Portion of attainment year emissions subject to federal and upwind sources as opposed to within state control.
  + Relative amount of reductions already achieved for state-regulated sources.
  + Evaluation of opportunity for additional emission reductions from sources subject to state regulation (e.g., technical feasibility, time required for implementation, since most measures cannot be implemented immediately upon trigger occurring).
  + Impact of further reductions from state-regulated sources on ambient AQ.
  + Impact of available measures on jobs and economy.

*Supplemental Option C: Concentration-Based Alternative*

* Focus on air quality outcome rather than emission reductions, where nonattainment is due to federal sources and/or overwhelming transport and additional state controls are unavailable or insufficient, the area could alternatively demonstrate reduction in concentration for design value monitoring station area equal to one year’s worth of progress.

1. *Association of Irritated Residents v. U.S. Environmental Protection Agency*, 10 F. 4th 937 (9th Cir. 2021) [↑](#footnote-ref-2)