

local area as a result of fuel RVP regulations promulgated in June, 1990.

(2) Calculate the difference between 2008 and 2011 emission factors and multiply by 2002 VMT. The result is the emissions reductions that will occur between 2008 and 2011 without the benefits of any post-1990 CAA measures. These are the non-creditable reductions that occur over this period.

(3) Subtract the non-creditable reductions calculated in step 2 from the 2008 target level of emissions calculated previously.

(4) Reduce the inventory calculated in step 3 by 9 percent. The result is the target level of emissions in 2011 in order to meet the 2011 ROP requirement. The actual projected 2011 inventory with all control measures in place and including projected 2011 growth in activity must be at or lower than this target level of emissions.

J. Are Contingency Measures Required in the Event of Failure To Meet a Milestone or To Attain the 8-Hour Ozone NAAQS?

1. Background

Under the CAA, nonattainment areas must include in their SIPs contingency measures consistent with section 172(c)(9). However, section 182(a) expressly exempts areas classified as marginal from this obligation. States with ozone nonattainment areas classified as moderate and above must include contingency measures in their SIPs consistent with sections 172(c)(9) and 182(c)(9). Contingency measures are additional controls to be implemented in the event the area fails to meet a RFP milestone or fails to attain by its attainment date. These contingency measures must be fully adopted rules or measures which are ready for implementation quickly upon failure to meet milestones or attainment. The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without significant further action by the State or EPA. Additional background information concerning the CAA contingency measure provisions appears in the General Preamble of April 16, 1992 (57 FR 13510–13512 and 13520); and Section 9.2 of “Guidance for Growth Factor, Projections, and Control Strategies for the 15 percent Rate-of-Progress Plans” (EPA–452/R–93–002), March 1993.

The guidance indicates that States should adopt and submit contingency measures to provide a three percent emission reduction (beyond what is needed for attainment or the ROP

requirement) for moderate and above ozone areas, which EPA concludes is generally acceptable to offset emission increases while States are correcting their SIPs.

Also, EPA guidance suggests that contingency measures that a State adopted for purposes of the 15 percent ROP requirement may be used as the contingency measures for any post-1996 3-year requirements for RFP, provided they have not been triggered and used as contingency measures for the 15 percent plan. See Section 5.6 of “Guidance on the Post 1996 Rate-of-Progress Plan (ROP) and Attainment Demonstration” (corrected version of February 18, 1994). Furthermore, Federal measures that result in additional emission reductions beyond those needed for attainment or ROP in an area could serve as contingency measures for a failure to attain or meet the ROP requirements. EPA has approved the use of Federal measures as part of contingency measures in several EPA actions approving 1-hour ozone SIPs (62 FR 15844, April 3, 1997), (62 FR 66279, December 18, 1997), and (66 FR 30811, June 8, 2001), (66 FR 586 and 66 FR 634, January 3, 2001).

2. Proposal

For the 8-hour ozone standard, we intend to continue to observe our existing policies regarding contingency measures for areas covered under subpart 2. Areas that are nonattainment for the 8-hour ozone standard that have unused adopted contingency measures for the 1-hour ozone NAAQS may use those measures as appropriate as contingency measures for the 8-hour ozone NAAQS. For areas covered under subpart 1, we will provide additional guidance on the contingency measure requirement, but it is likely that it will be patterned after the subpart 2 requirement.

K. What Requirements Should Apply for RACM and RACT for 8-Hour Ozone Nonattainment Areas?

1. Background

Subpart 1 of part D includes general requirements for all designated nonattainment areas, including a requirement that a nonattainment plan provide for the implementation of all RACM as expeditiously as practicable, including such reductions that may be obtained through RACT. Most areas designated nonattainment for the 1-hour ozone standard are also subject to the requirements of subpart 2 of part D, including its detailed control measure provisions. Under subpart 2, RACT requirements for ozone nonattainment

areas apply independent of the emissions reductions needed to attain the standard. The RACT requirements also apply in attainment areas within the current ozone transport region (OTR) (or any additional OTR that EPA may establish under the CAA), regardless of the emissions reductions needed to attain. The RACT requirement applies to both ozone precursors—NO_x and VOC. Since 1990, we have issued guidance on the RACT requirements in subpart 2.⁵⁰ Prior to enactment of the CAA Amendments of 1990, EPA also issued detailed guidance on RACT for ozone nonattainment area SIPs.⁵¹ This guidance continues to be relevant.

Elsewhere in this proposed rulemaking, we are proposing one option for classifying 8-hour ozone nonattainment areas in which some areas would be subject to the requirements of subpart 1. Unlike subpart 2, which contains detailed requirements regarding the adoption of RACT, subpart 1 contains only a general provision which requires that SIPs for nonattainment areas provide for RACM, including RACT. See CAA section 172(c)(1). Because RACT is a control technology requirement, it is somewhat independent of the need to demonstrate attainment or RFP. In the period prior to enactment of the 1990 CAA Amendments, only the general requirements for RACM and RACT existed, and EPA had issued CTGs to provide presumptive norms for RACT for VOC controls for States to follow in adopting RACT for ozone nonattainment areas. In 1990, Congress institutionalized this requirement for NO_x and VOC (as ozone precursors) in subpart 2, and emphasized the role of CTGs and EPA’s pre-1990 guidance for ensuring that RACT rules themselves were adequately structured to ensure they would be effective and enforceable. For instance, ozone nonattainment areas classified as marginal or higher that had a previous obligation to submit corrections to their VOC RACT rules were required to complete and submit

⁵⁰ 40 CFR part 52, State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule. April 16, 1992. (57 FR 13498); 40 CFR part 52, State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990; Implementation of Title I; Proposed Rule. November 25, 1992. (57 FR 55620).

⁵¹ “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987, **Federal Register**.” Ozone/Carbon Monoxide Program Branch, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency. May 25, 1988; **Federal Register** of November 24, 1987, Appendix D (52 FR at 45105).