NACAA
national association of clean air agencies

October 1, 2010

EPA Docket Center (Air Docket)
Docket ID No. EPA-HQ-OAR-2009-0491
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code: 2822T
Washington, DC 20460

To Whom It May Concern:

We write to you on behalf of the National Association of Clean Air Agencies (NACAA) to provide the association's perspectives on the U.S. Environmental Protection Agency's (EPA's) Proposal to Issue Federal Implementation Plans (FIPs) to Reduce Interstate Transport of Fine Particulate Matter and Ozone (75 *Federal Register* 45210). NACAA is the association of air pollution control agencies in 52 states and territories and over 165 metropolitan areas across the country.

Through these FIPs implementing the Transport Rule, EPA proposes to limit interstate transport of emissions of nitrogen oxide (NO_x) and sulfur dioxide (SO_2) in 31 states and the District of Columbia. NO_x and SO_2 emissions contribute to fine particulate matter ($PM_{2.5}$) and ozone pollution, which cause significant public health problems, including premature deaths, infant mortality, nonfatal heart attacks, hospital admissions for respiratory and cardiovascular issues, and emergency room visits for asthma. Electric power plants – the sources proposed to be controlled under the Transport Rule – represent 70 percent of SO_2 emissions and 20 percent of NO_x emissions in the 32 states covered by the rule and thus are significant contributors to ozone and $PM_{2.5}$ pollution. Controlling these sources is highly cost effective: EPA's own analysis shows a 40 to 1 – and up to a 100 to 1 – benefit-to-cost ratio for the power plant controls in the Transport Rule. Accordingly, this rule provides EPA with a tremendous opportunity to assist state and local air pollution control agencies throughout the eastern half of the United States with meeting their clean air obligations.

While the ultimate responsibility for attaining the ozone and $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) lies with state and local clean air agencies, federal control measures limiting emissions of NO_x and SO_2 are critical, due to the overwhelming transport problem in the Northeast, Mid-Atlantic, Southeast and Midwest (i.e., the region covered by the proposed Transport Rule). Accordingly, EPA needs to promulgate a strong timely Transport Rule.

Areas Where NACAA Generally Supports EPA's Approach in the Transport Rule

We appreciate EPA's efforts to thoughtfully address the court decision[1] that overturned the previous transport rule – the Clean Air Interstate Rule (CAIR) – and to quickly put in place a rule that limits NO_x and SO_2 emissions from power plants in the Northeast, Mid-Atlantic, Southeast and Midwest on a timeframe that helps states meet their attainment deadlines. We will highlight here several aspects of the proposed Transport Rule that we generally support:

- We are encouraged by EPA's provisions limiting interstate trading. These will ensure that a substantial portion of a state's assigned emissions reductions occur in that state (rather than through the purchase and use of out-of-state allowances to achieve compliance with the rule).
- Similarly, eliminating the use of Title IV SO_2 allowances means the caps in the Transport Rule for SO_2 are not weakened by the use of banked Title IV allowances.
- We support EPA's decision to prohibit the use of carryover CAIR NO_x allowances in the Transport Rule program. Use of these allowances would dilute the already weak NO_x caps. Furthermore, one of the aspects of the CAIR program that the court found invalid was EPA's use of a fuel adjustment factor in determining the allocation of the NOx allowances. Accordingly, this illegal aspect of the program should not be grandfathered into the new Transport Rule.
- We are also pleased that EPA has attempted to align the rule's compliance deadlines – 2012 and 2014 – with attainment deadlines for the 1997 ozone, 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ air quality standards. The court, in striking down CAIR, said that the agency's failure to require sources to comply with CAIR in the same timeframe as states' attainment deadlines was one of the "fatal flaws" in CAIR.
- NACAA also supports the agency's use of air quality factors and a health benefits assessment in calculating states' emissions budgets, rather than basing the budgets solely on the availability of highly cost-effective controls. We also support EPA's use of a lower threshold (1 percent of the NAAQS) than used in CAIR for determining states that significantly contribute to downwind nonattainment.
- We are also pleased that EPA has committed to quickly finalizing a second Transport Rule – Transport Rule II – in recognition that much tighter NO_x caps will be needed to address the pending revision to the 8-hour ozone standard.
- NACAA strongly supports EPA's pledge to review whether a new or revised Transport Rule is needed each time it revises an air quality standard.

However, we have identified several areas where the rule can be improved and areas where we have concerns, and we will now discuss our recommendations and concerns.

[1] *North Carolina v. EPA*, 531 F.3d 896 (DC Cir. 2008) (court decision vacating CAIR) and *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. 2008) (court decision remanding CAIR in lieu of vacatur).

Areas Where the Transport Rule Could Be Strengthened and Improved

The 2014 NO_x Emissions Cap Should Be Tightened

The NO_x emissions caps in the proposed Transport Rule are not stringent enough. EPA admits that there are 10 states for which the agency has "only quantified a minimum amount of emissions reductions needed to make measurable progress towards eliminating their significant contribution and interference with maintenance with respect to" the 1997 ozone standard.[2] Furthermore, while EPA proposes to lower the SO_2 cap in 2014, the agency makes no such adjustment for NO_x. Although EPA says it will address the NO_x reductions needed to meet the soon-to-be promulgated revised ozone standard in Transport Rule II, it is imperative that the agency include in *this* Transport Rule a second, tighter annual NO_x cap in 2014 to assist states in attaining the 1997 ozone standard (85 parts per billion) and 2006 $PM_{2.5}$ standards.[3] Analysis by NACAA and the Ozone Transport Commission suggests a 900,000 ton annual NO_x cap in 2014 is technologically feasible and cost-effective, and EPA's analysis confirms the cost-effectiveness of additional NO_x reductions.[4]

Emissions of Other Sources Also Need to Be Reduced to Eliminate Transport

The Transport Rule fails to include all sources that contribute significantly to transport, such as industrial, commercial and institutional boilers, and cement kilns. These additional source categories represent a significant percentage of the states' NO_x and SO_2 emissions inventories and also contribute to interstate transport problems. We recognize that to include these sources, EPA believes it would need to repropose Transport Rule I, which, in the interest of time, we do not support. Thus, EPA *must* address these source categories as well when it proposes its Transport Rule II. In addition, EPA could assist state and local agencies by requiring substantial emissions reductions from other source categories that are significant contributors of ozone and $PM_{2.5}$ precursor emissions, including, but not limited to, on-road light duty vehicles, locomotive and oceangoing marine engines, and nonroad vehicles.

The Transport Rule Fails to Completely Eliminate Transport

The proposed Transport Rule does not completely satisfy section 110(a)(2)(D)'s requirements to eliminate emissions that significantly contribute to downwind nonattainment

---

[2] 75 *Federal Register* 45214.

[3] We believe a tighter annual NO_x cap is called for because (1) ozone seasons vary in states, and states experience ozone problems outside the months covered by EPA's seasonal NO_x program; and (2) research in the Midwest points to nitrates driving wintertime $PM_{2.5}$ attainment problems. Jaemeen Beck, et al, "Episodic Air Pollution in Wisconsin (LADCO Winter Nitrate Study) and Georgia (SEARCH Network) During Jan-Mar 2009," (*forthcoming* 2010).

[4] Senator Thomas Carper (D-DE) asked EPA to analyze the impacts of a 900,000 ton NO_x cap in the East beginning in 2015 as a possible alternative to the 1.3 million ton cap in 2015 in his bill, the Clean Air Act Amendments of 2010 (S. 2995). The more stringent NO_x caps provided between $3-10 billion in additional benefits each year at a cost of $1.5 billion. "EPA Analysis of Alternative NO_x and SO_2 Caps for Senator Carper" (July 16, 2010).

or interfere with maintenance. As mentioned previously, there are dozens of states[5] that will need to do more in order to satisfy their Clean Air Act obligation to address transport, unless EPA reduces the NO_x and SO_2 emissions caps. We are disappointed that after spending a year-and-a-half to analyze interstate transport, EPA presents us with an incomplete solution.

For the remaining transport problems associated with the 2006 $PM_{2.5}$ NAAQS, EPA says in the proposal that its air quality modeling shows that the "remaining component of nonattainment is almost entirely occurring in the winter months" and that the agency is "moving ahead with further efforts, before the final rule is published, to determine the extent to which this winter problem is caused by emissions transported from upwind states and, if this is the case, to identify the total amount of emissions that represents significant contribution and interference with maintenance. To the extent possible, EPA plans to finalize a rule that fully defines this amount."[6] We urge EPA to quickly complete this study in collaboration with the 15 states identified by EPA as still contributing to transport of $PM_{2.5}$ precursor emissions, and we urge the agency to promulgate a final rule resolving the transport problem associated with the 2006 $PM_{2.5}$ NAAQS. In this rule, EPA should clearly identify any additional requirements states must complete in order to fully satisfy their section 110(a)(2)(D) obligations.

With respect to ozone, our preference is that EPA tighten the NO_x caps in 2014 to resolve the remaining nonattainment problems. In addition, since EPA plans to quickly promulgate Transport Rule II to address the new tightened ozone standard, EPA also has an opportunity in that rulemaking to resolve any remaining ozone downwind issues, in collaboration with the 10 states identified as still contributing to transport of ozone precursor emissions.

Adding a Variability Factor to the Emissions Budgets Dilutes the Environmental Integrity of the Rule

EPA presents three "remedy" options for implementing the Transport Rule's emissions reduction requirements.[7] EPA's preferred approach would use state-specific control budgets and allow for intrastate and limited interstate trading of emissions allowances allocated to power plants, to ensure that the majority of power plants in each state control their own emissions rather than buy out-of-state allowances. This option is implemented by adding a variability factor to each state budget, and if a state's emissions exceed the budget plus the variability factor, sources in the exceeding state are penalized (through the turn-in of allowances) based on their proportional share of the overage in emissions.[8]

---

[5] There are ten eastern states for which EPA has not completely quantified the total significant contribution or interference with maintenance with respect to the 1997 ozone NAAQS and 15 states for which EPA has not completely quantified total significant contribution or interference with maintenance with respect to the 2006 $PM_{2.5}$ NAAQS. 75 *Federal Register* 45214.

[6] Id. at 45284.

[7] Id. at 45303.

[8] Id. at 45313-45314.

NACAA supports EPA's preferred approach but we recommend that the agency modify it to hew more closely to the Act's requirements under section 110(a)(2)(D) and to ensure protection of public health and the environment. Under EPA's preferred approach, if a state's emissions are below the budget *plus* a variability factor, then there is no penalty. However, EPA has determined that a state's emissions need to be *at or under its budget* (not at or under the inflated budget that includes the variability factor) in order to eliminate significant contribution to downwind nonattainment. In our reading of the Act, then, EPA cannot allow a state to emit any more than its emissions budget in order to eliminate significant contribution to downwind nonattainment and to not interfere with maintenance.

EPA says it is including a variability factor to account for unplanned increased emissions in a state due to situations such as extreme weather events, unplanned outages or unexpected load demands because of an unusually hot summer.[9] We understand the need to account for variability in output due to unforeseen circumstances. We strongly suggest that EPA consider a different mechanism that accounts for variability in weather and possible unplanned outages of power plant units but that also preserves the environmental integrity of the Transport Rule. EPA should set aside an emergency reserve of allowances each year that can be used by plants that have to ramp up production because other plants out of state have experienced outages or that have to ramp up unexpectedly due to extreme weather events. These reserve allowances should be deducted proportionally from each state's budgets so that the overall caps remain intact. This approach still permits interstate trading – as long as purchases by in-state sources of out-of-state allowances matches out-of-state purchases of in-state allowances. If there is an imbalance because of an unplanned outage or weather emergency, the emergency reserve of allowances is available to make up the difference in case of emergencies. This ensures the integrity of the cap while also accounting for variability.

EPA Should Provide Guidance on Transport Rule SIP Submittals – Particularly for States That Wish to Allocate Allowances Using a Different Mechanism Than Proposed by EPA

NACAA appreciates EPA's attempts to expedite implementation of the Transport Rule by proposing a FIP along with the rule instead of issuing a notice requesting the submission of State Implementation Plans (SIP Call). As EPA well knows, preparing another SIP on top of existing SIP obligations would be a severe strain on already stretched state and local resources. However, NACAA does not believe EPA has provided sufficient guidance to states that may choose to submit a SIP. In particular, a number of NACAA members would prefer to allocate emissions allowances to in-state sources using their own procedures, rather than EPA's. For example, some states may wish to distribute their allowances to in-state sources in a manner that encourages renewable energy and energy efficiency. We believe that this should not affect the approvability of the SIP, since the distribution of allowances within the state does not affect the overall emissions in the state or a source's decision to control or not to control emissions. However, the proposal does not provide guidance on what EPA would consider an acceptable allowance distribution mechanism. Furthermore – and critically –

[9] In the case of an unusually hot summer, we note that these are precisely the circumstances where emissions reductions are needed the most, since increased temperatures can lead to higher ozone levels.

NACAA seeks guidance on what criteria state SIPs would need to meet in order for that state's sources to be able to still participate in the interstate trading program. We urge EPA to state that it will quickly approve a state SIP that incorporates the Transport Rule FIP elements and only differs significantly from the FIP with respect to the allowance allocation scheme.

Inclusion of Texas in SO_2 Control Program

NACAA recommends that Texas be included in the SO_2 control program as a group 2 state. As EPA notes in the proposal, EPA's analysis shows that if Texas is not included in the SO_2 control program, Texas' SO_2 emissions would increase the state's contribution to an amount that would exceed the threshold for annual $PM_{2.5}$ (thus exceeding the threshold for inclusion in the SO_2 program).[10] Since implementation of the Transport Rule program changes Texas from a state whose contribution to annual $PM_{2.5}$ does not exceed EPA's threshold to a state that does, EPA must proactively address the impacts that naturally flow from the Transport Rule and include Texas in the Transport Rule, so that the Transport Rule does not cause Texas to violate section 110(a)(2)(D) of the Act.

Concerns Regarding the Accuracy of Inventory Information

In our discussions with EPA on the proposal, EPA requested that NACAA review the emissions inventory information the agency used in developing the proposed Transport Rule. Many of our members have concerns with the quality of the data or analysis and will be submitting comments separately to EPA to assist in promulgation of the final rule. We understand the challenging nature of the schedule in the specific circumstances of this rule, but we urge EPA in the future to provide NACAA and its members with its modeling assumptions, inventory and projections *prior to* proposal, to enhance the accuracy of EPA's technical information.

Lead-In Time for Sources

As noted previously, we support alignment of compliance dates with states' attainment deadlines, so that controls are installed and operational and reduce air pollutant emissions on a timeframe consistent with states' attainment deadlines.[11] We do note, however, that requiring compliance one year (2012) and three years (2014) after the rule's effective date will be technically challenging for a number of sources. We recognize the particular circumstances of this rule – the agency's need to act quickly to ensure reductions achieved by CAIR remained in place and to quickly propose a rule that met the court's dictates – influenced this schedule. In the future, we recommend that the agency attempt to include more lead-in time for sources and that the agency work closely with NACAA and its members in fashioning the rule so we can provide detailed feedback prior to the proposed rule.

[10] 75 *Federal Register* 45284.

[11] Not only does this make sense, the court decision requires such an alignment.

EPA Needs to Finalize Transport Rule II Quickly and Work With Closely with NACAA and Its Members in Fashioning the Rule

Finally, and very critically, NACAA urges EPA to finalize Transport Rule II quickly. EPA must promulgate a second Transport Rule no later than 2012 if the agency is indeed serious about helping state and local air pollution control agencies to address interstate transport, meet their statutory obligations under the Clean Air Act (e.g., meet the attainment deadlines for moderate nonattainment areas) and to ultimately attain the health-based standards. We also urge the agency to work closely with NACAA and its members so that this next phase fits seamlessly into state and local air agency planning and reflects a deep collaboration with state and local air agencies.

Thank you for the opportunity to comment. If you have any questions, please feel free to contact either of us or S. William Becker, NACAA's Executive Director, at 202-624-7864.

Sincerely,

Tad Aburn
Maryland
Co-chair
NACAA Criteria Pollutants Committee

Lynne A. Liddington
Knoxville, Tennessee
Co-chair
NACAA Criteria Pollutants Committee