STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

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EXECUTIVE DIRECTOR

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Environmental Protection Agency
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To Whom It May Concern:

The State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) are pleased to submit these comments on the U.S. Environmental Protection Agency's (EPA's) Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule, or Transport Rule), as published in the *Federal Register* on June 10, 2004 (69 *Federal Register* 32684) (hereinafter referred to as the "Transport Rule Supplemental Proposal"). STAPPA and ALAPCO submitted comments on EPA's original Transport Rule proposal (published in 69 *Federal Register* 4566). In those comments, we said that while EPA has taken an important first step to address transport, we are concerned that the agency has not done enough. We believe the compliance deadlines are too long, the emissions caps are too weak, and an insufficient number of sources are covered. The Transport Rule Supplemental Proposal does not address these concerns; instead, certain statements in the Transport Rule Supplemental Proposal underscore the importance of our concerns, as described below. In addition, the Transport Rule Supplemental Proposal raises other issues that we will address below.

I. Failure to Align Transport Rule Deadlines with Attainment Dates

On page 32690 of the Transport Rule Supplemental Proposal, EPA notes that commenters on the original proposal raised concerns about the timing of the Transport Rule reductions vis-à-vis attainment dates for areas. In particular, the Phase I and Phase II compliance deadlines come too late for many states and localities with ozone and fine particulate matter ($PM_{2.5}$) nonattainment problems, since these agencies are required to demonstrate attainment prior to the Transport Rule compliance deadlines. Rather than adjust the Transport Rule's compliance deadlines, however, EPA's response is that areas can request extensions or bump-ups in classification to get more time to comply.

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This is a completely inadequate response to a serious concern raised by states and localities about the difficulty in complying with attainment deadlines. First, it demeans the importance of attainment dates, and the protection of public health and welfare, since EPA is recommending relying on extensions. Second, it contradicts an earlier statement of EPA about the importance of providing flexibility without having to resort to waivers or exemptions. EPA lists one of the advantages of adopting the model cap-and-trade rules as providing "flexibility for the regulated community (*without resorting to waivers, exemptions and other forms of administrative relief that can delay emission reductions*)" (p.32709 (emphasis supplied)). Yet, EPA is proposing that states and localities rely on "waivers, exemptions and other forms of administrative relief that can delay emission reductions" since the Transport Rule reductions are inadequate. STAPPA and ALAPCO strongly recommend that EPA accelerate the compliance schedule for affected facilities to provide cleaner air more quickly and to better align these reductions with states and localities' attainment deadlines.

II. Failure to Require More Stringent Reductions and Include More Sources

Two statements in the Transport Rule Supplemental Proposal make it clear that more stringent reductions are needed and from more sources, as STAPPA and ALAPCO have recommended.

On page 32693, footnote 5, EPA states that its 2010 emission projections did not account for Reasonably Available Control Measures (RACM), Reasonably Available Control Technology (RACT), or Inspection and Maintenance requirements in any new 8-hour ozone or $PM_{2.5}$ nonattainment areas. Nevertheless, EPA does not believe that this "distorts" its proposed findings "because the aggregate reduction in [nitrogen oxide] (NO_x) and [sulfur dioxide] (SO_2) emissions from these measures would be at most a small percentage of overall emissions." EPA admits that emission reductions from local measures in 2010 are so negligible that including them would not affect its modeling results. This underscores the need for more stringent *national* reductions so states can attain the 8-hour ozone and $PM_{2.5}$ standards.

On the same page, EPA says that it will require states that rely on reductions from controls on non-EGUs to commit in their Transport Rule SIPs to replace the emission reductions attributable to any Transport Rule SIP measure if that measure is subsequently determined to be required in meeting any other SIP requirement related to adoption of control measures (e.g., RACM or RACT). EPA's intent is to ensure that states don't substitute controls for non-EGUs for controls on EGUs in order to meet the Transport Rule caps. EPA's preferred approach is that states only control EGUs to meet the caps in the rule. A better way to ensure that there are reductions from non-EGUs, such as large industrial boilers and stationary internal combustion engines, *and* ensure that EGUs are controlled as well is to expand the Transport Rule to include these sources and change the caps accordingly.

III. Transport Rule and Regional Haze

In addition to preserving air quality to attain health-based National Ambient Air Quality Standards (NAAQS), the Clean Air Act (CAA) requires the prevention of any future and remedying any current impairment of visibility in so-called Class I areas (national parks) (CAA §

169A(a)(1)). One of the tools for preserving visibility and improving visibility in parks is the requirement that certain sources install Best Available Retrofit Technology (BART). The CAA states that BART is required for any BART-eligible source that "emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area" (CAA § 169A(b)(2)(A)). Under a separate rule, EPA spells out how these BART requirements should apply. (See "Regional Haze Regulations and Guidelines for BART Determinations," 69 *Federal Register* 25184 (May 5, 2004).)

In the Transport Rule, EPA proposes that BART-eligible electric generating units (EGUs) in any state affected by the Transport Rule may be exempted from BART for controls for NO_x and SO_2 if that state complies with the Transport Rule requirements through adoption of the Transport Rule cap-and-trade programs for NO_x and SO_2 emissions (p. 32702). EPA's Transport Rule is no substitute for the requirement for EGUs to meet visibility requirements. Visibility goals are a separate requirement that necessitate additional analysis to determine the means to achieving them.

IV. Modification of EPA's Process for Determining Significant Contribution

In the Transport Supplemental Proposal, EPA seeks comment on whether it should change the way it makes CAA section 110(a)(2)(D) findings that a state is failing to prohibit emissions that contribute significantly to downwind nonattainment (p. 32720). EPA has interpreted this section to require that a state reduce emissions by specified amounts, and has based those amounts on the availability of highly cost-effective controls for certain source categories. Some commenters recommended that EPA "consider a source category's contribution to ambient concentrations above the attainment level in all nonattainment areas in affected downwind states" and that a source category should only be included if the "proposed level of additional control of that category would meet a specified threshold" (Id.). For example, EPA suggests that it could determine that inclusion of a source category in a broad multi-state SIP call would be appropriate "only if it would result in at least 0.5 percent of U.S. counties and/or parishes in the lower 48 states coming into attainment with a NAAQS" (Id.). EPA seeks comment on whether this test should be incorporated as a part of the highly cost-effective component of the "contribute significantly" requirement of CAA § 110(a)(2)(D).

STAPPA and ALAPCO recommend that EPA <u>not</u> adopt this test. Most importantly, a fuller discussion and analysis of the implications of this change are necessary. While STAPPA and ALAPCO have not analyzed the full impact of this test, we raise several preliminary concerns. First, it is not clear how to determine scientifically what the correct threshold should be under this proposed methodology. EPA in its example selects an arbitrary threshold of bringing 0.5 percent of counties/parishes into attainment, but does not explain how it arrived at that threshold. A county/parish impact analysis fails to take into account the number of people, or the number of people sensitive to air pollution, who live in the counties that benefit from a multi-state SIP call. Second, this test overlooks the impact of multiple sources on nonattainment and that a multi-state SIP call may be the only way of controlling sources in upwind states that have an impact on downwind states. It may be that controls in the downwind state *plus* section 110(a)(2)(D) controls in upwind states result in the downwind state attaining the standard. It also may be that the other alternatives available to a state or locality for reaching attainment are measures that are less cost-effective than the multi-state SIP call, and just because the multi-state SIP call controls do not

bring those areas into attainment, does not mean they should be eliminated from the list of measures. Furthermore, an analysis that looks only at the impact of controls on one source category does not capture the impact of controls on multiple source categories. Finally, STAPPA and ALAPCO are concerned that this method of analysis could be used to exclude almost any source category by subdividing the category to a level of insignificance.

V. NO_x Emissions Budgets

In the Transport Rule Supplemental Proposal, EPA proposes determining state NO_x budgets based on historical heat input data (pp. 32688-32689). In the original Transport Rule proposal, however, EPA solicited comment on using two alternative methods: 1) pro-rated emissions levels (budgets based on reductions in emissions levels) and 2) pro-rated share of output (kilowatt hours (kwh)) (budgets based on their output (same pound/kwh rate)) (p.4621). The Transport Rule Supplemental Proposal is silent on either of those two different allocation methods. EPA should have conducted a detailed analysis on both of these alternative allocation methods (including the possible impacts of each on existing state programs) and provided the results of this analysis in the form of a technical support document in order to allow for informed comment.

VI. Interaction with Title IV Acid Rain Program

STAPPA and ALAPCO are concerned about EPA's proposal to subsume the Title IV Acid Rain program into the Transport Rule. EPA proposes to use the same allocation methodology for SO_2 allowances under the Transport Rule as used in the Title IV Acid Rain program and proposes that the SO_2 acid rain allowances can be used for compliance with the Transport Rule. There are several problems with this scheme. First, by linking to the Acid Rain program, which has a predetermined allocation methodology, there is no flexibility for states in allocating SO_2 allowances. Second, several commenters have raised questions about the legality of EPA's linking Title IV Acid Rain allowances to the Transport Rule program; thus, EPA is needlessly subjecting the Transport Rule to legal uncertainty. A better course would be to keep the programs separate.

STAPPA and ALAPCO appreciate this opportunity to comment on EPA's Transport Rule Supplemental Proposal and look forward to working with the agency as additional steps are taken with respect to this important issue.

Sincerely,

Ron Methier
STAPPA Chair
Energy Committee

John Paul
ALAPCO Chair
Energy Committee