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To Whom It May Concern:

The National Association of Clean Air Agencies (NACAA) appreciates this opportunity to comment on the U.S. Environmental Protection Agency's (EPA's) proposed rule, *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements*, as published in the *Federal Register* on June 6, 2013 (78 FR 34178). NACAA is a national, non-partisan, non-profit association of air pollution control agencies in 43 states, the District of Columbia, four territories and 116 metropolitan areas. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. These comments are based upon that experience. The views expressed in these comments do not necessarily represent the positions of every state and local air pollution control agency in the country.

Once final, the 2008 ozone State Implementation Plan (SIP) Requirements Rule will serve as an important guidepost to state and local air agencies with respect to a range of SIP requirements related to such items as the timing of SIP submissions, attainment demonstrations, reasonable further progress (RFP), Reasonably Available Control Technology (RACT) and Reasonably Available Control Measures (RACM), New Source Review (NSR), requirements in nonattainment areas and emission inventories as well as anti-backsliding requirements that would apply once the 1997 National Ambient Air Quality Standards (NAAQS) for ozone are revoked.

Developing implementation plans to attain and maintain the 2008 ozone NAAQS is a significant challenge for state and local air agencies. However, we are committed to protecting public health and welfare by implementing the necessary air pollution control strategies that make the most sense for our communities and urge EPA to provide rules and guidance documents, as well as federal control measures, that will enable us to attain the ozone NAAQS as expeditiously as practicable. We have reviewed carefully the proposed 2008 ozone SIP requirements rule and offer comments on the following issues.

1) *Timing of Guidance*

The current ozone NAAQS was adopted by EPA in March 2008. Designations for this standard took effect in July 2012. Attainment demonstrations, for those required to submit them, are due starting in mid-2015 – less than two years from now and about a year, if that, from the time this rule will be published in final form. So that states have adequate time to successfully meet their statutory obligations under the Clean Air Act (CAA), it is imperative that EPA provide all NAAQS implementation rules and guidance in a timely manner. This ozone SIP requirements rule is not timely. All states with ozone SIP preparation responsibilities are severely hamstrung by the lack of a final rule and some are entirely unable to move forward with any development of a SIP in the absence of a final federal rule. We cannot overstate how critically important it is that EPA ensure that future implementation rules and guidance documents are developed, proposed and finalized on a much more accelerated timeline. Ideally, EPA should propose the SIP requirements rule at the same time a final NAAQS is promulgated.

2) *SIP Deadlines*

EPA proposes two alternatives for SIP deadlines. Under the first proposed alternative, states would submit their required SIPs individually based on the stipulated CAA deadlines (i.e., emissions inventory [sec. 182(a)(1)] and RACT [sec. 182(b)(2)] within 24 months after designation; 15-percent RFP plans for Moderate and above nonattainment areas and attainment plans for Moderate nonattainment areas within three years after designation [sec. 182(b)(1)]; and attainment plans and demonstrations and three-percent-per-year RFP plans for Serious and above areas within 4 years after designation [sec. 182(c)(2)]). Under the second proposed alternative, states would have the choice of submitting SIPs individually based on the stipulated CAA deadlines or submitting one consolidated SIP, with all required components, within 30 months after designation.

NACAA supports the second alternative, giving states the choice, provided however, that EPA demonstrates a legal interpretation that allows it to provide more time for states to submit emissions inventories and RACT SIPs, which the CAA requires be submitted within 24 months after designation. Further, NACAA suggests that under the consolidated SIP option, states be given 36 months rather than 30 months to make the submittal, however, only if EPA is able to demonstrate a legal interpretation that allows EPA to authorize more than 24 months for submittal of the emissions inventory and RACT SIP.

3) *Modeling and Attainment Demonstrations*

EPA proposes to continue requiring states within Moderate nonattainment areas to submit an attainment demonstration based on photochemical modeling (or another equivalent analytical method determined to be at least as effective). NACAA requests that EPA clarify in footnote 15 on p. 34185, relative to multi-state nonattainment areas, that the requirement to prepare an attainment plan applies only to Moderate and above areas and not to all multi-state nonattainment areas.

4) *Substituting NO_x Reductions for VOC Reductions in Meeting RFP*

Although the CAA requires that RFP reductions be volatile organic compounds (VOCs), EPA proposes an alternative to allow an area to meet the 15-percent RFP requirement, in whole or in part, with reductions in oxides of nitrogen (NO_x) instead of VOCs. EPA offers this approach stating that in many areas of the country it is now evident that NO_x reductions will have a more significant impact on reducing

ambient ozone concentrations than VOC reductions and also that the mix of emissions across the nation and in specific areas is quite different than it was in 1990 when the RFP requirements were written into the CAA, due to emission controls that have been put in place over the past 20 years. To the extent that EPA believes it has the legal authority to allow NO_x reductions to substitute for VOC reductions for RFP, NACAA would support this approach.

5) *RFP for Serious and Above Areas*

For the 1997 ozone standard, EPA went beyond the authority of CAA sec. 182(c)(2)(B) and required Serious and above areas to achieve an RFP reduction of 18 percent in the first six years rather than 15 percent, and required Serious+ areas to submit RFP SIPs for the period after the first six years within three years rather than four years as stipulated by the CAA. For the 2008 ozone NAAQS, EPA proposes RFP requirements for Serious and above areas that comport with the requirements of sec. 182(c)(2)(B). NACAA supports this proposal.

6) *RFP Accounting for Non-Creditable Reductions*

EPA proposes that when calculating RFP emission reduction targets states no longer need to calculate and deduct emissions related to pre-1990 motor vehicle exhaust or evaporative emission control measures, Reid Vapor Pressure rules adopted by November 15, 1990, measures to correct previous RACT requirements and vehicle Inspection and Maintenance program corrections (all of which are specified in CAA sec. 182(b)(1)(D) as not being creditable toward RFP) because such reductions are *de minimis* and the calculation and deduction process is tedious. NACAA agrees with EPA's conclusion and supports this proposal.

7) *Alternative Approaches for Achieving RFP*

EPA is taking comment on several alternative approaches to achieving RFP, including an air quality-based approach that would measure RFP in terms of actual ambient air quality improvements tied to an area's percent emission reduction requirements and an approach to weight the amount of RFP credit given for reductions of individual species of VOCs based on their ozone-forming potential.

Although NACAA has no comment on these specific proposals or their legal merits, we do note that some state and local agencies will face serious difficulties achieving the required RFP reductions by the prescribed deadlines. We urge EPA to engage in meaningful and timely dialogue with states and localities on this issue and to provide states and localities all legally available flexibility in reaching attainment, provided there is no adverse effect on other states' efforts.

8) *RFP Base Year*

EPA recommends in the proposal that areas use 2011 as the base year for RFP reductions. However, the agency also proposes to allow an area the option of choosing an earlier base year for RFP reductions, if the area began early reductions in 2008, in order to take credit for early reductions in the RFP plan. If an earlier year is chosen, the area would need to provide an additional 3 percent per year RFP for each year prior to 2011. NACAA agrees with this approach.

9) *RACM and RACT Requirements*

In discussing its proposed requirements for RACM and RACT, EPA refers to Alternative Control Technique (ACT) guidelines that have been issued by the agency. ACTs present a range of available control strategies and related costs for different source categories. NACAA notes that the EPA ACTs currently on the books for NO_x are nearly 20 years old and urges that the agency update these important documents. In addition, NACAA recommends that, with respect to RACM and RACT, EPA provide all legally available flexibility for reaching attainment, provided there is no adverse effect on other states' efforts

10) *Contingency Measures*

Regarding content of the contingency measures, EPA proposes for Moderate and above areas that have completed the initial 15-percent VOC reduction that the 3-percent emission reductions of contingency measures may be based entirely on NO_x controls (with no minimum VOC requirement) if the state's analyses demonstrate this would be most effective in reaching attainment. NACAA supports this proposal.

In addition, NACAA requests that rather than requiring that contingency measures represent one year's worth of emission reductions, EPA should allow contingency measures to represent "approximately" one year's worth of reductions.

11) *New Source Review – Interpollutant Offset Substitution*

To create additional flexibility for satisfying pollutant offset requirements, EPA authorizes the establishment of emissions offset trading ratios for ozone precursors (NO_x and VOCs) that would provide at least equivalent ozone reduction benefits. Under this approach, NO_x emissions reductions may satisfy VOC offset requirements, and vice versa. The appropriate interpollutant ratios, EPA maintains, are determined by the states for each area consistent with the needs of the area. NACAA recommends that EPA consider using its regional modeling to specify presumptive offset trading ratios that air quality control agencies may use for each ozone nonattainment air quality control region, without requiring agencies to conduct their own complex regional modeling. Alternatively, EPA might provide examples of where such analyses have been successful in obtaining EPA approval of offset trading ratios, so that other agencies can follow the same procedures.

12) *New Source Review – Use of Appendix S for Nonattainment New Source Review.*

EPA states that it intends to reinstate the 18-month limit for the availability of the section VI waiver provision in Appendix S of 40 C.F.R. Part 51. Appendix S, the "Emissions Offset Interpretive Ruling," governs construction and operating permits applied for during the period between the date of designation of an area as nonattainment and the date a nonattainment New Source Review (NSR) permitting program for that area is approved. Under section VI, sources may be exempted from the NSR permitting requirements set forth in the other sections of Appendix S under certain circumstances. EPA should clarify that the reinstated 18-month deadline applies *only* to section VI waivers, and not to the applicability of the remainder of Appendix S, which states should continue to be able to use beyond the 18-month period.

13) *Emission Inventory and Emission Statement Requirements*

EPA states in its proposal that it believes it is appropriate for states to rely on their three-year cycle inventory to meet their sec. 182(a)(3)(A) periodic inventory obligation. The agency proposes that the emissions reporting requirements of the Air Emissions Reporting Rule (AERR) be applied to determine all of the data elements required for such inventories. NACAA notes, however, that the AERR is being revised and EPA has proposed to remove the provisions referenced in this proposal. Therefore, EPA should either amend the AERR to reincorporate the cited provisions or include in the ozone SIP requirements rule provisions for developing an ozone season day emission inventory rather than an annual inventory.

EPA also proposes to allow states to defer public hearings on certain inventories until such time as the areas adopt and submit their RFP plans or attainment demonstrations that rely on these inventories. NACAA supports this proposal.

14) Monitoring

In July 2009, EPA proposed revised rules for monitoring ambient ozone, including modified minimum monitoring requirements in urban areas, new minimum monitoring requirements in non-urban areas and an extended required ozone monitoring season in some states. EPA states in the ozone SIP requirements proposal that the schedule for finalizing any or all aspects of the ozone monitoring proposal remains unclear at this time. NACAA notes that if and when EPA requires such monitoring, states will need time, resources and training to implement the requirements.

15) Anti-Backsliding

With respect to requirements for areas designated attainment for the 2008 ozone NAAQS and either maintenance of the 1997 ozone NAAQS or nonattainment of the 1997 ozone NAAQS, EPA proposes that for maintenance areas the approved maintenance plan will act as the sec. 110(a)(1) maintenance plan and that for 1997 ozone nonattainment areas the Prevention of Significant Deterioration SIP will act as the sec. 110(a)(1) maintenance plan. In addition, for 1997 ozone maintenance areas, EPA proposes to forego the requirement for submittal of a second 10-year maintenance plan. NACAA supports these approaches as long as EPA requires that an area still be attaining the 2008 ozone NAAQS in order to be eligible to eliminate the second 10-year maintenance plan. Although the sec. 110(a)(1) maintenance plans are important to protect against backsliding, EPA's proposed options for satisfying the sec. 110(a)(1) requirements will protect air quality while also minimizing paperwork at the state and federal levels.

EPA also proposes to revise the existing anti-backsliding rule to remove Stage II vapor recovery as a required measure for anti-backsliding purposes. NACAA agrees with this proposal in that onboard refueling vapor recovery is now considered to be in widespread use and areas may, at their discretion, decommission Stage II vapor recovery systems with an EPA-approved SIP revision that is in compliance with the CAA.

16) Federal Control Measures

Finally, the CAA provides that air pollution prevention and air pollution control at its source is the primary responsibility of state and local governments. At the same time, however, the Act requires EPA to address sources that are nationally significant. There are various source categories that contribute significantly not only to levels of NO_x emissions but also to levels of sulfur dioxide, toxic air pollutants, diesel particulate and greenhouse gases as well as to regional haze, acid deposition and nitrogen deposition to water bodies. Such source categories – which include electric generating units, light-duty

vehicles, locomotive engines, oceangoing marine engines and aircraft – can be cost-effectively regulated at the national level and NACAA strongly urges EPA to adopt or refine national rules for them to help all areas of the country attain and maintain the existing and new NAAQS for ozone and other criteria pollutants.

On behalf of NACAA, we thank you for this opportunity to comment on the proposed SIP requirements rule for the 2008 ozone NAAQS. If you have any questions, please do not hesitate to contact either of us or Nancy Kruger, Deputy Director of NACAA. We look forward to working with EPA on the completion of this final rule and on all aspect of implementation of the 2008 ozone standard.

Sincerely,



George S. (Tad) Aburn, Jr.
(Maryland)
Co-Chair
NACAA Criteria Pollutants Committee



Lynne A. Liddington
(Knoxville, Tennessee)
Co-Chair
NACAA Criteria Pollutants Committee