

February 7, 2011

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EPA Docket Center  
EPA West (Air Docket)  
Attention: 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) Notice of Data Availability for Federal Implementation Plans (FIPs) to Reduce Interstate Transport of Fine Particulate Matter and Ozone: Request for Comment on Alternative Allocations, Calculation of Assurance Provision Allowance Surrender Requirements, New-Unit Allocations in Indian Country and Allocations by States (76 *Federal Register* 1109) ("Transport Rule NODA"). NACAA is the association of air pollution control agencies in 52 states and territories and over 165 metropolitan areas across the country. Our comments on the Transport Rule NODA are limited to section VIII (Provisions for States to Submit Transport Rule SIPs or Abbreviated SIPs Providing for State Allocation of Allowances in Proposed Transport Rule Trading Programs). Additionally, we present for the agency's consideration some concerns about the schedule for the agency's contemplated Transport Rule II.

Comments on Section VIII of the Transport Rule NODA

We are pleased that EPA responded favorably to NACAA's comments on the Transport Rule proposal (75 *Federal Register* 45210), in which the association requested that the agency provide additional guidance to states that wish to submit abbreviated or full SIPs that contain provisions providing for state allocations or auctions of the Transport Rule allowances. As we noted in our comments, 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.

We are also pleased that the Transport Rule NODA indicates specifically to what extent an abbreviated or full SIP may differ from the Transport Rule FIP provisions (pp. 1119-1120). We appreciate the clarity provided by the agency.

However, we do have some concerns with EPA's schedule for submitting abbreviated SIPs for states that wish to use their own allocation or auction procedures. The earliest year for which a state could use its own allocation scheme for allowances is 2014.<sup>1</sup> EPA's schedules in Tables III and IV provide that a state must submit either an abbreviated or full SIP by November 1, 2011, in order for a state allowance allocation scheme to possibly apply for year 2014 allowances. Our understanding is that the Transport Rule will not be finalized until June 2011, giving states at most five months to write a SIP, hold public hearings on the SIP and otherwise follow its established administrative procedures for SIP approvals. It is unlikely any states would be able to meet this deadline for 2014 allocations.

We suggest an alternative: allowing states to submit an abbreviated SIP at a later date than a full SIP. This was the approach EPA took in the Clean Air Interstate Rule (CAIR), where the agency recognized that it required less time to approve an abbreviated SIP than a full SIP. Under CAIR, states could submit abbreviated SIPs six months later than the date for full SIPs and only one month before the date by which states were to have submitted allocations or auction results for existing units.<sup>2</sup> Thus, EPA should allow states to submit abbreviated SIPs by as late as April 1, 2012, for year 2014 allocations.<sup>3</sup> Likewise, EPA should also consider a later date for abbreviated SIP submittals for future year allocations.

### Concerns Regarding Schedule for Transport Rule II

Since NACAA submitted its comments on the Transport Rule proposal, EPA has twice delayed its release of the revised ozone NAAQS. EPA is now scheduled to release the final revised ozone NAAQS by July 31, 2011, a year later than originally announced. Thus, it is unlikely the agency will be able to propose Transport Rule II in the summer 2011 and finalize it by summer 2012, as the agency had planned to do.

This postponement means a delay in critical reductions in air pollutant emissions from power plants. The Transport Rule reductions are designed to eliminate interstate transport of nitrogen oxide (NO<sub>x</sub>) emissions that interfere with attainment of the 1997 ozone standard of 0.084 parts per million (ppm), which is unprotective of public health. The Bush administration revised

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<sup>1</sup> "Because EPA anticipates issuing the final Transport Rule around mid-2011, there would not be sufficient time for states to develop and submit abbreviated or full SIPs with allowance allocation provisions, and for EPA to review and approve such SIP submissions, before September 2011 when EPA would record allocations." Transport Rule NODA at 1120.

<sup>2</sup> 71 *Federal Register* 25353. States' deadline for submitting abbreviated SIPs covering 2009, 2010 and 2011 allocations was March 31, 2007, six months later than the deadline for full SIPs. EPA specified a deadline of April 30, 2007, for States to submit to EPA their first set of nitrogen oxide allocations associated with an abbreviated SIP revision.

<sup>3</sup> The deadline for states to submit allocation or auction results for 2014 allowances for existing units is May 1, 2012, so April 1, 2012, is consistent with CAIR's approach of allowing abbreviated SIPs to be submitted up to a month before this date.

this standard to 0.075 ppm in 2008. However, EPA said it was unable to consider the more stringent 2008 standard in crafting the Transport Rule because EPA was reconsidering the standard. Thus the proposed Transport Rule is inadequate to the task of protecting public health. And, because EPA has postponed revising the 2008 standard, a new more protective Transport Rule II is also likely to be deferred until a later date. NACAA urges EPA to proceed as expeditiously as practicable with a Transport Rule II that takes into account a more protective ozone standard and thus includes more stringent NO<sub>x</sub> reductions.

Thank you for the opportunity to comment. If you have any questions, please feel free to contact either of us or Amy Royden-Bloom, NACAA Senior Staff Associate, at 202-624-7864.

Sincerely,



Tad Aburn  
Maryland  
Co-chair, Criteria Pollutants Committee



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