Technical Support Document (TSD)

for the Transport Rule

Docket ID No. EPA-HQ-OAR-2009-0491

Other Remedy Options Evaluated

U.S. Environmental Protection Agency

Office of Air and Radiation

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OTHER OPTIONS EVALUATED

EPA considered several remedy options for reducing emissions from electric generating units (EGUs) that contribute significantly to nonattainment or interfere with maintenance of the air quality standards by downwind states. Three of the remedy options are discussed in the preamble of the proposed Transport Rule: the preferred remedy known as State Budgets/Limited Trading; and two other options, State Budgets/Intrastate Trading and Direct Control. See section V of the preamble of the proposed Transport Rule for details on these remedies. As discussed in preamble section V, the preferred remedy, State Budgets/Limited Trading, would use state-specific emissions budgets and allow for intrastate and limited interstate trading. This approach would assure environmental results while providing some limited flexibility to covered sources. EPA believes the remedy options discussed in the preamble are consistent with the Court's opinion in North Carolina v. EPA, 531 F.3d 896 (D.C. Cir. 2008).

However, EPA also considered variations of the remedies presented in the preamble of the proposed Transport Rule and other remedy concepts. Suggestions were submitted by states and other stakeholders during a robust outreach period before EPA began crafting the proposed rule. EPA evaluated these suggestions, as well as several permutations of the remedies presented in the proposed Transport Rule preamble.

This document summarizes the features of remedy concepts, and permutations of the remedies presented in the proposed Transport Rule preamble, that EPA evaluated during the process of developing the proposed Transport Rule but decided not to present in the preamble. Sections 1 and 2 look at options with interstate trading and intrastate trading, respectively; section 3 looks at options with direct control; and section 4 looks at other concepts. The docket for the proposed Transport Rule includes letters and meeting notes on the suggestions that EPA received from stakeholders in March and April 2009 during outreach discussions before the development of the proposal.

(1) OPTIONS WITH INTERSTATE TRADING

This type of potential remedy would involve: setting state emissions budgets; allocating allowances to the covered sources within each state, with the total allocation within the state equaling the state's budget; allowing trading of allowances; and requiring each covered source to hold allowances -- in an amount at least equaling the source's emissions -- that are allocated within any state included in the trading program. EPA considered several permutations of this type of potential remedy.

A. Unrestricted, regionwide interstate trading. EPA considered adoption of a program of unrestricted, regionwide trading, similar to the cap and trade programs that EPA has implemented for the Acid Rain, NO_X SIP Call, and CAIR programs. In these programs, an overall cap is set on a national or regionwide basis. If a source holds an allowance for every ton of emissions, the source is in compliance with the program's emissions limitation. EPA decided not to pursue this option. EPA decided instead to propose an option that would provide for limited interstate trading and greater assurance that emissions reductions necessary to eliminate significant contribution and interference with maintenance would occur "within each State" as required by section 110(a)(2)(D)(i)(I). 42 U.S.C. 7410(a)(2)(D)(i); see also North Carolina, 531 F.3d at 907.

B. Interstate trading with potential of triggering provision limiting future trading to only intrastate trading. EPA considered an approach of allowing regionwide interstate trading, where a provision that limited future trading to only intrastate trading would be automatically triggered for a state if the state was not making reasonable progress toward elimination of significant contribution or interference with maintenance. For each state, a level of total emissions from covered sources would be set above the state budget and, if that level were exceeded, the sources in the state would be limited thereafter to intrastate trading. EPA decided not to pursue this option. On one hand, EPA was concerned that, for a given compliance year under the program, the Agency could not determine -- until the second quarter of the following year -- whether the level of total covered-source emissions in a state in the compliance year had exceeded the state budget and that an intrastate-trading-only requirement could therefore not be imposed until 2 years after the compliance year. This would mean that total emissions in a state could exceed the state budget for 2 years in a row before there was any consequence for the sources in the state. On the other hand, EPA was also concerned that sources might need a longer transition period (e.g., more than 2 years) to shift from complying with an interstate trading program to complying with an intrastate trading program.

C. Interstate trading with direct control. See section (3)A below.

(2) OPTIONS WITH INTRASTATE TRADING

This type of potential remedy would involve: setting state emissions budgets; allocating allowances to the covered sources within each state, with the total allocation within the state equaling the state's budget; allowing trading of allowances; and requiring each covered source to hold allowances -- in an amount at least equaling the source's emissions -- that are allocated only within the source's state. EPA considered several permutations of this type of potential remedy.

A. Intrastate trading with a "safety valve". EPA considered adding a provision that would allow sources to buy, and use for compliance, additional allowances above the state budget at a price set above the cost effectiveness level on which the state budget was based to allow sources increased flexibility. EPA decided not to pursue this option. EPA decided instead to address in the preamble an option with intrastate trading that would provide greater assurance that emissions reductions necessary to eliminate significant contribution and interference with maintenance would occur "within each State" as required by section 110(a)(2)(D)(i)(I). 42 U.S.C. 7410(a)(2)(D)(i); see also North Carolina, 531 F.3d at 907.

B. Intrastate trading limited to within-company trading in a state. EPA considered an approach of dividing each state budget among the owners of covered sources in the state and limiting trading to sources in the state with the same owner. EPA decided not to pursue this option and decided instead to address in the preamble an option with intrastate trading that would not make compliance much more difficult for owners with few sources in a given state than for owners with several in-state sources.

C. Intrastate trading coupled with sub-regional trading. The Lake Michigan Air Directors Consortium (LADCO) suggested an approach that would allow intrastate trading and that would group states into blocks within which interstate trading would be allowed, with "flow control" provisions that would limit the use of banked allowances. The Texas Commission on Environmental Quality (TCEQ) also suggested the adoption of trading zones. This would result in larger allowance markets than an approach that only allowed intrastate trading. EPA decided not to pursue this option. EPA decided instead to address in the preamble two separate options -- one with limited interstate trading and one with intrastate trading -- that would each provide greater assurance that emissions reductions necessary to eliminate significant contribution and interference with maintenance would occur "within each State" as required by section 110(a)(2)(D)(i)(I). 42 U.S.C. 7410(a)(2)(D)(i); see also North Carolina, 531 F.3d at 907.

D. Intrastate trading with direct control. See section (3)B below.

(3) OPTIONS WITH DIRECT CONTROL

A. Direct control with interstate trading. EPA considered direct control in the form of unit-specific performance-based standards, company-wide performance-based standards, minimum performance-based standards, or performance standards based on best available retrofit technology (BART) emissions controls or reasonably available control technology (RACT) for all covered sources, along with interstate trading. The Collaborative, a group of the Ozone Transport Commission (OTC) and LADCO states, suggested adoption of minimum control requirements or performance standards for covered sources, state-wide emissions caps, and interstate trading with a regional emissions cap that might be more stringent than the statewide caps. EPA decided not to pursue the option of combining direct control and interstate trading. With regard to both the direct control option and the interstate trading option, EPA was concerned about including, in each option, provisions that would afford greater assurance that emissions reductions necessary to eliminate significant contribution and interference with maintenance would occur "within each State" as required by section 110(a)(2)(D)(i)(I). Id. EPA was also concerned that the interstate trading option with these provisions would afford such assurance, without adding to the option the complexity associated with imposition of direct control requirements. Consequently, EPA decided to address the direct control and interstate trading options separately and include such provisions in each option.

B. Direct control with intrastate trading. The Central States Air Resource Agencies CenSARA suggested the imposition of performance-based standards for all covered sources, along with intrastate trading. EPA decided not to pursue this option. EPA decided instead to address in the preamble two separate options -- one with intrastate trading and one with direct control -- that would each provide greater assurance that emission reductions necessary to eliminate significant contribution and interference with maintenance would occur "within each State" as required by section 110(a)(2)(D)(i)(I). Id. EPA was concerned that the intrastate trading option would provide such assurance, without adding to the option the complexity associated with imposition of direct control requirements.

(4) OTHER REMEDY CONCEPTS

The Collaborative, a group of the Ozone Transport Commission (OTC) and LADCO states, suggested a comprehensive national/regional "framework" to address transport and other Clean Air Act issues, including the suggested adoption of minimum emissions control requirements or performance standards for electric generating units (EGUs) and non-EGUs, statewide emission caps, and interstate trading with a regional emissions cap that might be more stringent than the statewide caps, resulting in additional emission reductions starting in 2014. Groups of OTC states and LADCO states also separately made suggestions on addressing interstate pollution transport issues from a regional perspective, including an emphasis on the importance of emissions reductions in the near-term (e.g., 2012-2016) and in the longer term (e.g., 2017-2025) and of the use of interstate trading. Many of the suggestions by the Collaborative, OTC, and LADCO were applied in the proposed Transport Rule.