

Update on EPA Rule Making

David Conroy,
EPA Region 1
April 8, 2010



Climate Change - Regulatory Initiatives



- Completed Actions
 - California Greenhouse Gas Waiver Request - Granted 6/30/09
 - GHG Reporting Rule - Final rule signed 9/22/09
 - Endangerment Finding - Signed 12/7/09
 - Renewable Fuel Standard Program (RFS2) - Final rule signed 2/3/10
 - Reconsideration of GHG Permitting Policy -Signed 3/29/10
 - Light-Duty Vehicle GHG Emissions Standards - Final rule signed 4/1/10
- Pending Actions
 - PSD and Title V GHG Tailoring Rule - proposed 9/30/09
 - Amendment to GHG Reporting Rule - proposed 3/22/10

More info: www.epa.gov/climatechange/initiatives/

Mandatory Greenhouse Gases

Reporting Rule - Final rule signed 9/22/09



- Annual reporting of GHG
 - CO₂, CH₄ (methane), N₂O (nitrous oxide), HFCs (hydrofluorocarbons), PFCs (perfluorocarbons), SF₆ (sulfur hexafluoride), Other fluorinated gases
- 25,000 metric tons CO₂e per year reporting threshold for most sources
- Monitoring begins January 1, 2010; first reports due March 31, 2011
- Direct reporting to EPA electronically
- EPA verification of emissions data

MRR - Proposed Revisions signed 3/22/10



- Subpart A revisions would require reporting on Corporate Parent, North American Industry Classification System codes, and whether or not emissions reported include emissions from a cogeneration unit.
- Would adding reporting requirements for:
 - Subpart W - Petroleum and Natural Gas Systems
 - Subpart RR - Carbon Dioxide Injection and Geologic Sequestration
- Would require reporting of fluorinated GHG from:
 - Subpart I - Electronics Manufacturing
 - Subpart L - Fluorinated Gas Production
 - Subpart DD - Imports and Exports of Equip. Containing Fluorinated GHGs in Closed-cell Foams
 - Subpart OOa - Use of Electric Transmission and Distribution Equip.
 - Subpart SS - Mfg. of Electric Transmission and Distribution Equip.
- EPA plans to finalize these proposals this year.

Endangerment Findings



- On December 7, 2009, the Administrator signed two distinct findings regarding greenhouse gases under section 202(a) of the Clean Air Act:
 - **Endangerment Finding:** The Administrator finds that the current and projected concentrations of the six key well-mixed greenhouse gases--carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)--in the atmosphere threaten the public health and welfare of current and future generations.
 - **Cause or Contribute Finding:** The Administrator finds that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution which threatens public health and welfare.

Endangerment Findings - con't



- These findings do not themselves impose any requirements on industry or other entities.
- However, this action was a prerequisite to finalizing the EPA's proposed greenhouse gas emission standards for light-duty vehicles, which EPA finalized on April 1, 2010.
- General Information and FAQs available on website at: www.epa.gov/climatechange/endangerment.html

Renewable Fuel Standard Program (RFS2) - Final rule signed 2/3/10



- On Feb. 2, 2010, EPA finalizes revisions to the National Renewable Fuel Standard program.
- Changes were required by the Energy Independence and Security Act of 2007 (EISA).
- Under RFS2, program will increase the volume of renewable fuel required to be blended into gasoline from 9 billion gallons in 2008 to 36 billion gallons by 2022.
- New annual volume standards established for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that must be used in transportation fuel.

New Renewable Volume Standards



EISA Renewable Fuel Volume Requirements (billion gallons)				
Year	Cellulosic biofuel requirement	Biomass-based diesel requirement	Advanced biofuel requirement	Total renewable fuel requirement
2008	n/a	n/a	n/a	9
2009	n/a	0.5	0.6	11.1
2010	0.1	0.65	0.95	12.95
2011	0.25	0.8	1.35	13.95
2012	0.5	1	2	15.2
2013	1	a	2.75	16.55
2014	1.75	a	3.75	18.15
2015	3	a	5.5	20.5
2016	4.25	a	7.25	22.25
2017	5.5	a	9	24
2018	7	a	11	26
2019	8.5	a	13	28
2020	10.5	a	15	30
2021	13.5	a	18	33
2022	16	a	21	36
2023+	b	b	b	b

^a To be determined by EPA through a future rulemaking, but no less than 1.0 billion gallons.

^b To be determined by EPA through a future rulemaking.

Light-Duty Vehicle GHG Emissions Standards - Final rule signed 4/1/10



- On April 1, 2010, EPA and the Department of Transportation's National Highway Safety Administration (NHTSA) announced a joint final rule establishing an historic National Program that will dramatically reduce greenhouse gas emissions and improve fuel economy for new cars and trucks sold in the United States.
- Under this National Program, automobile manufacturers will be able to build a single light-duty national fleet that satisfies all requirements under both the National Program and the standards of California and other states, while ensuring that consumers still have a full range of vehicle choices.

Light-Duty Vehicle GHG Emissions Standards - Con't



- The combined EPA and NHTSA standards apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles, covering model years 2012 through 2016.
- They require these vehicles to meet an estimated combined average emissions level of 250 grams of carbon dioxide per mile, equivalent to 35.5 miles per gallon (MPG) if the automobile industry were to meet this carbon dioxide level solely through fuel economy improvements.
- Together, these standards will cut greenhouse gas emissions by an estimated 960 million metric tons and 1.8 billion barrels of oil over the lifetime of the vehicles sold under the program (model years 2012-2016).

Projected Fleet-wide CO2 emission Level Requirements



Projected Fleet-Wide Emissions Compliance Levels under the Footprint-Based CO2 Standards (g/mi) and Corresponding Fuel Economy (mpg)					
	2012	2013	2014	2015	2016
Passenger Cars (g/mi)	263	256	247	236	225
Light Trucks (g/mi)	346	337	326	312	298
Combined Cars & Trucks (g/mi)	295	286	276	263	250
Passenger Cars (mpg)	33.8	34.7	36	37.7	39.5
Light Trucks (mpg)	25.7	26.4	27.3	28.5	29.8
Combined Cars & Trucks (mpg)	30.1	31.1	32.2	33.8	35.5

Reconsideration of GHG Permitting Policy - Finalized March 29, 2010



- On March 29, 2010, EPA has completed its reconsideration of the December 18, 2008 memorandum entitled “EPA’s Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program” - the so-called Johnson memo.
- Affirms our existing position that PSD permitting is not triggered for a pollutant such as GHGs until a final nationwide rule requires actual control of emissions of the pollutant.
- Interprets that PSD permitting requirements are triggered when the control requirement of the nationwide rule “takes effect” - rather than at signature, *Federal Register* publication, or effective date for the rule after publication in the *Federal Register*.

Reconsideration of GHG Permitting Policy - con't



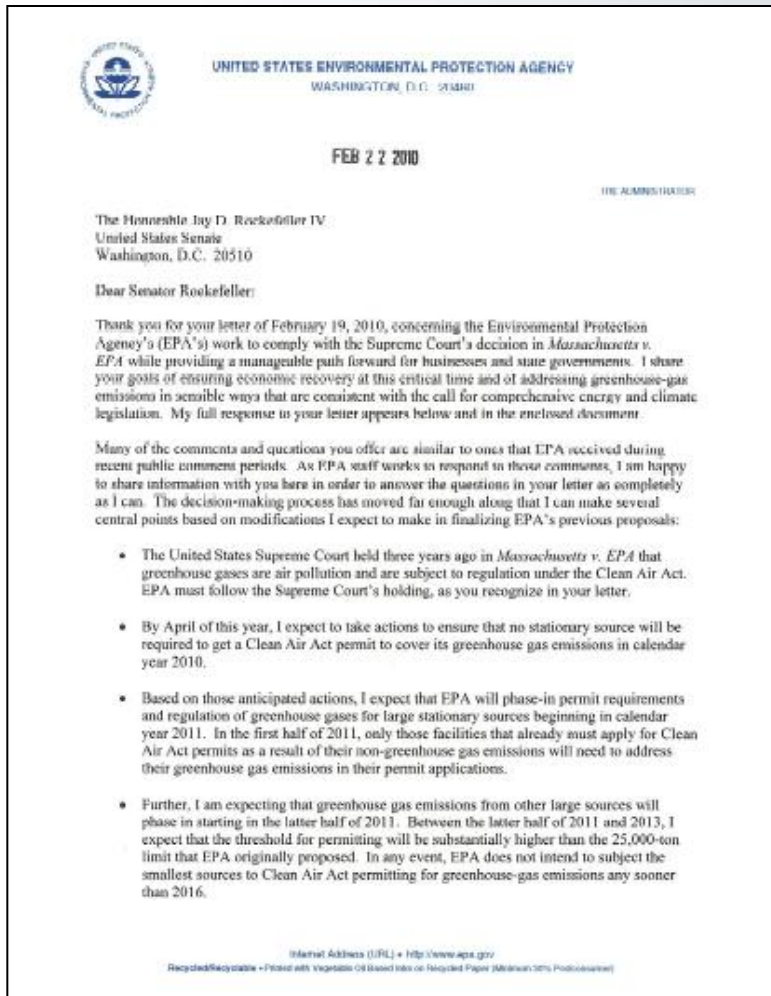
- Explains that for GHGs, "takes effect" means when the first national rule regulating GHGs takes effect. Thus, the GHG vehicle rule would trigger these requirements in January 2011 -- the earliest 2012 vehicles meeting the standards can be sold in the United States.
- Explains that this interpretation of "subject to regulation" applies for Title V permitting as well.
- Confirms that there is no "grandfathering" of pending permit applications. If a permit is issued after Jan 2, 2011, it will have to address GHG emissions, even if applications were filed (and determined complete) prior to that date.

PSD and Title V GHG Tailoring Rule - Proposed 9/30/09



- PSD and Title V permitting programs under the Clean Air Act apply to major sources and modifications of “regulated NSR pollutants.”
- Concerns about regulation of GHG stem from the fact that:
 - By statute, for Title V, the major source threshold is 100 tons/year.
 - By statute, for PSD, the threshold is 250 tons/year (100 tons/year for some categories).
- In Sept. 2009, EPA proposed to raise the “major source” thresholds and PSD “significance levels”
 - PSD and Title V: major source size raised to 25,000 tons/year CO₂e (sum of 6 gases)
 - PSD significance level: raised to a number within the range of 10,000-25,000 tons/year CO₂e (sum of 6 gases)
- EPA Official: Aim To Release Greenhouse Gas Rule By End Of April

Letter About EPA Greenhouse Gas Permitting Plans



- On Feb. 22, 2010 - Admin. Jackson issued a letter responding to 8 Senators about EPA's plans for addressing GHG in 2010.

See http://epa.gov/oar/pdfs/LPJ_letter.pdf

Excerpts from EPA's Feb. 22, 2010 Letter



- By April of this year, I expect to take actions to ensure that no stationary source will be required to get a Clean Air Act permit to cover its greenhouse gas emissions in calendar year 2010.
- Based on those anticipated actions, I expect that EPA will phase-in permit requirements and regulation of greenhouse gases for large stationary sources beginning in calendar year 2011. In the first half of 2011, only those facilities that already must apply for Clean Air Act permits as a result of their non-greenhouse gas emissions will need to address their greenhouse gas emissions in their permit applications.
- Further, I am expecting that greenhouse gas emissions from other large sources will phase in starting in the latter half of 2011. Between the latter half of 2011 and 2013, I expect that the threshold for permitting will be substantially higher than the 25,000-ton limit that EPA originally proposed. In any event, EPA does not intend to subject the smallest sources to Clean Air Act permitting for greenhouse-gas emissions any sooner than 2016.

CAAAC Climate Change Work Group



- In October 2009, a workgroup of the Clean Air Act Advisory Committee (CAAAC) was formed to discuss and identify the major issues and potential barriers to implementing the PSD program for greenhouse gases.
- The workgroup focused mainly on the Best Available Control Technology (BACT) requirement and identified and recommended information and guidance that would be useful for EPA to provide to permitting agencies regarding the consideration of the energy, economic, and environmental impacts of potential control options for greenhouse gases in the context of a BACT analysis.
- The workgroup presented their recommendations at the CAAAC's February 3, 2010 meeting, at which time the CAAAC unanimously voted to pass the recommendations on to EPA.

See <http://www.epa.gov/air/caaac/climatechangewg.html>

Air Quality - Regulatory Initiatives



- Air Quality - Regulatory Initiatives
 - Schedule for Ongoing NAAQS Reviews
 - Designations for the 2006 PM_{2.5} standard
 - Revised Lead (Pb) Standard
 - Revised NO₂ Standard
 - Proposed SO₂ Standard
 - Reconsideration of 2008 Ozone Standard
 - Other Topics of Interest
 - CAIR Replacement Rule
 - Section 185 fees

Anticipated NAAQS Implementation Milestones



Pollutant	NAAQS Promulgation Date	Designations Effective
PM _{2.5} (2006)	Sept 21, 2006	Dec 14, 2009
Pb	Oct 15, 2008	Oct 2010/2011 (extra time for new monitors)
NO ₂ (primary)	Jan 22, 2010	Jan 2012
SO ₂ (primary)	<u>June 2 2010</u>	July 2012
Ozone	Aug 31 2010	Aug 2011
CO	<u>May 13 2011</u> (proposal Oct 28 2010)	June 2013
PM _{2.5} (2011)	July 2011 (proposal Nov 2010)	Aug 2013

Underlined dates indicate court-ordered or settlement agreement deadlines.

EPA Issued Revised PM Standards in Sept 2006



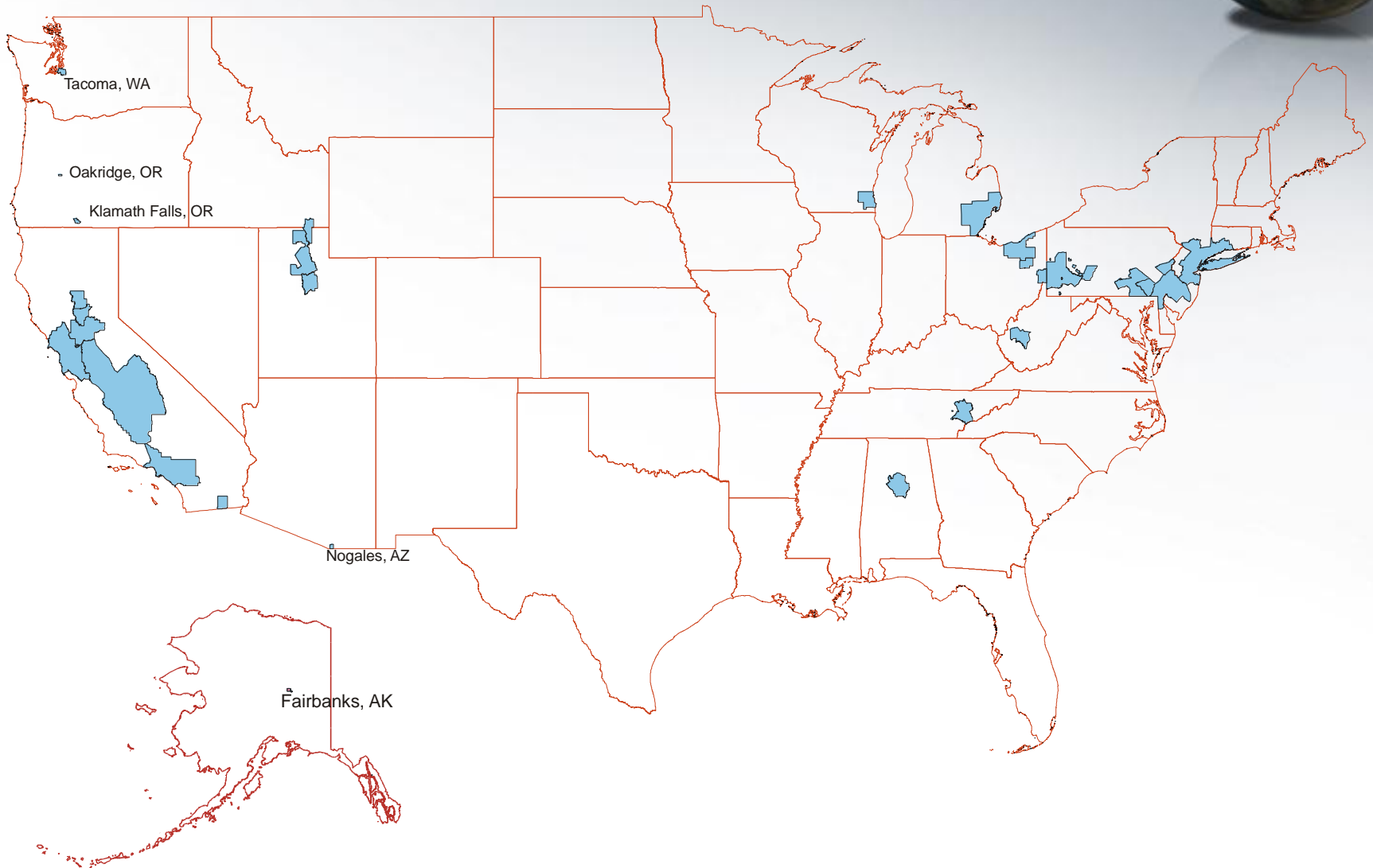
	2006 Standards	
	Annual	24-hour
PM_{2.5} (Fine)	15µg/m³ Annual arithmetic mean, averaged over 3 years	35µg/m³ 3-year average of the 98th percentile of 24-hour concentration
PM₁₀ (Coarse)	Revoked	150µg/m³ Not to be exceeded more than once per year on average over 3 years.

Nonattainment areas for 2006 24-hr $PM_{2.5}$ standard



- Administrator signed final designations notice on Oct 8, 2009
- Designations published Nov 13, 2009; will be effective Dec 14, 2009
- State plans will be due in Dec 14 2012
- Attainment Date
 - Dec 14, 2014
 - Extensions possible to Dec 14, 2019


2006 PM_{2.5} Nonattainment Areas



Revised Lead (Pb) Standard - Adopted Oct. 15, 2008



- EPA strengthened the lead standards by 90 percent to a level of $0.15 \mu\text{g}/\text{m}^3$
- EPA also made changes to the lead monitoring requirements
- State designation recommendations required by Oct. 2009
- CT recommended statewide attainment in an Oct. 6, 2009 letter
- Nonattainment designations expected by Oct 15 2010


M. Jodi Rell
GOVERNOR
STATE OF CONNECTICUT

October 6, 2009

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Arling House Building, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460


RECEIVED
OCT 13 2009
OFFICE OF THE REGIONAL ADMINISTRATOR

Dear Administrator Jackson:

I am writing to provide you with Connecticut's recommended attainment designations for the revised national ambient air quality standard (NAAQS) for airborne lead, which was finalized by the U.S. Environmental Protection Agency (EPA) on October 15, 2008. Section 107(G)(1) of the Clean Air Act (CAA) provides up to one year after adoption of a new or revised NAAQS for states to submit recommendations identifying areas that comply with the standard or that violate or contribute to nearby violations of the standard. Based on a review of monitored data and consistent with CAA Section 107(G)(1) and EPA guidance, the entire state of Connecticut should be designated as attainment for the revised lead NAAQS.

This recommendation for a statewide attainment designation is supported by available lead monitoring and emissions data, as summarized in the attachment. The Connecticut Department of Environmental Protection's (CTDEP) most recent ambient lead measurements associated with total suspended particulate (TSP) monitors that were collected in calendar year 2002. Those data indicate that maximum 3-month running averages at that time were $0.01 \mu\text{g}/\text{m}^3$, well below the revised lead NAAQS of $0.15 \mu\text{g}/\text{m}^3$. More recent lead levels gathered through 2008 are estimated to be less than $0.015 \mu\text{g}/\text{m}^3$, as derived from Connecticut's fine particulate ($\text{PM}_{2.5}$) speciation sites. These low measured lead levels are consistent with the low estimated emissions from individual lead sources in Connecticut, all of which are significantly less than either the 0.5 ton/year or 1.0 ton/year emission thresholds currently identified by EPA as triggering the need for source-specific ambient lead monitoring. When considered together, both the ambient monitored data and source emission levels support an attainment designation for the revised lead NAAQS throughout Connecticut.

Please contact Anne Gobin, Chief of CTDEP's Bureau of Air Management at 860-424-3026 with any questions regarding this recommendation.

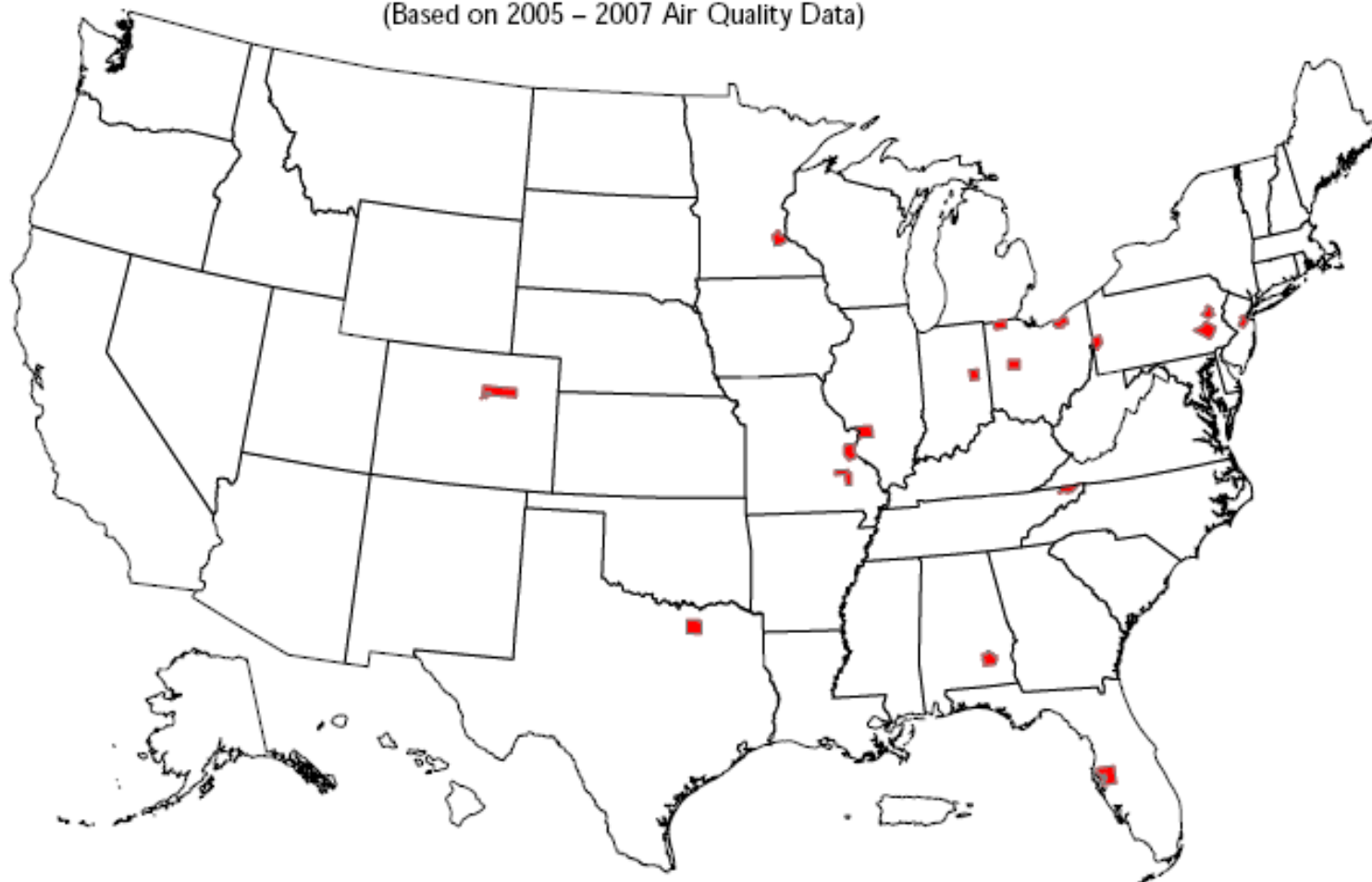
Sincerely,

M. Jodi Rell
Governor

Attachment
cc: I. Leighton (EPA Region I)
D. Conroy (EPA Region I)
A. Murella (CTDEP)
A. Gobin (CTDEP)

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Counties with Monitors Violating the 2008 Lead Standard of 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)

(Based on 2005 – 2007 Air Quality Data)



Notes

1. 18 of 111 monitored counties violate the 2008 lead standard of 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) measured as total suspended particulate matter (TSP).
2. These estimates are based on the most recent air quality data available (2005–2007). EPA will not designate areas based on these data, but likely on data from 2007-2009 or 2008-2010.
3. The existing monitoring network for lead is not sufficient to determine whether many areas of the country would meet the revised standards of 0.15 $\mu\text{g}/\text{m}^3$. EPA is re-designing the national lead monitoring network to allow assessment of compliance with the revised standards.
4. Monitored air quality data is available from the Air Quality System at <http://www.epa.gov/ttn/airs/airsaqsl/>

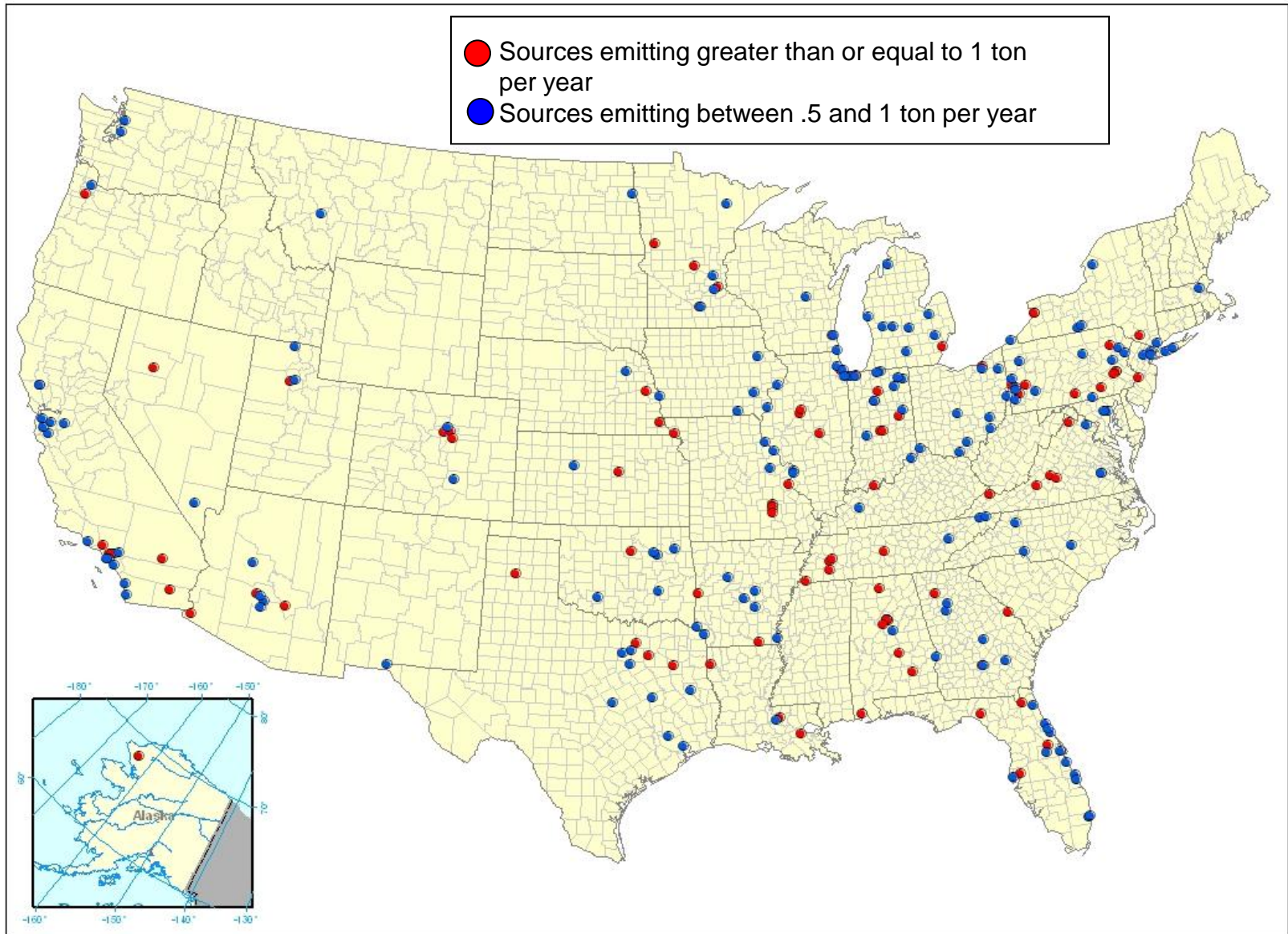
Lead (Pb) Monitoring Proposal



- On Dec. 23, 2009, EPA proposed to revise the ambient monitoring requirements for measuring airborne lead.
- EPA proposed to change the source-oriented monitoring threshold from 1.0 tons per year of lead to 0.50 tons per year.
- EPA proposed to require lead monitoring at sites comprising the “NCore Network” instead of the current requirement to place lead monitors in each Core Based Statistical Area (CBSA) with a population of 500,000 or more people.

Locations of Lead Emission Sources

Based on 2005 National Emissions Inventory*

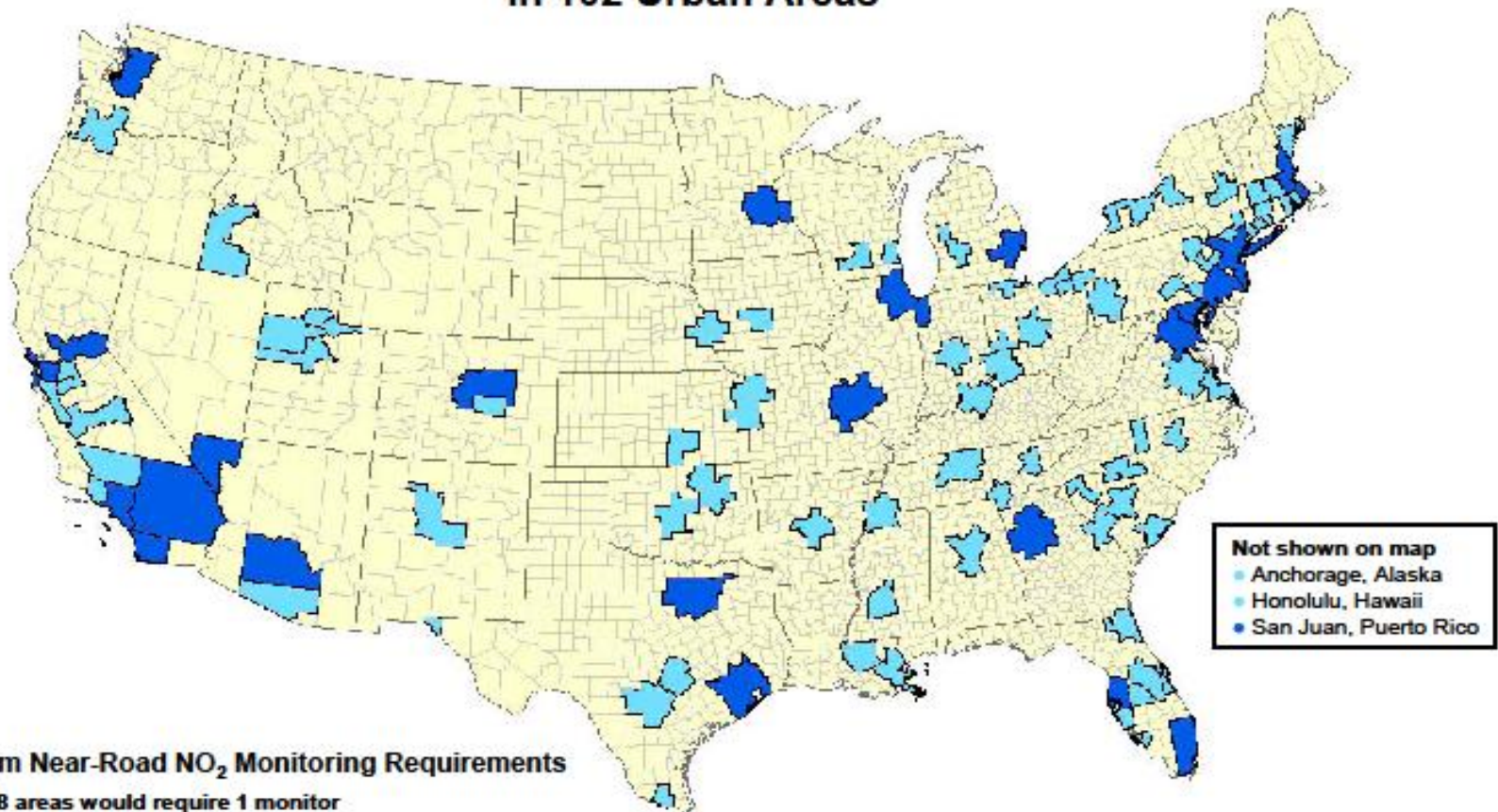


Revised NO₂ Standard - Adopted Jan. 22, 2010



- EPA revised primary standard for nitrogen dioxide (NO₂) by:
 - adding a **1-hour** NO₂ standard at 100 parts per billion (ppb); and
 - retaining the **annual** average NO₂ standard at a level of 53 ppb
- EPA also made changes to the NO₂ air quality monitoring network requirements in order to measure:
 - Peak, short-term concentrations - primarily near major roads in urban areas
 - Highest concentrations of NO₂ that occur over wider community areas, and
 - Concentrations impacting susceptible and vulnerable groups

EPA Plans to Monitor NO₂ Concentrations Near Roads in 102 Urban Areas



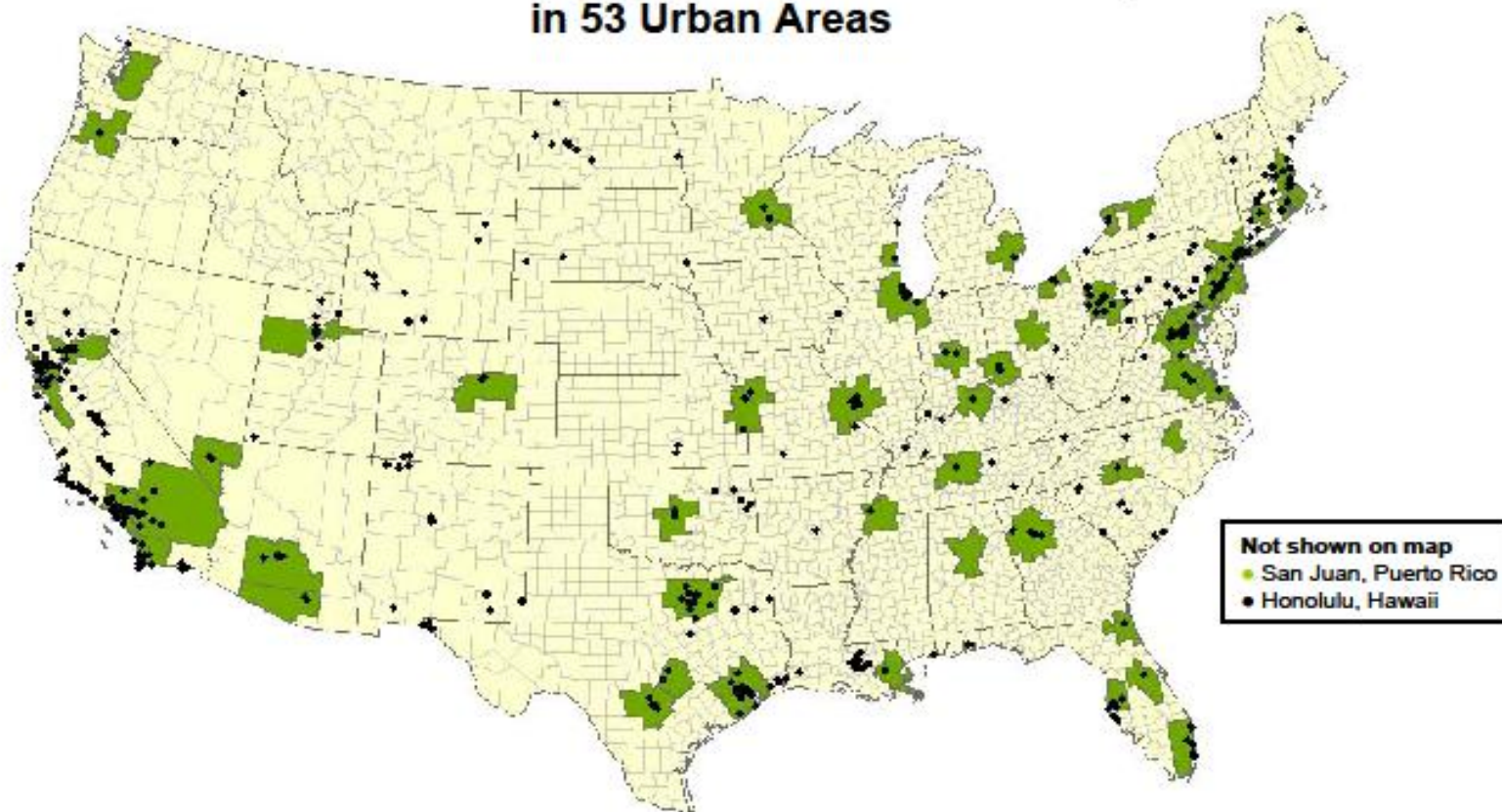
Minimum Near-Road NO₂ Monitoring Requirements

- ◆ 78 areas would require 1 monitor
(≥ 500,000 population)
- ◆ 24 areas would require 2 monitors
(≥ 2.5 million population or road segments with annual average daily traffic counts ≥ 250,000 vehicles)

126 total monitors

Approximately 40 additional monitors will be placed in locations to help protect communities that are susceptible and vulnerable to NO₂-related health effects

EPA to Monitor NO₂ Concentrations Community-Wide in 53 Urban Areas



Minimum Community-wide NO₂ Monitoring Requirements

-  53 areas would require 1 monitor (≥ 1 million population)
-  418 existing NO₂ monitoring sites in 2008
Many of these sites would satisfy the proposed community-wide monitoring requirements.

NO₂ Implementation Schedule



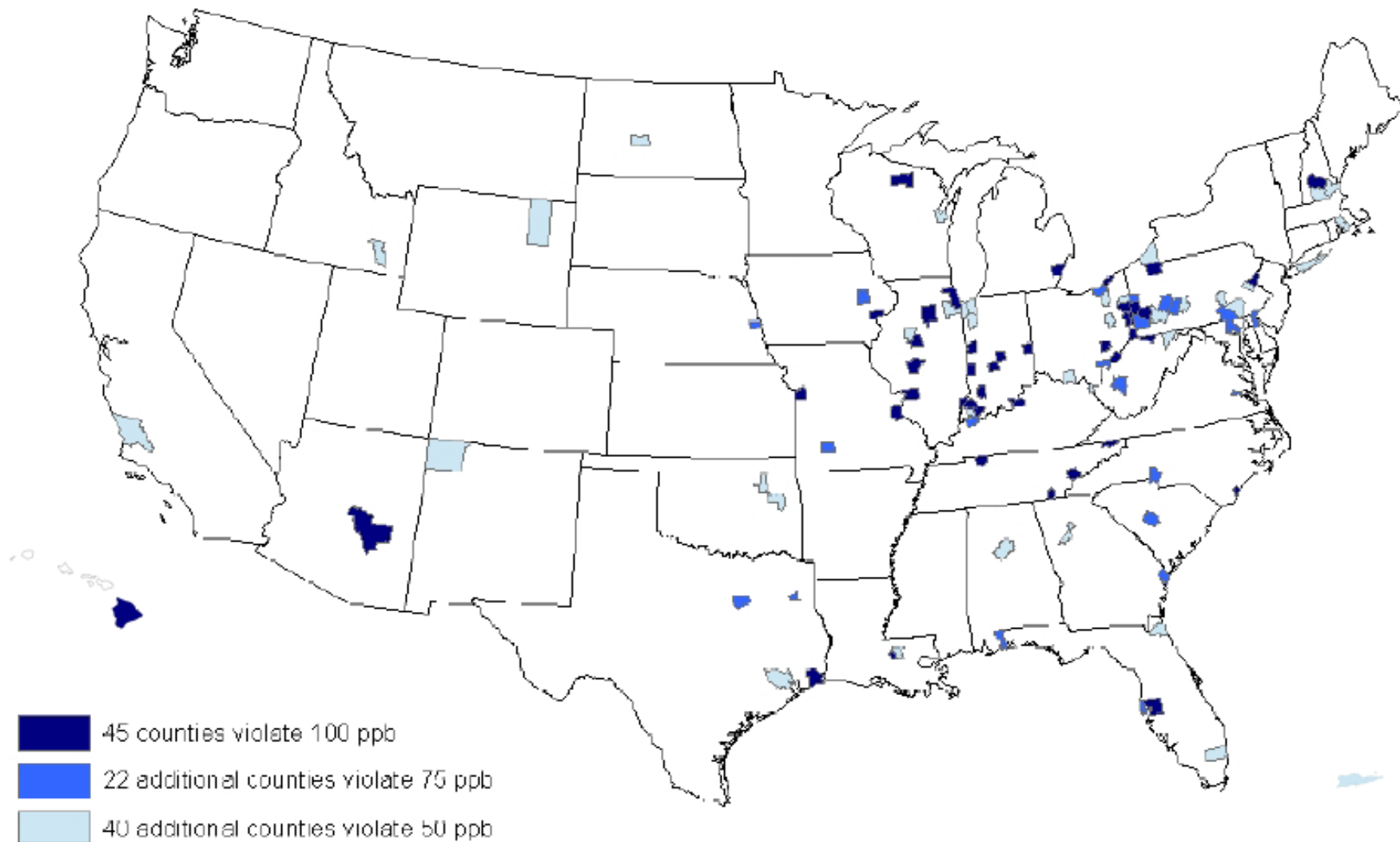
<u>Milestone</u>	<u>Date</u>
Signature - Final Rule	Jan 22, 2010
State Designation Recommendations to EPA	January 2011
Final Designations	January 2012 (Most areas as “unclassifiable” because near road monitors not in place)
New NO ₂ Monitoring Network	January 1, 2013 (Monitoring sites operational)
Next NO ₂ NAAQS Review	January 2015
Nonattainment Re- Designations	January 2016/2017
Attainment Date	January 2021/2022

Revision to SO₂ Standard - Proposed Nov. 16, 2009



- EPA proposed to replace the current annual and 24-hour SO₂ primary standards (30 ppb and 140 ppb, respectively) with a new 1-hour SO₂ standard set at a level between 50-100 ppb
- EPA's proposal is consistent with the recommendations of the Clean Air Scientific Advisory Committee
- The final rule will be signed no later than June 2, 2010

Counties with Monitors Currently Violating Proposed Range for 1-hour Sulfur Dioxide Standard, 50 – 100 parts per billion



Notes:

¹Based on the most recent air monitoring data (2006 – 2008).

²EPA will not designate areas as nonattainment on these data but likely using 2009 – 2011 data.

³Data are shown for monitors that met the following criteria: 75% of the day has valid hourly values, 75% of the days in a quarter are valid, and all 4 quarters for each of the three years are valid.

SO₂ Implementation Schedule



<u>Milestone</u>	<u>Date</u>
Proposal Published	December 8, 2009
Comment Period Closes	February 10, 2010
Signature - Final Rule	June 2, 2010
State Designation Recommendations to EPA	June 2011
Final Designations	June 2012
SIPs Due	Winter 2014
Attainment Date	Summer 2017

EPA's 2008 Ozone Standard



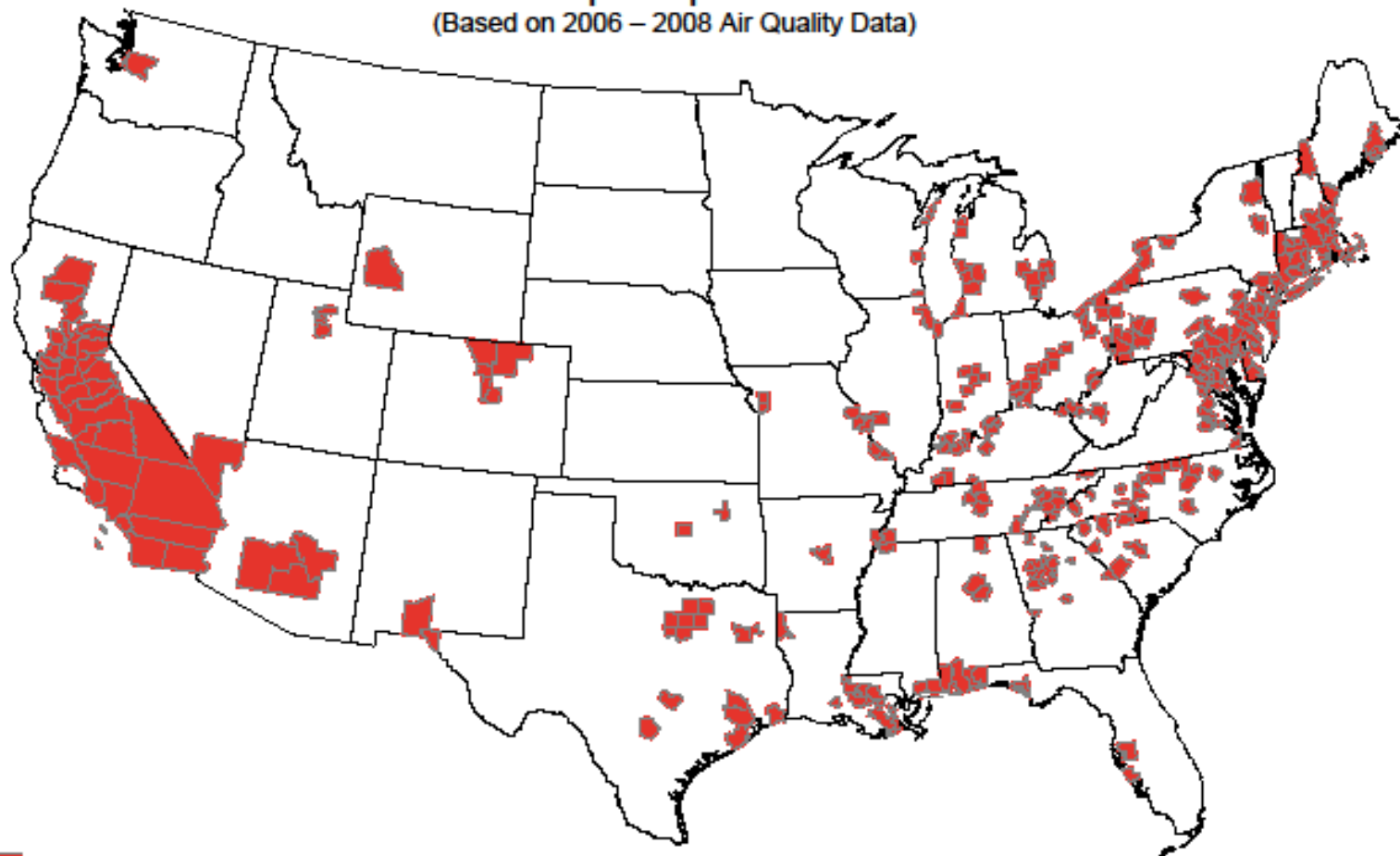
- In March, 2008, EPA strengthened the NAAQS for ozone based on new scientific evidence about ozone and its effects on public health and the environment.
- Specifically, EPA:
 - Revised the level of the primary and secondary 8-hour ozone standards to 0.075 ppm
- EPA was criticized, however, since the final standards were not as protective as recommended by the Clean Air Scientific Advisory Committee (CASAC)
 - 0.060 to 0.070 ppm for the primary ozone NAAQS
 - 7.5 to 15 ppm-hour for a seasonal W126 welfare-based (secondary) ozone NAAQS

2010 Ozone Reconsideration - Proposed Jan. 6, 2010



- On Jan. 6, 2010, EPA:
 - Proposed to revise the level of the *primary* 8-hour ozone standard to a level within the range of 0.060-0.070 parts per million (ppm)
 - Proposed to establish a separate cumulative *secondary* standard within a range of 7-15 ppm-hours
- Comment period closed on March 22, 2010
- EPA plans to issue final standards by August 31, 2010

Counties With Monitors Violating the March 2008 Ground-Level Ozone Standards 0.075 parts per million (Based on 2006 – 2008 Air Quality Data)



322 of 675¹ monitored counties violate the standard

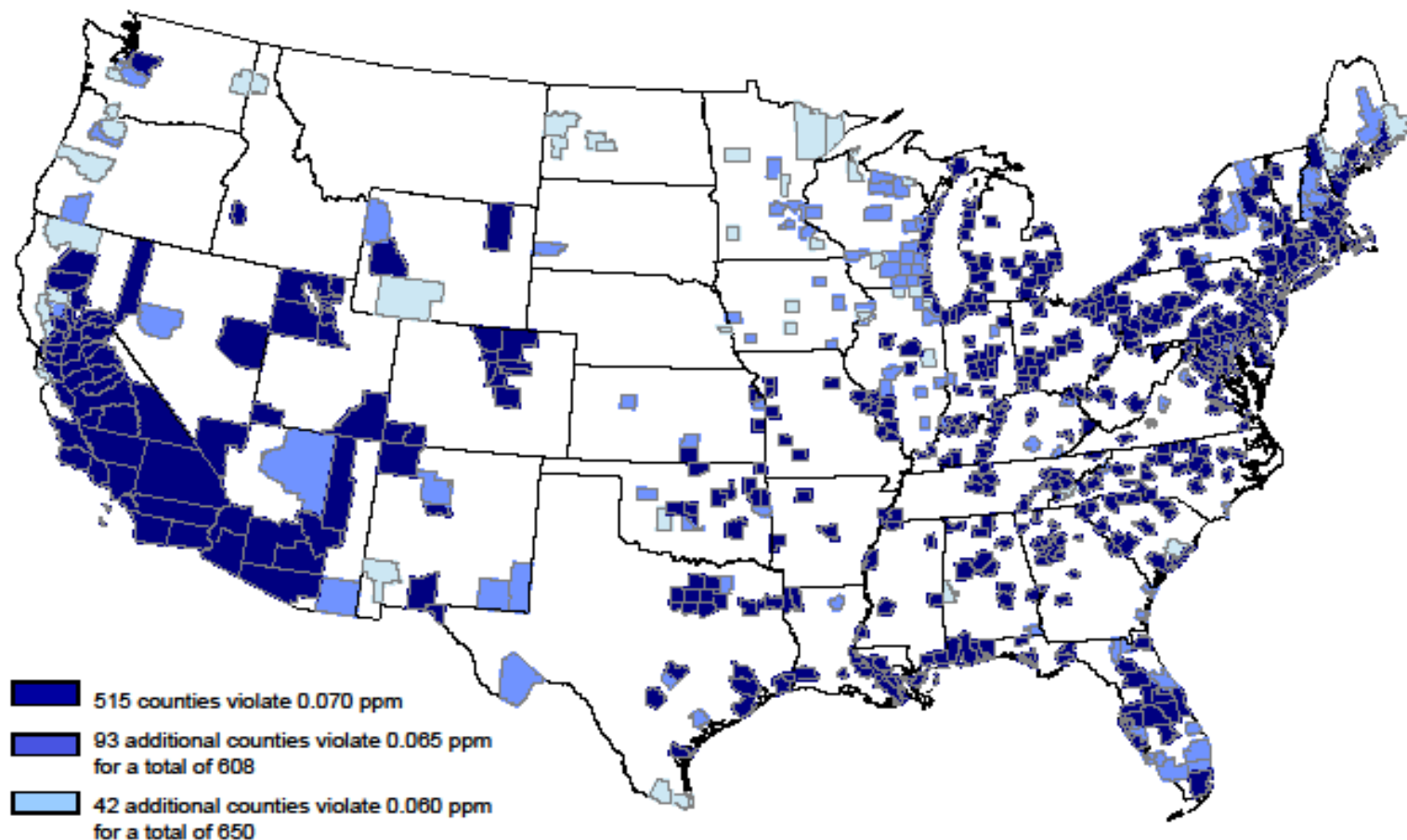
Notes:

1. Counties with at least one monitor with complete data for 2006 – 2008
2. To determine compliance with the March 2008 ozone standards, the 3-year average is truncated to three decimal places.

Counties With Monitors Violating Proposed Primary 8-hour Ground-level Ozone Standards 0.060 - 0.070 parts per million

(Based on 2006 - 2008 Air Quality Data)

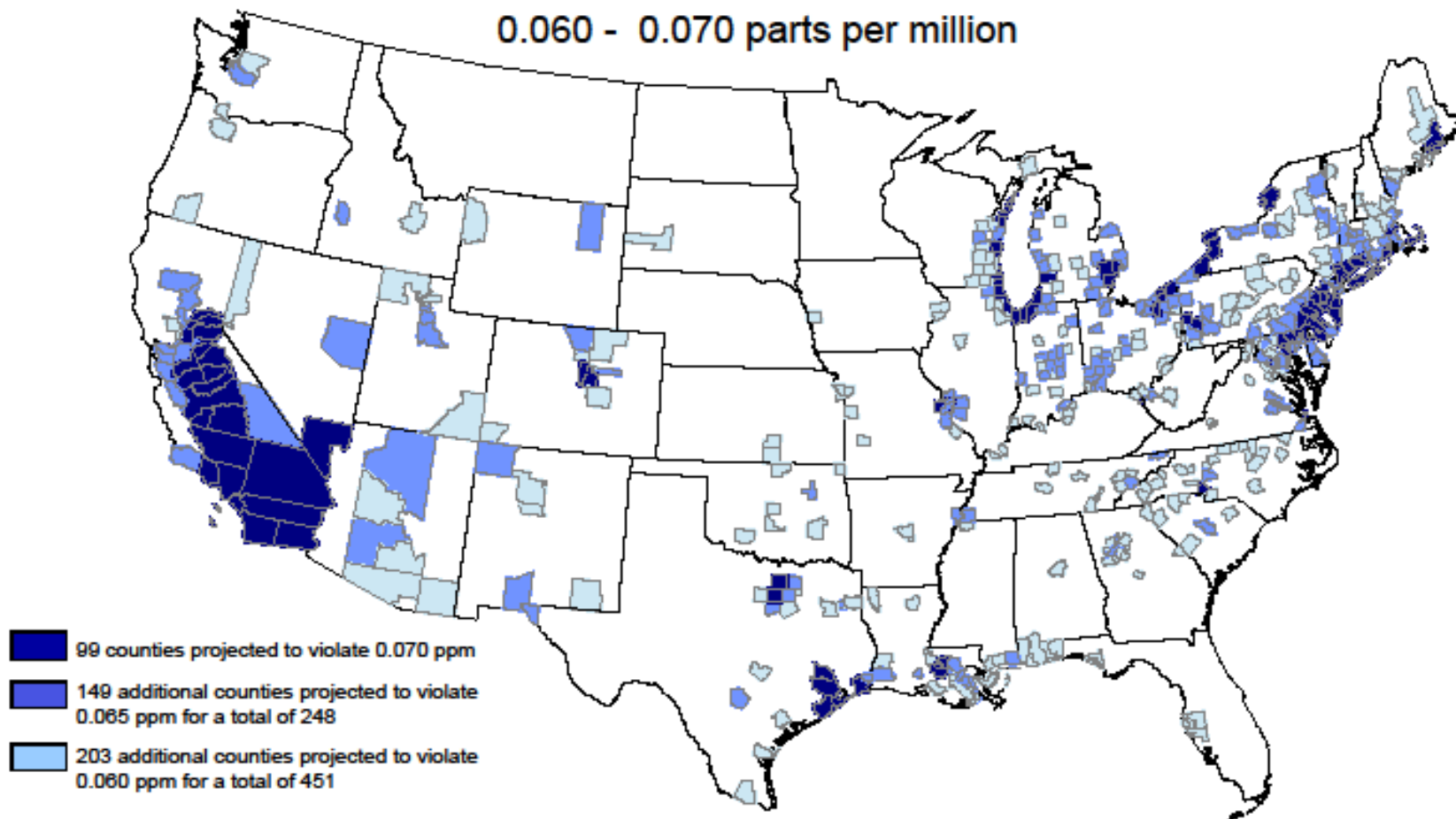
EPA will not designate areas as nonattainment on these data, but likely on 2008 - 2010 data which are expected to show improved air quality.



Notes:

1. No monitored counties outside the continental U.S. violate.
2. EPA is proposing to determine compliance with a revised primary ozone standard by rounding the 3-year average to three decimal places.

Counties With Monitors Projected to Violate Proposed Primary 8-hour Ground-Level Ozone Standards in 2020 0.060 - 0.070 parts per million



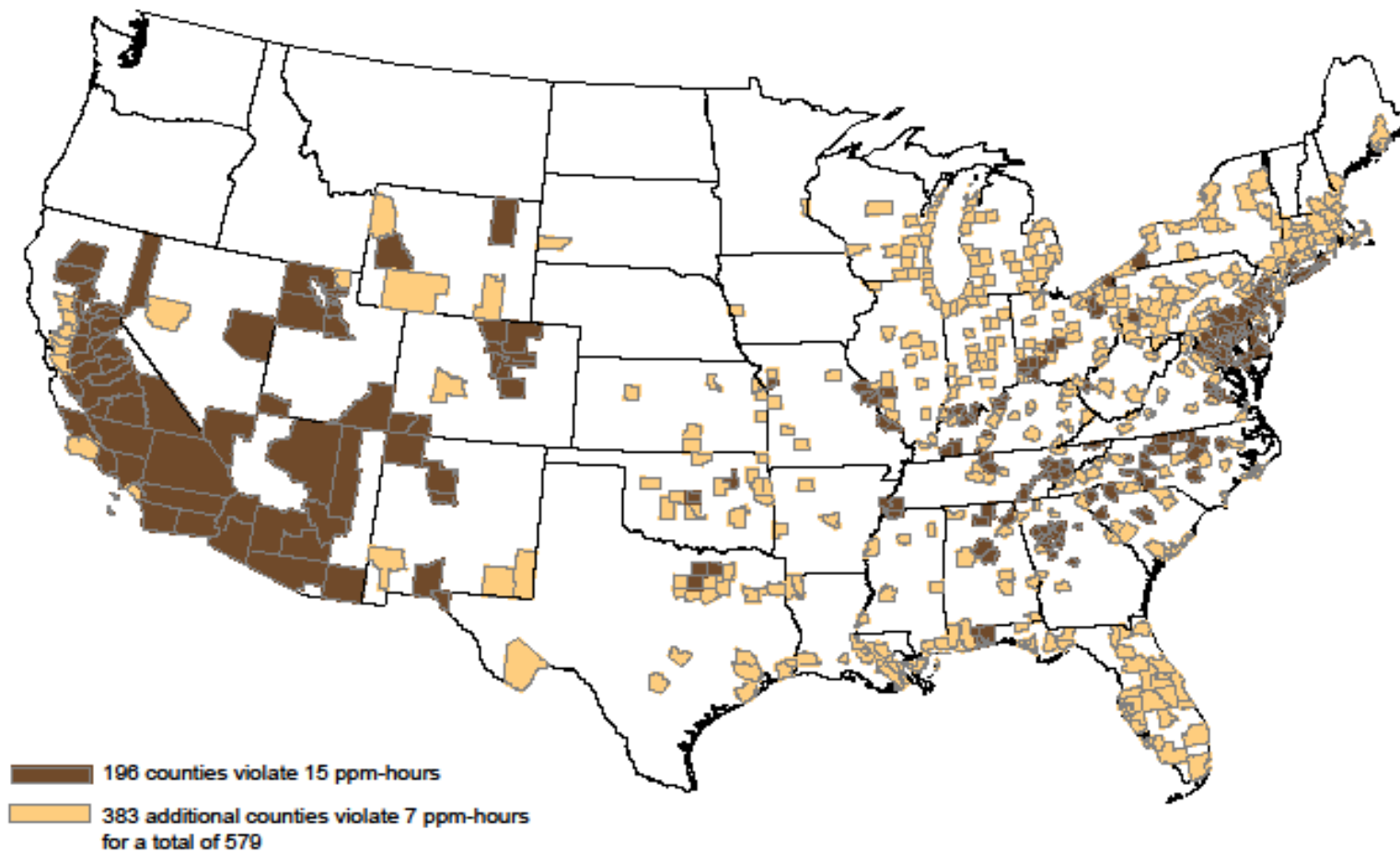
Notes:

1. The modeled emissions in 2020 reflect the expected emissions reductions from federal programs by 2020 including: the Clean Air Interstate Rule, the Clean Air Mercury Rule, the Clean Air Visibility Rule, the Clean Air Nonroad Diesel Rule, the Light-Duty Vehicle Tier 2 Rule, the Heavy Duty Diesel Rule, the proposed rules for Locomotive and Marine Vessels and for Small Spark-Ignition Engines, and an estimate of State-level mobile and stationary source controls that were projected to be needed to attain pre-existing PM 2.5 and ozone standards.
2. Controls applied are illustrative. States may choose to apply different control strategies for implementation.
3. EPA did not model future violations outside the continental U.S.
4. EPA is proposing to determine compliance with a revised primary ozone standard by rounding the 3-year average to three decimal places.

Counties With Monitors Violating Proposed Secondary Seasonal Ground-Level Ozone Standards 7 – 15 parts per million - hours

(Based on 2006 – 2008 Air Quality Data)

EPA will not designate areas as nonattainment on these data, but likely on 2008 – 2010 data which are expected to show improved air quality.



No monitored counties outside the continental U.S. violate.

Proposed Accelerated Implementation Timeline



<u>Milestone</u>	<u>Date</u>
Proposal Published	Jan 19, 2010
Proposed implementation rule	Shooting for end of June 2010
Signature - Final Rule	August 31, 2010
Final implementation rule	As quickly as possible after the final ozone NAAQS
State Designations Recommendations to EPA	January 2011
Final Designations	Effective no later than August 2011
Attainment SIPs Due	December 2013
Attainment Dates	2014-2031 (depends on severity of problem)

Ozone Implementation Rule Issues



- Major issues to address:
 - Whether to revoke the 1997 standard one year after designations
 - Whether to use CAA Subpart 2 for primary NAAQS implementation
 - Method for determining ozone classifications, which dictate attainment dates
 - Timeframe for Reductions/Attainment Dates since designations will be effective in middle of ozone season (i.e., August 2011)
 - RFP Baseyear, which is start date for 3% per year reduction
 - RACT/EI submission Dates given Attainment SIPs due Dec. 2013
 - Whether to use CAA subpart 1 or subpart 2 for implementation of the secondary NAAQS



Other Topics of Interest

CAIR Replacement Rule - Still work in progress



- December 2008 D.C. Circuit Court decision remanded CAIR and FIPs without vacatur
- CAIR was designed to help address 1997 ozone and PM_{2.5} NAAQS
- Court ruled against EPA on issues relating to:
 - Quantification and elimination of significant contribution
 - Interference with maintenance
 - How EPA constructed the regional cap-and-trade programs
 - State NO_x and SO₂ emission budgets
 - NO_x fuel factors
 - Use of Title IV SO₂ allowances for compliance in the CAIR SO₂ cap-and-trade program
 - Timing of the second phase
 - Inclusion of Minnesota for PM_{2.5}

Major Issues to Address



- EPA working on getting a proposal out in the near future, and finalizing the rule a year later.
- Proposal will address critical issues including:
 - Which ozone and PM_{2.5} NAAQS will be addressed beyond 1997 standards
 - Approaches to defining significant contribution and interference with maintenance
 - Determines which states will be in the program and stringency of rule
 - Which source categories to include in the program
 - Regulatory approaches to “prohibit emissions that significantly contribute” to nonattainment or interfere with maintenance
 - What is the right combination of SIPs and FIPs to achieve reductions expeditiously

Clean Air Act Section 185 fee requirement



- Applies to Severe and Extreme nonattainment areas that failed to attain the 1-hour ozone standard by their attainment date.
- Clean Air Act required fee program SIPs from states by December 31, 2000.
- EPA had previously waived the program when it revoked 1-hour ozone standard.
- D.C. Court ruled in Dec. 2006 that EPA improperly waived the application of the section 185 fee provision.

Recent Action on the 185 Fee Program




- On January 5, 2010, EPA is issuing two separate documents related to the 185 fee program
 - EPA issued a rule finding that California did not submit the required SIP for several of its 1-hour ozone nonattainment areas
 - EPA issued guidance to help states develop approvable fee collection programs for the 1-hour ozone standard.
 - EPA's guidance document also describes circumstances that will enable EPA to undertake a notice-and-comment rulemaking and terminate an area's 1-hour ozone anti-backsliding fee collection program obligation.

Guidance on 185 Fee Programs



- For areas that have clean air based on permanent and enforceable measures, EPA believes the goal of the section 185 fee anti-backsliding program has been met.
- For areas that currently have clean air, EPA intends to initiate a notice-and-comment rulemaking that determines whether attainment is a result of permanent and enforceable measures.
 - If finalized, this determination would relieve an area of its 185 fee 1-hour ozone anti-backsliding obligation.


 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

JAN 05 2010

OFFICE OF AIR QUALITY PLANNING AND STANDARDS

MEMORANDUM

SUBJECT: Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS

FROM: Stephen D. Page, Director 
Office of Air Quality Planning and Standards

TO: Regional Air Division Directors, Regions I-X

Section 185 of the Clean Air Act (CAA) requires states with ozone nonattainment areas classified as Severe or Extreme to develop, as a revision to their state implementation plan (SIP), a fee collection rule to be implemented in the event that an area fails to attain the ozone standards by the required attainment date.¹ This memorandum provides additional guidance on fee collection programs for the 1-hour ozone National Ambient Air Quality Standard (NAAQS or standard), which are required as anti-backsliding measures during transition to the 1997 8-hour ozone standard.

Applicability of Section 185 to Ozone NAAQS Nonattainment Areas

The section 185 fee program requirement applies to any ozone nonattainment area that is classified as Severe or Extreme under the NAAQS, including any area that was classified Severe or Extreme under the 1-hour ozone NAAQS as of the effective date of the area's 8-hour designation.² The EPA had previously waived the section 185 fee program requirements applicable under the revoked 1-hour ozone NAAQS in rules issued to address the transition from the 1-hour standard to the 1997 8-hour standard.³ However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit issued an opinion determining that EPA impermissibly waived the application of the section 185 fee provision for Severe and Extreme nonattainment areas that failed to attain the 1-hour ozone standard by their attainment date. *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (D.C. Cir. 2006).

¹ See Attachment A for the text of CAA section 185. The CAA requires that fee program SIPs for nonattainment areas initially classified as Severe or Extreme for the 1-hour ozone standard be submitted to EPA by December 31, 2000 (see CAA section 182(d)(3)). Areas subsequently reclassified as Severe or Extreme have a SIP submission date as determined by EPA.

² The 1-hour ozone NAAQS were established in 1983 and revoked on June 15, 2004 for most areas. The 8-hour ozone NAAQS were first established in 1997. EPA is currently reconsidering the 8-hour ozone NAAQS that was last revised in 2008. EPA intends to complete the reconsideration by August 31, 2010.

³ See 69 Fed. Reg. 23951 (April 30, 2004).

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Eligible Areas



- Footnote from Jan. 5 2010 findings notice:
 - *¹ Although EPA has not in all cases completed determinations through notice-and-comment rulemaking, current air quality data indicate that a number of nonattainment areas classified as Severe or Extreme for the 1-hour NAAQS and also designated in June 2004 nonattainment for the 1997 8-hour NAAQS appear to have attained the 1-hour NAAQS and/or the 1997 8-hour NAAQS. In this notice EPA is not making findings that states failed to submit SIP revisions for these areas. These areas are: Chicago-Gary-Lake County, IL-IN; Milwaukee-Racine, WI; Philadelphia-Trenton-Wilmington, MD-DE-PA-NJ; Ventura County, CA; Metropolitan Washington, DC-VA-MD; Baton Rouge, LA; New York, NY-NJ-CT; Houston, TX; and Baltimore, MD.*



Questions