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
  - CO$_2$, CH$_4$ (methane), N$_2$O (nitrous oxide), HFCs (hydrofluorocarbons), PFCs (perfluorocarbons), SF$_6$ (sulfur hexafluoride), Other fluorinated gases

- 25,000 metric tons CO$_2$e 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
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.
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

• 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

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

*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.*
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.
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

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Passenger Cars (g/mi)</strong></td>
<td>263</td>
<td>256</td>
<td>247</td>
<td>236</td>
<td>225</td>
</tr>
<tr>
<td><strong>Light Trucks (g/mi)</strong></td>
<td>346</td>
<td>337</td>
<td>326</td>
<td>312</td>
<td>298</td>
</tr>
<tr>
<td><strong>Combined Cars &amp; Trucks (g/mi)</strong></td>
<td>295</td>
<td>286</td>
<td>276</td>
<td>263</td>
<td>250</td>
</tr>
<tr>
<td><strong>Passenger Cars (mpg)</strong></td>
<td>33.8</td>
<td>34.7</td>
<td>36</td>
<td>37.7</td>
<td>39.5</td>
</tr>
<tr>
<td><strong>Light Trucks (mpg)</strong></td>
<td>25.7</td>
<td>26.4</td>
<td>27.3</td>
<td>28.5</td>
<td>29.8</td>
</tr>
<tr>
<td><strong>Combined Cars &amp; Trucks (mpg)</strong></td>
<td>30.1</td>
<td>31.1</td>
<td>32.2</td>
<td>33.8</td>
<td>35.5</td>
</tr>
</tbody>
</table>
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


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.
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](http://www.epa.gov/air/CAAAC/climatechangewg.html)
Air Quality - Regulatory Initiatives

- Schedule for Ongoing NAAQS Reviews
- Designations for the 2006 PM$_{2.5}$ standard
- Revised Lead (Pb) Standard
- Revised NO$_2$ Standard
- Proposed SO$_2$ Standard
- Reconsideration of 2008 Ozone Standard
- Other Topics of Interest
  - CAIR Replacement Rule
  - Section 185 fees
## Anticipated NAAQS Implementation Milestones

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>NAAQS Promulgation Date</th>
<th>Designations Effective</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PM$_{2.5}$ (2006)</strong></td>
<td>Sept 21, 2006</td>
<td>Dec 14, 2009</td>
</tr>
<tr>
<td><strong>NO$_2$ (primary)</strong></td>
<td>Jan 22, 2010</td>
<td>Jan 2012</td>
</tr>
<tr>
<td><strong>SO$_2$ (primary)</strong></td>
<td>June 2 2010</td>
<td>July 2012</td>
</tr>
<tr>
<td><strong>Ozone</strong></td>
<td>Aug 31 2010</td>
<td>Aug 2011</td>
</tr>
</tbody>
</table>

*Underlined dates indicate court-ordered or settlement agreement deadlines.*
## EPA Issued Revised PM Standards in Sept 2006

<table>
<thead>
<tr>
<th>2006 Standards</th>
<th>Annual</th>
<th>24-hour</th>
</tr>
</thead>
</table>
| **PM\textsubscript{2.5}** (Fine) | 15µg/m\textsuperscript{3}  
Annual arithmetic mean, averaged over 3 years | 35µg/m\textsuperscript{3}  
3-year average of the 98th percentile of 24-hour concentration |
| **PM\textsubscript{10}** (Coarse) | Revoked | 150µg/m\textsuperscript{3}  
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

- Oakridge, OR
- Klamath Falls, OR
- Nogales, AZ
- Tacoma, WA
- Fairbanks, AK

10/08/2009
• EPA strengthened the lead standards by 90 percent to a level of 0.15 μg/m³
• 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
Counties with Monitors Violating the 2008 Lead Standard of 0.15 micrograms per cubic meter (µg/m³)
(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 (µg/m³) 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 µg/m³. EPA is re-designing the national lead monitoring network to allow assessment of compliance with the revised standards.
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*

- Sources emitting greater than or equal to 1 ton per year
- Sources emitting between .5 and 1 ton per year

*Most recent set of complete national emissions data.
Revised NO$_2$ Standard - Adopted Jan. 22, 2010

- EPA revised primary standard for nitrogen dioxide (NO$_2$) by:
  - adding a **1-hour** NO$_2$ standard at 100 parts per billion (ppb); and
  - retaining the **annual** average NO$_2$ standard at a level of 53 ppb

- EPA also made changes to the NO$_2$ 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 NO$_2$ Concentrations Near Roads in 102 Urban Areas

Minimum Near-Road NO$_2$ 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 NO$_2$-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.
## NO$_2$ Implementation Schedule

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature - Final Rule</td>
<td>Jan 22, 2010</td>
</tr>
<tr>
<td>State Designation Recommendations to EPA</td>
<td>January 2011</td>
</tr>
<tr>
<td>Final Designations</td>
<td>January 2012</td>
</tr>
<tr>
<td>(Most areas as “unclassifiable” because near road monitors not in place)</td>
<td></td>
</tr>
<tr>
<td>New NO$_2$ Monitoring Network</td>
<td>January 1, 2013</td>
</tr>
<tr>
<td>(Monitoring sites operational)</td>
<td></td>
</tr>
<tr>
<td>Next NO$_2$ NAAQS Review</td>
<td>January 2015</td>
</tr>
<tr>
<td>Nonattainment Re- Designations</td>
<td>January 2016/2017</td>
</tr>
<tr>
<td>Attainment Date</td>
<td>January 2021/2022</td>
</tr>
</tbody>
</table>
Revision to SO$_2$ Standard - Proposed Nov. 16, 2009

- EPA proposed to replace the current annual and 24-hour SO$_2$ primary standards (30 ppb and 140 ppb, respectively) with a new 1-hour SO$_2$ 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:
1 Based on the most recent air monitoring data (2006 – 2008).
2 EPA will not designate areas as nonattainment on these data but likely using 2009 – 2011 data.
3 Data 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

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date</th>
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</thead>
<tbody>
<tr>
<td>Proposal Published</td>
<td>December 8, 2009</td>
</tr>
<tr>
<td>Comment Period Closes</td>
<td>February 10, 2010</td>
</tr>
<tr>
<td>Signature - Final Rule</td>
<td>June 2, 2010</td>
</tr>
<tr>
<td>State Designation Recommendations to EPA</td>
<td>June 2011</td>
</tr>
<tr>
<td>Final Designations</td>
<td>June 2012</td>
</tr>
<tr>
<td>SIPs Due</td>
<td>Winter 2014</td>
</tr>
<tr>
<td>Attainment Date</td>
<td>Summer 2017</td>
</tr>
</tbody>
</table>
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
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 675 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

<table>
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<tr>
<th>Milestone</th>
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<tbody>
<tr>
<td>Proposal Published</td>
<td>Jan 19, 2010</td>
</tr>
<tr>
<td>Proposed implementation rule</td>
<td>Shooting for end of June 2010</td>
</tr>
<tr>
<td>Signature - Final Rule</td>
<td>August 31, 2010</td>
</tr>
<tr>
<td>Final implementation rule</td>
<td>As quickly as possible after the final ozone NAAQS</td>
</tr>
<tr>
<td>State Designations Recommendations to EPA</td>
<td>January 2011</td>
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<tr>
<td>Final Designations</td>
<td>Effective no later than August 2011</td>
</tr>
<tr>
<td>Attainment SIPs Due</td>
<td>December 2013</td>
</tr>
<tr>
<td>Attainment Dates</td>
<td>2014-2031</td>
</tr>
<tr>
<td></td>
<td>(depends on severity of problem)</td>
</tr>
</tbody>
</table>
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/El 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 SO$_2$ emission budgets
    - NO$_X$ fuel factors
  - Use of Title IV SO$_2$ allowances for compliance in the CAIR SO$_2$ 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.
Eligible Areas

• Footnote from Jan. 5 2010 findings notice:
  - 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, MDDE-PA-NJ; Ventura County, CA; Metropolitan Washington, DC-VA-MD; Baton Rouge, LA; New York, NY-NJ-CT; Houston, TX; and Baltimore, MD.
Questions