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Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Mailcode 28221T, Attention Docket ID  
No. OAR-2008-0699  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

Re: Comments on Proposed National Ambient Air Quality Standards for Ozone

To the Environmental Protection Agency:

The American Association of State Highway and Transportation Officials (AASHTO) and the Association of Metropolitan Planning Organizations (AMPO) welcome the opportunity to submit these comments on the proposed National Ambient Air Quality Standards (NAAQS) for ozone, which was published by the Environmental Protection Agency (EPA) in the Federal Register on December 17, 2014. (78 Fed. Reg. 75234).

While AASHTO and AMPO support the need to protect public health, we are concerned that the proposed rule will dramatically expand the number of areas subject to transportation conformity requirements, including many areas in which local governments have limited, if any, ability to reduce ozone levels through changes in transportation plans and projects. As explained further below, we urge EPA to consider the consequences for transportation conformity requirements when setting and implementing any new NAAQS for ozone.

## I. General Comments

In this notice of proposed rulemaking (NPRM), EPA proposes to set the ozone NAAQS at a level between 65 and 70 parts per billion (ppb), reducing it from the current level of 75 ppb. According to EPA's projections, the stricter standard would cause hundreds of additional counties to become designated as non-attainment. Currently, 227 counties are designated as non-attainment for the 75 ppb standard.<sup>1</sup> See **Attachment 1**. Under the NPRM, the number of

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<sup>1</sup> See EPA, Green Book, "8-Hr Ozone (2008) Nonattainment Areas" (last updated Jan. 30, 2015), available at <http://www.epa.gov/airquality/greenbook/hntc.html>. See **Attachment 1**.

counties designated as non-attainment would rise to 358 under the 70 ppb standard and to 558 under the 65 ppb standard.<sup>2</sup> See **Attachment 2**.

As shown in EPA's maps, many of the counties that would become newly designated as non-attainment for ozone are located outside metropolitan areas or are in small metropolitan areas, and have not previously been subject to transportation conformity requirements.<sup>3</sup> The following States - all of which currently have no ozone non-attainment areas - include counties that would violate the 65 or 70 ppb standards according to EPA's projections: Alabama, Florida, Idaho, Iowa, Kansas, Maine, Michigan, Nebraska, Nevada, New Hampshire, New Mexico, Oklahoma, South Dakota, Utah, and West Virginia.<sup>4</sup> In addition, the number of counties in non-attainment would increase in many other States, including Arizona, Colorado, Indiana, Wisconsin, Wyoming, and others.<sup>5</sup>

Notably, many of the areas that would be designated as nonattainment have high background levels of ozone, especially in rural areas and Western states. According to the Regulatory Impact Analysis that accompanies the NPRM, EPA acknowledges that "Background ozone is a relatively larger percentage (e.g., 70-80%) of the total seasonal mean ozone in locations within the intermountain western U.S. and along the U.S. border."<sup>6</sup> The report estimates that seasonal mean background levels of ozone are "greater than 40 ppb" in Colorado, Nevada, Utah, Wyoming, northern Arizona, eastern California, and parts of New Mexico.<sup>7</sup>

**Given the high background levels as a percentage of current ambient levels, many areas in the West (and to some extent in other parts of the country as well) will have limited ability to reduce ambient levels of ozone through changes in transportation plans and the associated transportation conformity process.** The Regulatory Impacts Analysis acknowledges this difficulty in discussing rural areas in the Southwest: "[M]odeling of additional NOx reductions [beyond those already on the books] within the region provide little incremental benefit suggesting that most of the regional anthropogenic sources impacting ozone at these locations have already been accounted for in the 2025 base case scenario."<sup>8</sup>

For States and MPOs, the change in the NAAQS will have significant practical implications, including administrative burdens and slowdown in project delivery. The administrative burdens result from the need to make transportation conformity findings for ozone in hundreds of counties where those findings are not currently required. Especially in rural areas and small metropolitan areas, these burdens will be significant in comparison to existing budgets for transportation planning. The effect on project delivery results from the additional time required

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<sup>2</sup> See EPA, "Counties Violating the Primary Ground-level Ozone Standard Based on Monitored Air Quality from 2011 - 2013" (undated) available at <http://www.epa.gov/groundlevelozone/pdfs/20141126-20112013datatable.pdf>.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> This statement is based on a comparison of the counties currently in nonattainment for the 2008 ozone NAAQS (<http://www.epa.gov/airquality/greenbook/hncs.html>) and the list of counties identified by EPA as being in violation of the proposed ozone NAAQS (<http://www.epa.gov/groundlevelozone/pdfs/20141126-20112013datatable.pdf>).

<sup>6</sup> EPA, "Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone" (Nov. 2014), p. 2-16.

<sup>7</sup> Id.

<sup>8</sup> Id. p. 3A-54.

for transportation conformity determinations. While it is difficult to quantify these administrative burdens and delay impacts, we expect that they will be significant.

Finally, we note that according to EPA's own projections, "the vast majority of U.S. counties would meet the proposed standards by 2025 just with the rules and programs now in place or under way."<sup>9</sup> EPA's analysis includes a "base case" scenario, which assumed implementation of all regulations currently on the books, including new vehicle fuel economy and emissions standards. The analysis found that only 9 counties outside California would violate the 70 ppb standard in 2025, and only 68 counties would violate the 65 ppb standard in 2025.<sup>10</sup> See **Attachment 3**. In other words, the vast majority of counties that will be designated as non-attainment under the NPRM will come into compliance with the proposed standards *without any additional action being taken* - and yet they still would need to undertake a time-consuming and burdensome transportation conformity process.

In short, the proposed change in the ozone NAAQS would trigger the designation of hundreds of additional counties across the country as non-attainment areas, which in turn would require compliance with transportation conformity requirements. The transportation conformity process will impose a difficult - if not impossible - task in places where background levels are so high that there is little that can be done through transportation planning to reduce ambient ozone. And in many other counties, transportation conformity will impose burdens without corresponding benefits, because the areas would meet the new standards without any additional action being taken. EPA should carefully consider these practical implications when exercising its policy discretion to determine the appropriate level for the NAAQS.

## II. Specific Comments

In addition to the general comments provided above, we also submit the following specific comments regarding issues addressed in the NPRM.

### A. Primary Standard

While the decision on where to set the NAAQS is based on health effects and does not take into account cost of compliance, the NPRM recognizes that the decision involves a "public health policy judgment" by the Administrator and that the Administrator has some discretion to determine the appropriate level.<sup>11</sup> We recommend that EPA set a primary standard at a level that is best supported by the science, taking into account the uncertainty inherent in the available scientific studies regarding health effects of ozone at various levels.

If the standard is lowered, the available scientific evidence provides stronger support for setting the standard close to the upper end of the range being considered (0.070). As stated in the NPRM, "the Administrator judges that the evidence supporting the occurrence of adverse

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<sup>9</sup> EPA, "EPA's Proposal to Update the Air Quality Standards for Ground-Level Ozone" (undated), available at: <http://www.epa.gov/groundlevelozone/pdfs/20141125fs-overview.pdf>.

<sup>10</sup> EPA, "Counties Projected to Violate the Primary Ground-level Ozone Standard Model - Projections for 2025" (undated), available at <http://www.epa.gov/groundlevelozone/pdfs/20141126-2025datatable.pdf>.

<sup>11</sup> 79 Fed. Reg. 75243.

respiratory effects is strongest for exposures at or above the 70 and 80 ppb benchmarks.” (p. 75305).

## **B. Secondary Standard**

The NPRM proposes to set the secondary standard in the range of 65 to 70 ppb, which is the same range proposed for the primary standard. This range correlates to a separate measure, the W126 index value of “W126 index” in a range of 13 to 17 parts per million-hours (ppm-hours). The NPRM also invites comment on an alternative approach, under which the secondary standard would be set based on the W126 index values.<sup>12</sup>

We recommend that the EPA set the secondary standard at the same level as the primary standard, as it is under current regulations, because implementation of transportation conformity and other Clean Air Act requirements in nonattainment areas will be more efficient if the primary and secondary NAAQS are the same.

Moreover, if EPA were to set a different secondary standard, we recommend that the standard use the same measurements (ppb) as are used for the primary standard, so that the monitoring data gathered to assess compliance with the primary standard can also be used to determine compliance with the secondary standard.

## **C. Exceptional Events Demonstrations**

The NPRM notes that several forms of relief are available for areas with high background levels, including exclusion of data affected by exceptional events. The NPRM correctly recognizes that these provisions would become much more important if the NAAQS is lowered, especially if it is lowered to 65 ppb:

While any prediction of the exact nature of future implementation challenges associated with alternative prospective standards is inherently uncertain, **there is no question that, as the levels of alternative prospective standards are lowered, background will represent increasingly larger fractions of total O3 levels** and may subsequently complicate efforts to attain these standards. For a prospective standard of 70 ppb, the EPA does not believe that background O3 would create significant implementation-related challenges at locations throughout the U.S. and prevent attainment of the NAAQS. However, as the levels of prospective standards are lowered, the areas that would most likely need to use the relief mechanisms discussed in this section as part of attaining the lower prospective levels are rural locations in the western U.S., consistent with the previously mentioned locations where we have estimated the largest seasonal average values of background occur.<sup>13</sup>

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<sup>12</sup> 79 Fed. Reg. 75237 (“The EPA also solicits comments on the alternative approach of revising the secondary standard to a W126-based form, averaged over three years, with a level within the range of 13 ppm-hrs to 17 ppm-hrs.”).

<sup>13</sup> 79 Fed. Reg. 75383.

We are concerned that it may be extremely difficult for a State to demonstrate - within the time period allowed for making non-attainment designations - that violations result from exceptional events. The process for making an exceptional-event determination is governed by the confusing, burdensome requirements established in the 2007 Exceptional Events Rule, which essentially requires the State to provide scientific proof of a causal relationship between the exceptional event and an exceedance of the NAAQS.<sup>14</sup> EPA has issued interim guidance to clarify the rule, but that guidance itself establishes a lengthy process that would take more than two years to complete, including a period of up to 18 months for EPA review *after* a State has submitted a complete documentation package.<sup>15</sup> EPA has announced its intention to commence a new rulemaking to streamline the Exceptional Events Rule - but the proposed regulations have not yet been issued, and the NPRM for the ozone NAAQS does not commit to a specific schedule for the rulemaking on the Exceptional Events Rule.<sup>16</sup>

Moreover, the schedule proposed in the ozone NAAQS rule for flagging and documenting exceptional events is very tight. The ozone rule would give states twelve months from the time of promulgation to provide any exceptional event demonstration documents to the EPA for events occurring in 2013, 2014, and 2015. This time period coincides with the deadline for states to make designation recommendations to the EPA (another labor-intensive exercise). The EPA's Administrator would then have 12 months to make final designations while concurrently reviewing exceptional event packages.<sup>17</sup> In our view, these deadlines do not allow adequate time for the development and approval of state demonstrations requesting the exclusion of data from the first round of designations under the new standard.

Our concerns about the schedule for making exceptional-event determinations are heightened by the likelihood that - with the lower NAAQS - EPA will be receiving a large number of requests for exceptional-event determinations, increasing the likelihood of delay in EPA's review. The potential for delay may increase even further because, during this same time period, EPA will be undertaking a rulemaking to revise the very regulations (the Exceptional Event Rule) on which these determinations will be based.

If exceptional-event determinations are not made in a timely manner, an area may be designated as nonattainment based on exceedances that are later determined to result from exceptional events. Unfortunately, there is no authority for the EPA to redesignate an area (from non-attainment to attainment) based on changes to past air quality data.<sup>18</sup> Therefore, if an exceptional-event determination is approved *after* EPA's ozone nonattainment designation is

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<sup>14</sup> 40 C.F.R. 50.14.

<sup>15</sup> See EPA, "Interim Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events" (May 10, 2013), available at <http://www.epa.gov/ttn/analysis/exevents.htm>.

<sup>16</sup> See 79 Fed. Reg. 75358 ("The EPA expects to propose additional revisions to the Exceptional Events Rule in a future notice and comment rulemaking effort and will solicit public comment on other, non-schedule related, aspects of the Exceptional Events Rule at that time.")

<sup>17</sup> See 79 Fed. Reg. 75353-75358 (describing proposed schedule for exceptional-event determinations under the proposed ozone NAAQS rule).

<sup>18</sup> Section 107(d)(3) of the Clean Air Act governs redesignations of non-attainment areas. It requires that an area demonstrate that it is currently attaining the NAAQS, in addition to meeting other specific requirements, such as having an approved SIP, and demonstrating that the improvement in air quality is due to permanent and enforceable emission reductions resulting from the implementation of the SIP and applicable federal requirements.

made, the nonattainment designation would remain in effect - even if that designation would not have been justified if the exceptional event had been excluded. In effect, significant delays in approving exceptional-event determination may cause areas to be designated as non-attainment when that designation is not actually justified.

To address these concerns, **it will be essential for EPA to ensure that there is a workable, efficient process for making exceptional event determinations.** Therefore, if the proposed NAAQS are adopted, we urge EPA to develop guidance, templates, training materials, and other practical resources to assist States in obtaining expeditious approval for exceptional event determinations. We also urge EPA to consider a more programmatic approach to making exceptional events determinations, which would minimize the need to develop extensive documentation for each individual event.

In addition, we recommend that EPA establish a process for deferring non-attainment designations for areas with pending requests for exceptional-event determinations at the time of the statutory deadline for making non-attainment designations. **Specifically, we recommend that EPA designate as “unclassifiable” any area that has a pending, unresolved request for an exceptional-event determination that is material to the designation decision.** Designation of an area as non-attainment should be made only *after* the request for an exceptional-event determination has been resolved.

#### **D. Methodology for Determining Ambient Levels (Data Uncertainty)**

The proposed rule should take into account the uncertainty in monitor data when designating non-attainment areas. The EPA’s data quality assurance handbook for air quality monitors identifies the acceptance criteria for ozone measurements as being whether a one-point quality control check for a single analyzer is +/- 7 % compared to a known quantity. That means that a valid measurement as high as 74.9 ppb or as low as 65.1 ppb could potentially be sampling actual ozone concentrations of 70 ppb, and that measurements as high as 69.6 ppb and or as low as 60.5 ppb could be sampling actual ozone concentrations of 65 ppb.

AASHTO and AMPO request that EPA consider a designation approach that accounts for known monitor data uncertainty. AASHTO and AMPO recommend EPA designate areas as “unclassifiable” rather than “nonattainment” if its design value is within the range that could be explained by monitoring equipment measurement uncertainty within the range allowed by EPA for valid ozone measurements (70 ppb  $\pm$  4.9 ppb for a 70 ppb standard and 65  $\pm$  4.5 ppb for a 65 ppb standard), since this level of uncertainty calls into question whether that design value is actually not attaining the standard and instead suggests that the area “cannot be classified on the basis of available information as meeting or not meeting” the standard. This is an appropriate use of the “unclassifiable” designation that Congress quite deliberately included in designation options.

#### **E. Designation of Non-Attainment Area Boundaries**

While the proposed rule did not address the criteria for determining the boundaries of a non-attainment area, the NRPM “solicits comment related to establishing area designation boundaries

for the proposed revised primary and secondary NAAQS, including any relevant technical information that should be considered by the EPA and the extent to which different considerations may be relevant to establishing boundaries for a distinct secondary NAAQS.”

AASHTO and AMPO recommend that, when making non-attainment designations, EPA should avoid relying upon a single monitor to designate a broad multi-county area. This consideration is especially important in Western states with large rural counties, which often include federal or tribal lands. EPA should also consider changing how design values are determined. For example, in large multi-county areas with multiple monitors, EPA could choose to average the concentrations across all monitors instead of just using the monitor with the annual fourth-highest daily maximum 8-hr concentration, averaged over three years.

#### **F. Transportation Conformity Requirements in New Nonattainment Areas**

As noted above, lowering the NAAQS will likely cause hundreds of additional counties to come into non-attainment. Compliance with transportation conformity will be a significant burden, but in most cases, will not have corresponding benefits, because as the NPRM acknowledges, the vast majority of the counties will come into compliance with the stricter NAAQS levels even if no additional regulatory action is taken.

**AASHTO and AMPO recommend that EPA use all regulatory flexibilities available within existing law to defer the imposition of transportation conformity requirements on areas that EPA’s own modeling shows will come into compliance with the NAAQS without any additional actions being taken.** If the transportation conformity requirements cannot be entirely deferred in these areas, EPA should allow a streamlined process for making conformity determinations in those areas, given that additional actions are not needed to achieve the NAAQS or demonstrate conformity.

#### **G. Timing of Implementation Guidance and Regulations**

This rulemaking does not include implementation guidance for the new NAAQS, but EPA has requested comment on implementation issues as part of this rulemaking. AASHTO and AMPO urge EPA to issue guidance as early as possible after finalizing the NAAQS in order to minimize any delays involved in transitioning into the new guidance.

Thank you for the opportunity to comment on EPA’s proposed NAAQS for Ozone. Should you have any questions, please contact: Shannon Eggleston from AASHTO at 202-624-3649, or DeLania Hardy from AMPO at 202-624-3684.

Sincerely,

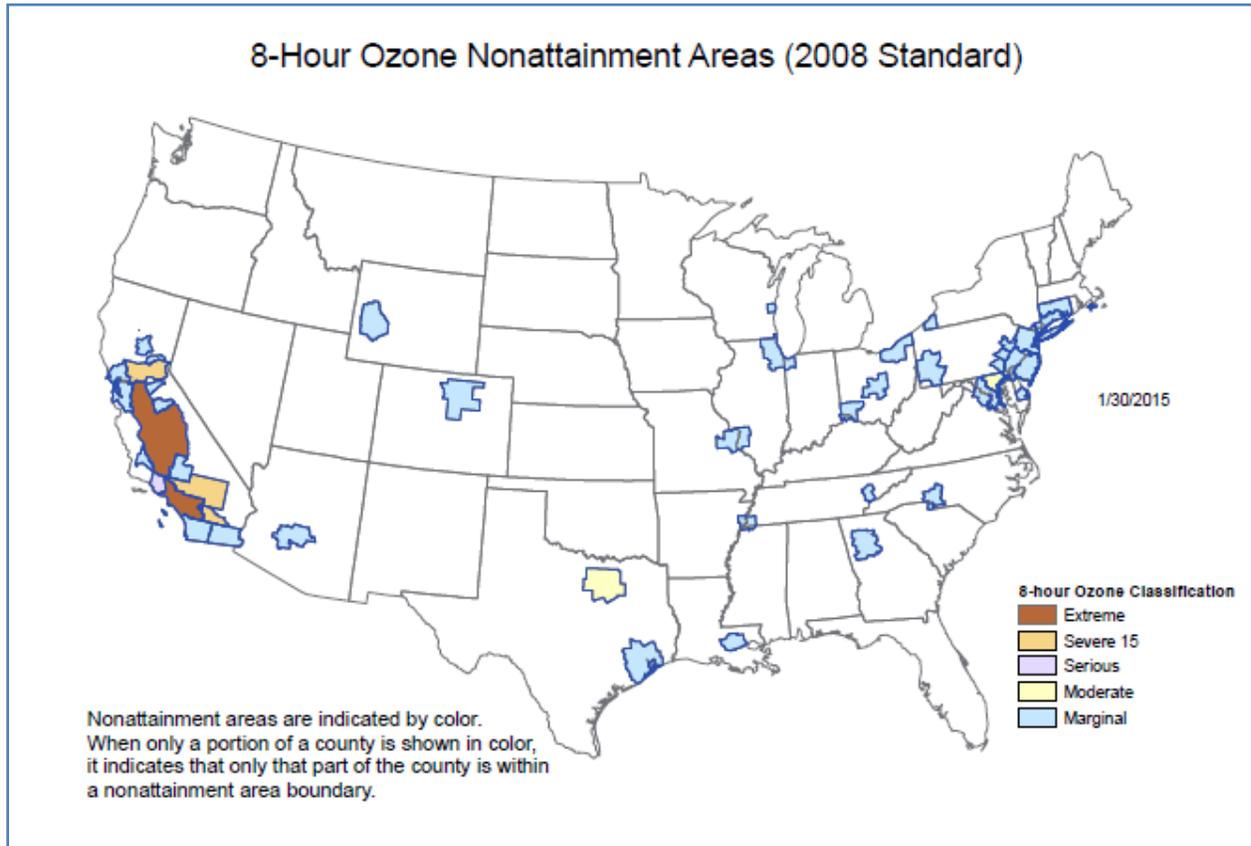


Bud Wright  
Executive Director  
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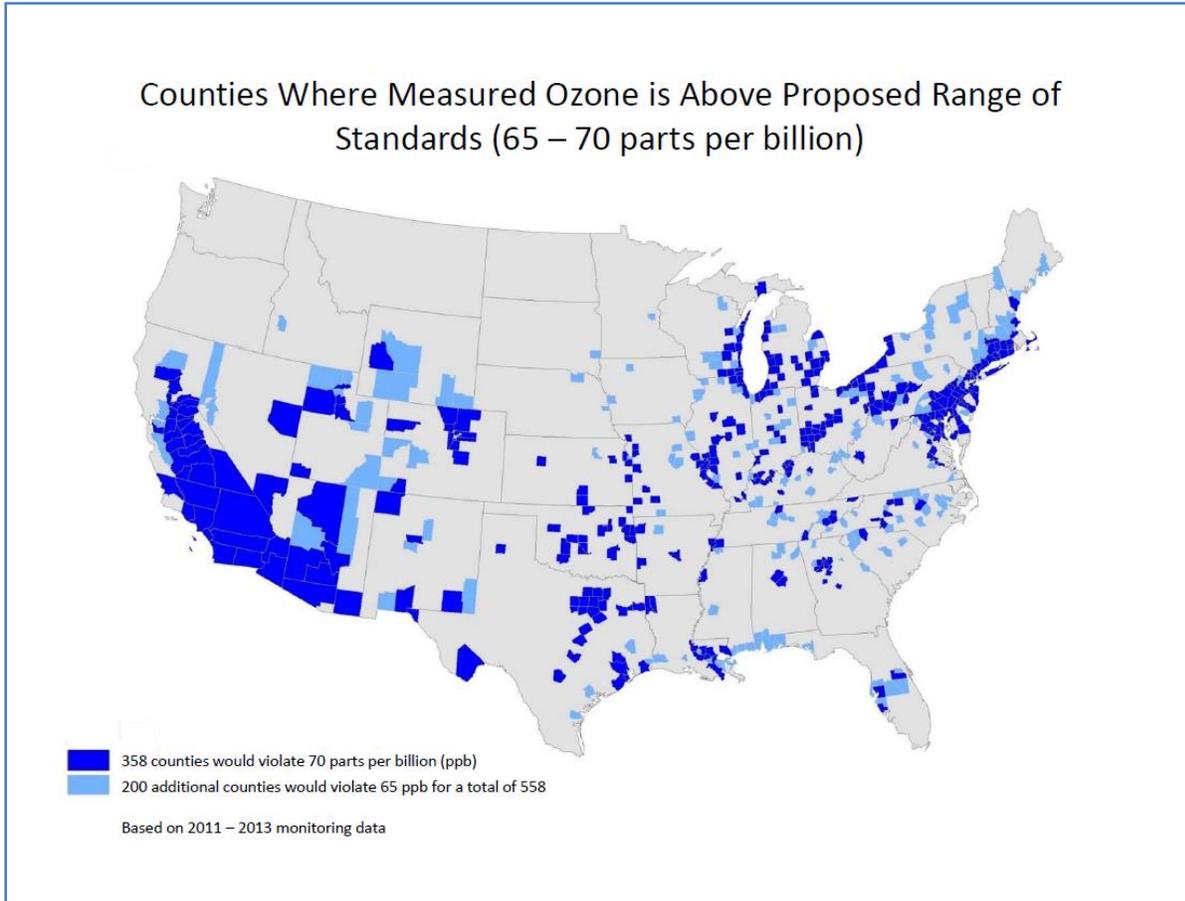
DeLania Hardy  
Executive Director  
AMPO

**Attachment 1: Counties Designated as Non-Attainment for 2008 Ozone NAAQS (75 ppb)**



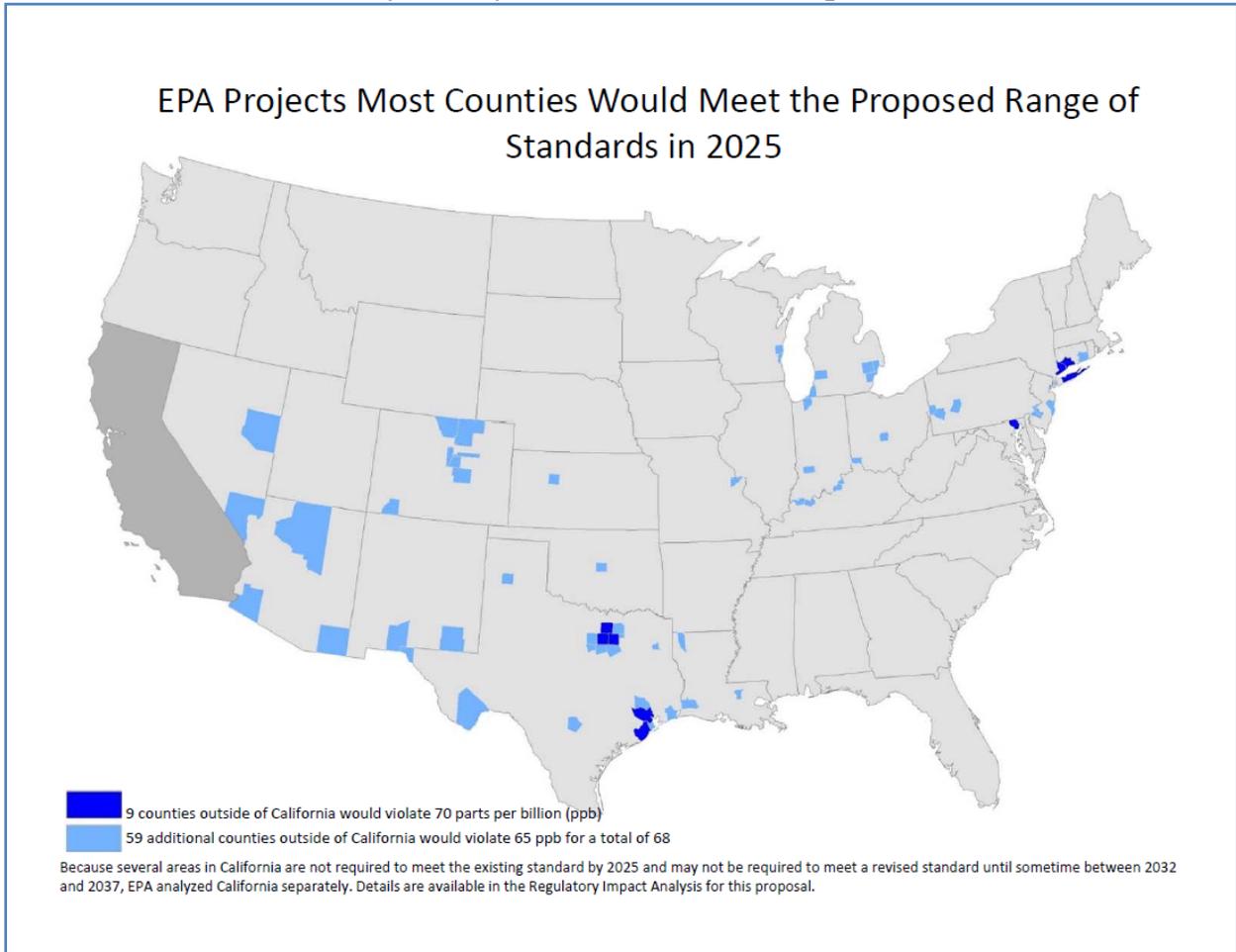
Map is from EPA Green Book on nonattainment areas at:  
[http://www.epa.gov/airquality/greenbook/map8hr\\_2008.html](http://www.epa.gov/airquality/greenbook/map8hr_2008.html)

**Attachment 2: Counties Projected by EPA to Violate the Proposed Ozone NAAQS Based on Current (2011-2013) Monitoring Data**



<http://www.epa.gov/airquality/ozonepollution/pdfs/20141126-ozonemaps.pdf>

**Attachment 3: Counties Projected by EPA to Violate the Proposed Ozone NAAQS in 2025**



<http://www.epa.gov/airquality/ozonepollution/pdfs/20141126-ozonemaps.pdf>