NATIONAL CAPITAL REGION TRANSPORTATION PLANNING BOARD

MEMORANDUM

TO: TPB Technical Committee

FROM: Kanti Srikanth
Director, Plan Development and Data Programs
Department of Transportation Planning

SUBJECT: Testimony during hearing held by US Senate's Environment and Public Works Committee on June 3, 2015

DATE: June 5, 2015

I was invited to provide testimony on behalf of the Association of Metropolitan Planning Organizations (AMPO) during a hearing of the United States Environment and Public Works Committee (EPW) on June 3, 2015, regarding the implications of proposed changes to the National Ambient Air Quality Standards (NAAQS) for ozone on metropolitan transportation planning and programming activities. The Senate EPW Committee is examining EPA's proposal to change the Ozone NAAQS standard from its current value of 75 ppb to a value in the range of 65 ppb to 70 ppb. I was told that the Committee members were interested in understanding the relationship between of the NAAQS for criteria pollutants and metropolitan transportation planning via transportation conformity analysis requirements. I was further informed that members of this Committee who were working on the Transportation Reauthorization Bill were also interested in understanding the transportation planning and programming implementation issues associated with changes to the ozone NAAQS.

I accepted the invitation noting that I would not be testifying on proposed changes to the ozone NAAQS, the levels at which it should be set, the science behind it or other policy aspects. I informed AMPO and the Senate Committee staff that the Transportation Planning Board has not taken an official position and hence my testimony would not be an official representation of the TPB. I also informed them that the Metropolitan Washington Air Quality Committee had taken a position on the proposed range of changes to the level of ozone NAAQS and that my testimony would note it but, I would not be officially representing MWAQC. AMPO also has commented to the EPA's docket on the proposed changes and I informed AMPO that I would note this and include AMPO's comments as part my testimony, but I would not be speaking to their comments. I informed both AMPO and the Senate EPW Committee staff that my testimony would strictly be from a practitioner's perspective and draw from my experience and knowledge of the National Capital region with transportation conformity, transportation emissions reduction measures and what the anticipated implications would be on the region with regard to its attainment status with the proposed changes to the ozone NAAQS.

I was assisted by the Metropolitan Council of Government's Department of Environment and Executive staffs in preparing this testimony. I shared my written testimony with the officers of the TPB, chairman of MWAQC and representatives of the state DOTs and WMATA ahead of my testimony on June 3, 2015. A copy of my written testimony is attached for your information and this will be shared with the TPB as part of its meeting packet this month. A copy of my written testimony will also be shared with MWAQC and its Technical Advisory Committee.

TESTIMONY OF

KANATHUR SRIKANTH

DIRECTOR OF TRANSPORTATION PLANNING

NATIONAL CAPITAL REGION

TRANSPORTATION PLANNING BOARD

METROPOLITAN WASHINGTON

COUNCIL OF GOVERNMENTS

ON BEHALF OF THE

ASSOCIATION OF METROPOLITAN PLANNING ORGANIZATIONS

BEFORE THE

U.S. SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

June 3, 2015
Washington, D.C.

Association of Metropolitan Planning Organizations
444 N Capitol Street, N.W., Suite 345, Washington, D.C 20001
P: 202-624-3680 • F: 202-624-3685 • www.ampo.org

June 3, 2015

Mr. Chairman and Members of the Committee, I am Kanathur Srikanth, Director of Transportation Planning for the National Capital Region Transportation Planning Board (TPB), the Metropolitan Planning Organization (MPO) for the Washington, DC region. I am appearing today at your invitation and on behalf of the Association of Metropolitan Planning Organizations (AMPO) of which I am an active member, serving as a member on its Policy Committee and the Air Quality Group.

First I would like to thank Chairman Inhofe and Ranking Member Boxer for holding this hearing to review critical issues surrounding the proposed revisions to the 8 hour National Ambient Air Quality Standards (NAAQS) for ground level ozone and potential implications of the proposed revisions on regional transportation planning.

I understand the Committee is discussing the state and local implications and implementation challenges of the Environmental Protection Agency's (EPA's) proposed ozone standards across the United States. I am here to present a practitioner's perspective on how lowering the existing 8 hour ozone standard could impact transportation planning activities in metropolitan areas and on some of the potential implementation challenges. I will attempt to present the potential challenges for MPOs in general based on the efforts by and experiences of my own MPO, known as the National Capital Region Transportation Planning Board (TPB).

EPA issued a notice of proposed rulemaking (NPRM; Dec. 17, 2014), proposing to set the level of the 8-hour ozone standard to within the range of 65 to 70 ppb, reducing it from the current level of 75 ppb. In its proposed rulemaking, the EPA also solicited comment on setting the level of the ozone standard below 65 ppb, to as low as 60 ppb.

Federal transportation legislation requires that an MPO be designated for each urbanized area with a population of more than 50,000 people in order to carry out the metropolitan transportation planning process, as a condition of federal aid. About 405 MPOs operate in the United States. MPOs with a population greater than 200,000 are known as Transportation Management Areas (TMAs), and about 150 TMAs operate within the United States. The TPB for the National Capital Region is a TMA with a population of over 5M people covering about 3,000 square miles. The National Capitol Region is one of the large urban MPOs that will be affected should the EPA act to lower the 8 hour ozone standards.

The National Capital Region TPB has not taken an official position on the range of the proposed ozone standard. However, the Metropolitan Washington Air Quality Committee, the regional air quality planning body for this area established in 1992 under Section 174 of the Clean Air Act Amendments of 1990, of which the region's state and local environmental and transportation agencies are members, has taken an official position on the proposed ozone standard and has communicated this information to the EPA. The letter to the EPA notes: "Metropolitan Washington Air Quality Committee supports the range of the proposed ozone standard, 65-70 parts per billion (ppb) as being more protective of human health and the environment. …… MWAQC believes that this proposal is the next logical step in a long term effort to improve air quality. The new standard will pose a fresh challenge to the metropolitan Washington region……. it is imperative that EPA help the states and local governments meet the new standards by providing assistance and adopting national rules as part of a national strategy to address pollution – particularly as it relates to pollution that does not originate in our region." A copy of the Metropolitan Washington Air Quality Committee's letter to the EPA is included as part of my written testimony to this Committee.

Additionally the Association of MPOs, AMPO, has communicated its position to the EPA on the proposed changes to the ozone standards. AMPO's position notes: "…..AMPO support(s) 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." A copy of AMPO's letter to the EPA's docket is included as part of my detailed testimony to this Committee.

From a practitioner's perspective and with specific reference to the National Capital Region and its MPO, I provide the following observations on the implications and potential implementation challenges associated with changes to the 8-hour ozone standards.

At the MPO level, a designation of nonattainment results in the implementation of transportation conformity requirements as per Section 176(c)(2) of the Clean Air Act. Under the Clean Air Act, air quality conformity analyses must be conducted to ensure that transportation plans and programs conform to the area's state implementation plan for a particular federal air quality standard. Federal rules require that these analyses be approved before any new transportation plan or program can be adopted by an MPO. MPOs in nonattainment and maintenance areas must demonstrate conformity of their transportation Plans and Programs at least once every four years. An amendment to add a regionally significant project to the plan or program, or changes to an existing project in the plan or program would also trigger a conformity analysis.

For areas such as the Metropolitan Washington, D.C. area, where plans undergo regionally significant changes on a frequent basis due to the complexity, growth rates, and sheer size of the area's transportation systems, MPOs must conduct these analyses on at least an annual basis. The TPB's current budget includes about $2M for activities directly related to air quality analysis which represents about 15% of its total budget. A conformity analysis is a highly technical undertaking that uses considerable amounts of data, time, the use of a broad range of growth estimates, and the application of several different computer models. The development of the supporting data and assumptions used in conformity analyses involve numerous interagency consultation meetings, public hearings, and engagement of MPO board members. Results of the

conformity analysis must thoroughly vetted to ensure results are appropriate, representative, and informative.

Today, 227 counties are designated as nonattainment for the 75 ppb standard. EPA's analysis shows that the number of counties designated as non-attainment could rise to 358 under a 70 ppb standard and to 558 under a 65 ppb standard. Many of these localities have not previously been designated non-attainment and as such have not previously been subject to transportation conformity requirements. The MPOs in these areas would need to budget significant amount of time and money to develop air quality conformity analyses supporting their transportation plans and programs in order to continue receive federal transportation funds. EPA's analysis indicates that many of these areas would be able to attain the new standards with the help of existing and proposed federal control programs.

A stricter ozone standard would result in the need for additional reductions in ozone precursor emissions. The Metropolitan Washington region is currently classified in as a marginal non-attainment area for the of the EPA's 2008 8 hour primary ozone standards. The region anticipates demonstrating attainment of the 2008 standard by end of this year. Current air quality modeling analyses indicate that for the National Capital Region, additional precursor reductions would need to be implemented to meet lower health-based thresholds beneath 75 ppb. The magnitude of reductions as well as the time frame needed to achieve these reductions will depend on the level of the new standard.

For example, the latest three year average (2012-2014) of ozone measurements in this region indicate that 7 of the 10 monitors have recorded values higher than 70 ppb, the upper end of EPA's proposed range, and that all 10 monitors have recorded values higher than 65 ppb, the lower end of EPA's proposed range. Ozone concentrations monitored within the Metropolitan Washington, D.C. area would need to decrease 6 ppb to 11 ppb to comply with a new lower standard. For a moderate nonattainment area, the likely compliance deadline for the new standard is 2023.

The National Capital Region has made great strides in improving its air quality. The Region has attained the 1990 ozone NAAQS (120 ppb); the 1997 ozone NAAQS (80 ppb); and anticipates attaining the 2008 ozone NAAQS (75ppb) in the coming year. Emissions reductions achieved in this region to date have been possible due to a combination of federal control programs[1] and regulatory and voluntary actions at state and local levels.

Locally, the National Capital region has taken actions on the transportation network and land use fronts to help reduce automobile travel and automobile emissions including:

- focusing its job and household growth in Activity Centers (areas that take about 9% of the land area but will host 76% of new jobs and 58% of new population).
- investing heavily in transit systems (more than 60% funding in TPB's plan is for Transit; 2/3 of activity centers will be connected by High Capacity Transit).
- strongly promoting non-motorized modes of travel (forecast increase in walk/bike trips almost same as increase in single occupant automobile trips), and
- implementing a number of regional travel demand management programs aimed at reducing automobile trips and vehicle miles travelled as a means of reducing automobile emissions of ozone precursors since the mid-1990s and costs about $6M annually.

[1] Past federal emissions control programs have been a significant contributor. Some of the major federal controls include:

Engine Standards, On-Road

- Federal Motor Vehicle Emission Control Program (Tier I)
- NLEV-National Low Emission Vehicle Program
- Tier 2 Vehicle and Gasoline Sulfur Program
- Enhanced Vehicle Emissions Inspection and Maintenance
- Reformulated Gasoline
- Heavy-duty Highway Engine Rules

Engine Standards, Off-Road

- Nonroad Diesel Emissions Program
- Emission Standards for Locomotive and Marine Engines
- North American Emission Control Areas (Off North American Coasts)

Electric Generating Unit (EGU) Programs-Federal

- NOx Budget Trading Program/NOx SIP Call
- Cross-State Air Pollution Rule
- Cross State Air Pollution Rule (CSAPR).

The results of these significant planning efforts are that vehicle miles traveled per capita is forecasted to decrease by about 3% and growth in vehicle trips and vehicles miles traveled is forecasted to grow at rate that is less than growth in population and jobs.

Even with all of these programs and efforts, the forecasts in ozone precursor emissions from the transportation sector beyond 2025 are forecast to remain steady unless new federal vehicle and or fuel control programs are implemented. There are a number of factors for this.

First local transportation control measures in the National Capital Region have been voluntary, typically affecting only a small portion of the sector being targeted and thus producing smaller amounts of emissions reductions. Federal control programs, on the other hand, have broad applicability, can produce substantial amounts of emissions reductions and typically are much more cost-effective than voluntary local controls.

For example, current estimates of the region's travel demand management programs show that this program decreases nitrogen oxide (NOx) emissions by about 0.4% by 2025 and 0.6% by 2030. While these travel demand programs provide multiple other important benefits including improving roadway safety, reducing energy consumption, decreasing traffic congestions, and therefore should continue to be implemented and enhanced, the program does not result in a large percentage decrease in ozone precursor emissions. In contrast, emission reduction estimates for Tier 3, the latest federal emission control program for on road vehicles, are approximately 19% by 2025 and by 28% by 2030.

Second the anticipated growth of the Metropolitan Washington DC region is another factor that influences the amount of vehicular emission reductions this region can achieve via voluntary programs. In the next 25 years – which includes the period when the region would have to comply with new ozone standard - the regional forecast suggests that population will increase by approximately 1.3M people and the area will add approximately 1.2M more jobs. The regional

forecasts estimate an additional 4M vehicle trips and 40M more vehicle miles travelled per day without additional transit and related investments.

Third, transportation funding constraints is another important factor that impacts the region's ability to realize additional significant amounts of on-road emissions in a timely manner to improve air quality and comply with any tougher ozone standards. Within the transportation sector in this region, funding to pursue or accelerate other improvements aimed at reducing vehicular travel and automobile emissions is constrained. Of the approximately $250B the region anticipates spending on transportation in the next 25 years, 83% is for maintenance, operations and state of good repair. Only 17% is available for capacity expansion of the highway and transit systems, and no governmental funding exists for a comprehensive system of infrastructure to support consumer acceptance of emerging and alternative fuel technologies such as electric vehicles.

In light of the above challenges to reducing on road vehicular emissions, federal efforts to assist states and MPOs reduce emissions and achieve national air quality standards should be an integral part of a broad strategy to meet new ozone NAAQS. At a minimum, federal efforts should encompass the development of new multi-sector control programs to help attain future ozone standards expeditiously. These new control programs should address interstate transport mandates in a timely manner. Failure to address such outstanding issues as interstate transport places undue burdens on transportation planning organizations within nonattainment areas. Minimum federal efforts should also include:

- timely enactment of implementation rules and guidance for all new standards;
- thorough review and update of the existing transportation conformity regulations so that transportation planning and air quality planning efforts may be harmonized;
- streamlining and simplifying the conformity process for areas that EPA's analysis indicates will attain the new ozone standard based solely on existing federal control programs; and
- increased transportation funding and flexibility in use of the funds for both planning and project implementation.

Local land use solutions and investment in transit and non-motorized travels to reduce vehicle miles of travel, while successful and necessary for many reasons including improving air quality, are however limited in terms of their ability to provide significant additional ozone precursor emission reductions in a timely manner and are also affected by improvements in vehicle emissions and fuel economy standards. As ozone standards are lowered, additional emission reductions from the on road and non-road sector will be critical to attaining those standards. In order to achieve significant reductions from the on-road sector, federal efforts and participation are imperative. Without adequate planning, funding and federal support, Metropolitan Planning Organizations could face difficulties in demonstrating conformity of its transportation plans and programs to the new emissions standards, leading to potential disruption in flow of federal transportation funds to the areas.

Working together, federal, state, regional and local environmental and transportation agencies must develop coordinated actions and be provided adequate resources to implement the timely actions needed to harmonize the dual goals of reducing ozone emissions to improve air quality and meeting the transportation needs of our communities.

Thank you for your time and the opportunity to speak before this committee.

Metropolitan Washington Air Quality Committee

Suite 300, 777 North Capitol Street, N.E. Washington, D.C. 20002-4239 202-962-3358 Fax: 202-962-3203

March 4, 2015

Administrator Gina McCarthy
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Mail code 28221T
Washington, DC 20460
Docket ID No. EPA-HQ-OAR-2008-0699

Dear Administrator McCarthy:

On behalf of the Metropolitan Washington Air Quality Committee (MWAQC), I am writing to comment on the proposed revisions to the National Ambient Air Quality Standards (NAAQS) for ozone. MWAQC was designated in 1992 under Section 174 of the Clean Air Act (CAA), to develop regional air quality plans for attaining Federal air quality standards in the Washington region. We have done so successfully over the past twenty three years. This assignment is carried out through a partnership among the States of Maryland and Virginia and the District of Columbia, and the region's local governments in the non-attainment area.

MWAQC supports the range of the proposed ozone standard, 65-70 parts per billion (ppb) as being more protective of human health and the environment. We are pleased that EPA's recommended standard is consistent with the Clean Air Scientific Advisory Committee's (CASAC) recommendations made in 2014. MWAQC believes that this proposal is the next logical step in a long term effort to improve air quality.

The new standard will pose a fresh challenge to the metropolitan Washington region. On the worst days of summer, transported pollution concentrations can exceed the levels proposed for the standard. MWAQC has and will continue to adopt all feasible control programs at the local level, however, it is imperative that EPA help the states and local governments meet the new standards by providing assistance and adopting national rules as part of a national strategy to address pollution – particularly as it relates to pollution that does not originate in our region.

Thank you for taking our concerns into consideration as EPA finalizes the new standard in the coming months.

Sincerely,

David Snyder, Chair
Metropolitan Washington Air Quality Committee

cc: MWAQC Members
COG Board of Directors
Governor Hogan, Governor McAuliffe, Mayor Bowser

Association of Metropolitan Planning Organizations

John Cox, President
Director, Wyoming Department of Transportation

Bud Wright, Executive Director

444 North Capitol Street NW, Suite 249, Washington, DC 20001
(202) 624-5800 Fax: (202) 624-5806 • transportation.org • centennial.transportation.org

March 17, 2015

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.[1] See **Attachment 1.** Under the NPRM, the number of

[1] 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.[2] 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.[3] 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.[4] In addition, the number of counties in non-attainment would increase in many other States, including Arizona, Colorado, Indiana, Wisconsin, Wyoming, and others.[5]

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."[6] 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.[7]

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."[8]

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

[2] 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.
[3] Id.
[4] Id.
[5] 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).
[6] EPA, "Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone" (Nov. 2014), p. 2-16.
[7] Id.
[8] 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."[9] 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.[10] 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.[11] 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

[9] 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.
[10] 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.
[11] 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.[12]

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.[13]

[12] 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.").
[13] 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.[14] 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.[15] 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.[16]

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.[17] 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.[18] Therefore, if an exceptional-event determination is approved *after* EPA's ozone nonattainment designation is

[14] 40 C.F.R. 50.14.

[15] 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.

[16] 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.")

[17] See 79 Fed. Reg. 75353-75358 (describing proposed schedule for exceptional-event determinations under the proposed ozone NAAQS rule).

[18] 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 ± 4.9 ppb for a 70 ppb standard and 65 ±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.

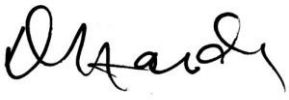
AASHTO and AMPO recommend that EPA use all regulatory flexibilities available within existing law to defer the imposition of transportation conformity requirements on areas that EPA's own modeling shows will come into compliance with the NAAQS without any additional actions being taken. If the transportation 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.

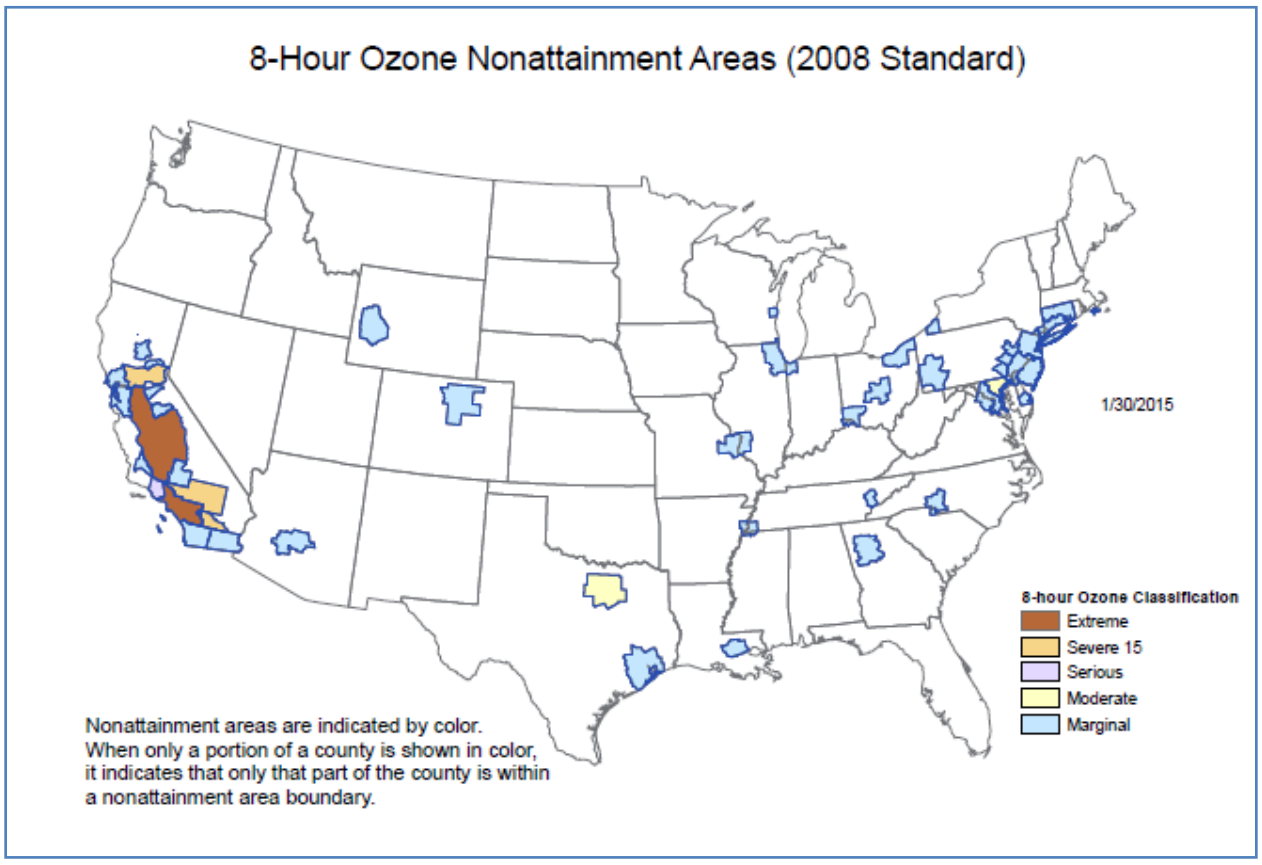
Sincerely,



Bud Wright
Executive Director
AASHTO

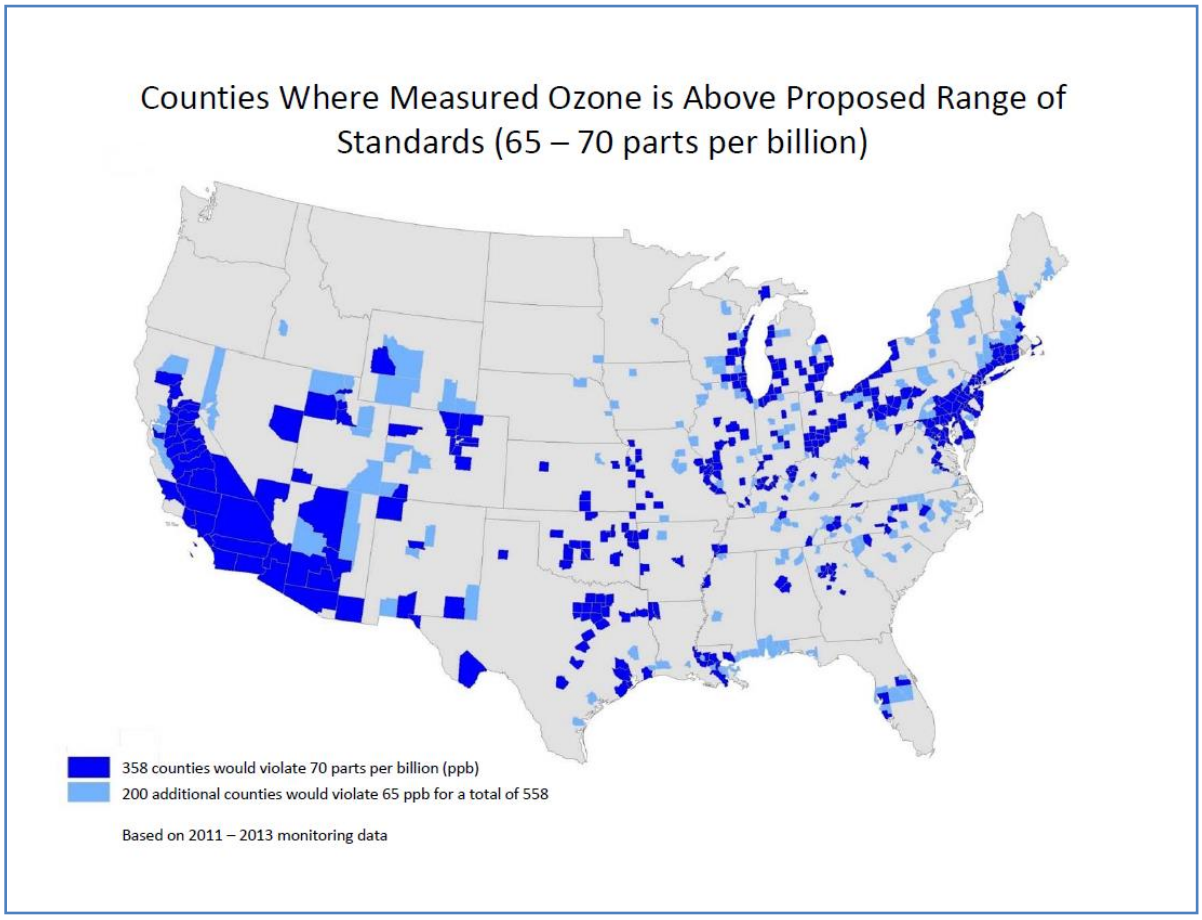
DeLania Hardy
Executive Director
AMPO

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



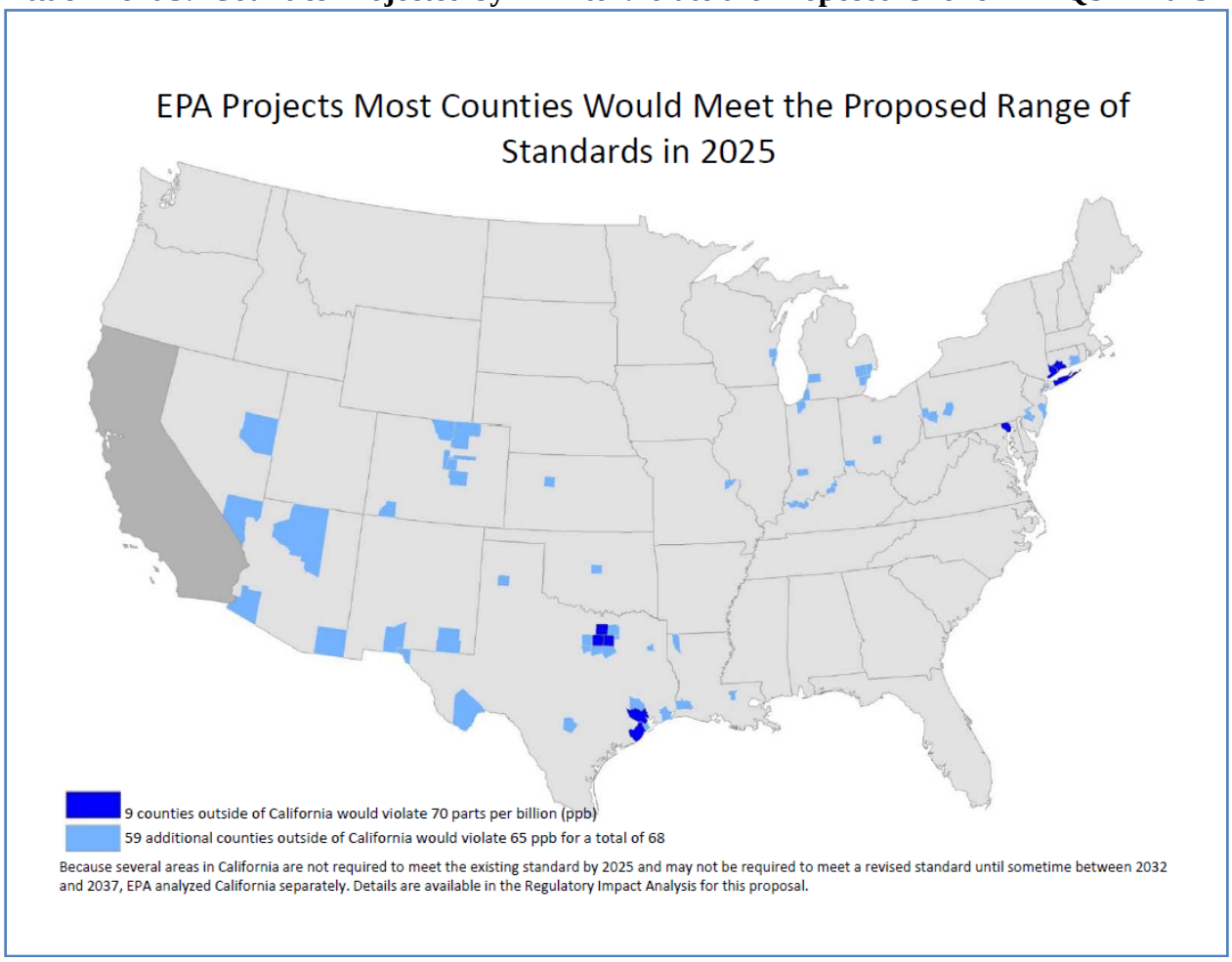
Map is from EPA Green Book on nonattainment areas at:
http://www.epa.gov/airquality/greenbook/map8hr_2008.html

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