



CAIR Replacement Rule and Regional Haze

NACAA Fall Meeting
September 22, 2009





Background

- December 2008 D.C. Circuit Court decision remanded CAIR and FIPs without vacatur
 - CAIR regional control programs operating
 - EPA must promulgate replacements
- Section 110(a)(2)(D) requires states to prohibit emissions that:
 - “contribute significantly” to NAAQS nonattainment downwind
 - “interfere with maintenance” of NAAQS downwind
- CAIR was designed to help address 1997 ozone and PM_{2.5} NAAQS



Background (cont)

- Court ruled against EPA on issues relating to:
 - Quantification and elimination of significant contribution
 - Interference with maintenance
 - How EPA constructed the regional cap-and-trade programs
 - State NO_x and SO₂ emission budgets
 - NO_x fuel factors
 - Use of Title IV SO₂ allowances for compliance in the CAIR SO₂ cap-and-trade program
 - Timing of the second phase
 - Inclusion of Minnesota for PM_{2.5}



Major Issues for Options Recommendation

- We will address critical issues including:
 - Which ozone and PM_{2.5} NAAQS to address beyond 1997 standards
 - If addressing updated standards, can/should this be done in one, or several rules
 - Approaches to defining significant contribution and interference with maintenance
 - Determines which states will be in the program and stringency of rule
 - Methods for identifying upwind to downwind linkages
 - Regulatory approaches to “prohibit emissions that significantly contribute” to nonattainment or interfere with maintenance
 - Which states should be covered
 - Which source categories to include in the program
 - What is the right combination of SIPs and FIPs to achieve reductions expeditiously
 - *Several of the issues are interrelated.*



Technical, Policy, Legal, and Programmatic Analyses

- Analyses include:
 - Upwind state contributions to downwind areas
 - New air quality modeling based on emissions projected for 2012
 - Costs and other impacts of various regulatory approaches; technical feasibility; distributional effects; potential for non-air quality impacts
 - Remedy options
 - Human health and environmental impacts
 - RIA and other analyses in support of statutes and E.O.s that affect rulemaking
 - Estimate of administrative burden (ICR)
 - Analysis of legal risks associated with various technical and policy options
- Coordination with other air program activities:
 - Consideration of utility MACT, revised NAAQS, BART, RACT, Section 126 petitions of NC and DE, interactions with Title IV



Proposed Schedule – Key Dates

**Sept/Oct 2009
briefings**

Options recommendation

March 2010

Signature on proposal

Spring 2011

Signature on final rule

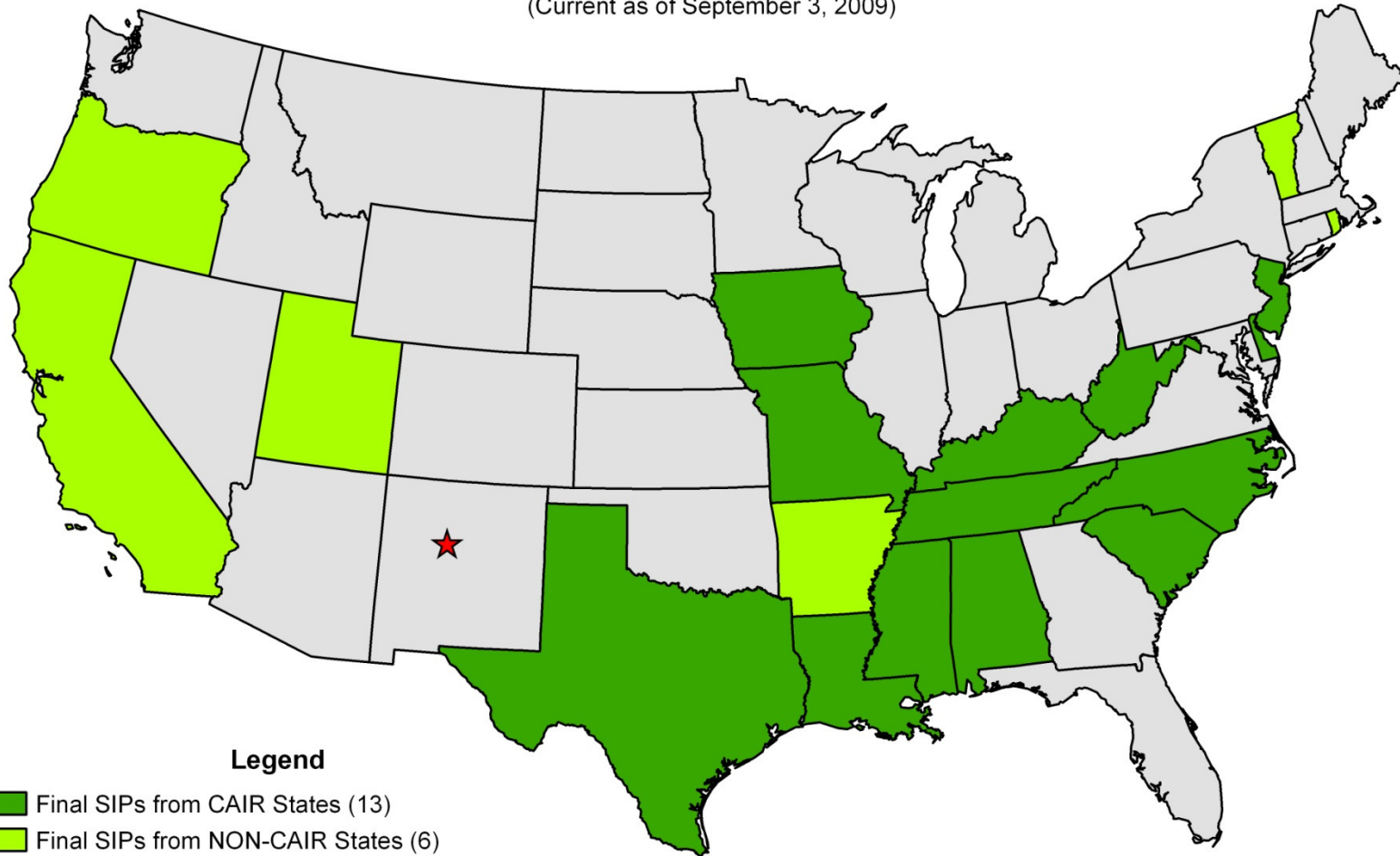


Status of Regional Haze SIPs

- **20 (out of 53) final Regional Haze SIPs:**
 - 13 from CAIR States (AL, DE, IA, KY, LA, MS, MO, NC, NJ, SC, TN, WV)
 - 7 from non-CAIR States (AR, CA, OR, RI, UT, VT; NM COUNTY)
- **Projected SIP submission dates*:** (**Estimates – likely to change*)
 - *For remaining 33 States/Territories/County (“States”):*
 - 19 SIPs - by end of 2009
 - 11 SIPs + 1 MT FIP - by end of 2010
 - 1 SIP (CO) - by July 2011
 - 1 HI FIP - sometime after 2009
 - *Draft/Proposed SIP Status:*
 - 7 Proposed SIPs for public comment submitted – *waiting for final SIP*
 - 8 States submitted EPA/FLM Draft SIPs – *waiting for Proposed SIP*
- **37 States received findings of failure to submit Regional Haze SIPs**
 - 6 submitted final SIPs (CA, NJ, OR, RI, TX, VT)
 - CAA requires EPA to take final action to approve these SIPs and any others submitted after findings by FIP deadline of January 15, 2011.

States that have Submitted Final Regional Haze SIPs to EPA

(Current as of September 3, 2009)

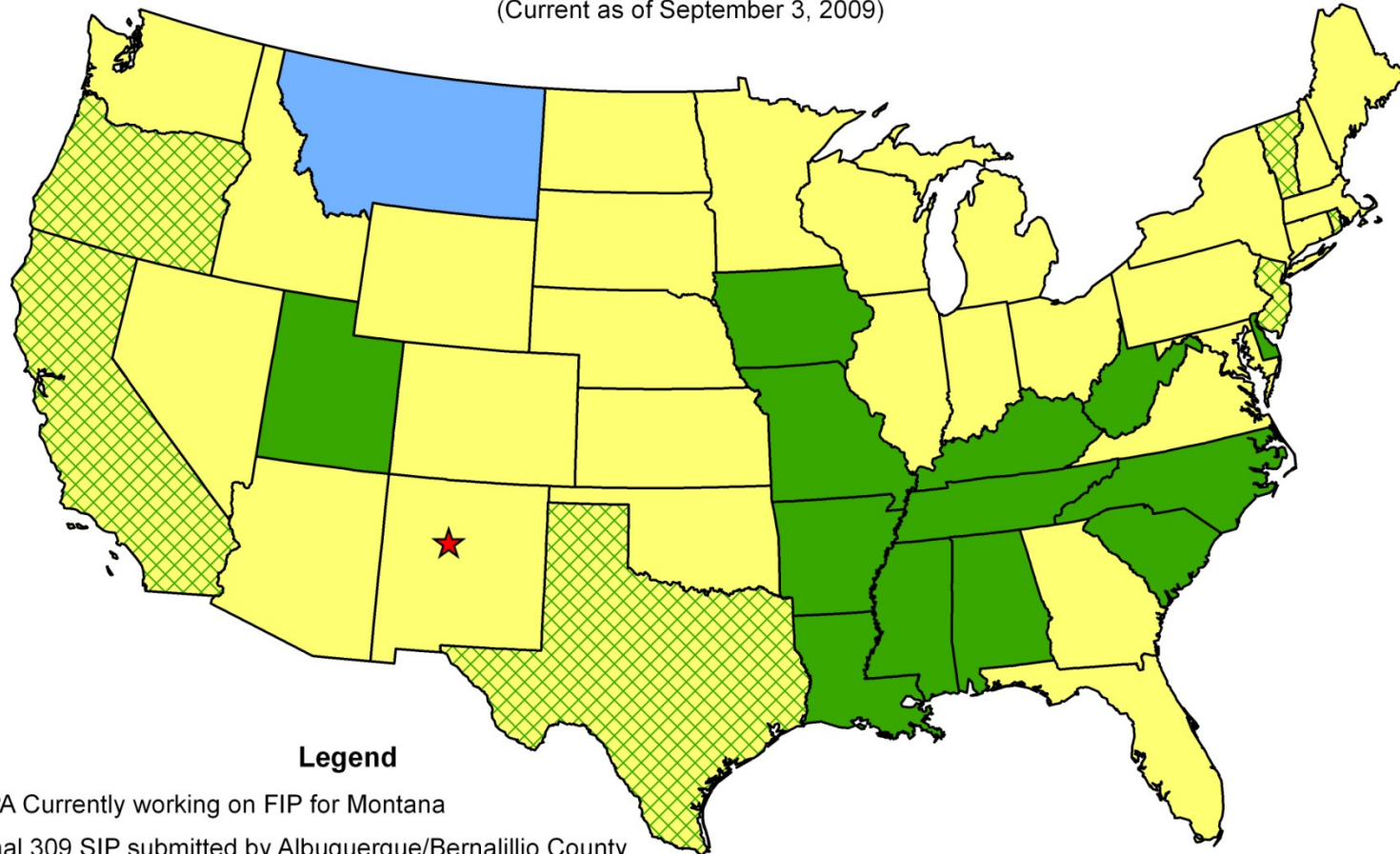


Legend






- Final SIPs from CAIR States (13)
- Final SIPs from NON-CAIR States (6)
- ★ Final 309 SIP from Albuquerque/Bernalillo County

Findings of Failure to Submit for Regional Haze SIPs

(Current as of September 3, 2009)



Legend

-  EPA Currently working on FIP for Montana
-  Final 309 SIP submitted by Albuquerque/Bernalillo County
-  States that submitted SIPs prior to Findings (13)
-  States on the Findings List that have submitted Final SIPs (6)
-  States on the Findings of Failure to Submit List (35 including AL, HI & VI)

Note: Alaska, Hawaii, and the Virgin Islands are also on the Findings List

- EPA is preparing a FIP for Hawaii and assisting the Virgin Islands with preparing SIP (possible FIP)



Reasons Remaining SIPs Not Yet Submitted

- **CAIR Court Rulings**
 - CAIR States hesitant to finish SIPs without firm direction on what EPA would deem approvable.
- **Other Priorities (e.g., PM, Ozone SIPs)**
 - Due to resource constraints, States put health-based standards as higher priority.
- **State rulemakings for BART and/or Reasonable Progress (RP) Authority**
 - Some states needed to establish authority for requiring BART/RP control & facility submissions.
 - Rulemakings took longer than expected.
- **Source Negotiations for BART & RP**
 - Negotiations took longer than expected.
 - Certain cases very contentious and/or resulted in legal challenges.
 - Technical issues still unresolved in some states.



Reasons Remaining SIPs Not Yet Submitted (continued)

- **SIP Development**
 - SIP took longer than expected to develop.
- **CAIR Eligibility Change**
 - One State (MN) relied on CAIR for EGU BART.
 - EPA proposing to remove MN from CAIR



Regional Haze SIPs

- *Key Questions:*
 - How do we get in SIPs from the States in a timely manner to avoid FIPs?
 - How do we coordinate nationally to ensure consistency in approving/disapproving BART determinations?