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U.S. Environmental Protection Agency
EPA Docket Center
EPA Docket ID: [EPA-HQ-OAR-2023-0262](https://www.regulations.gov/document/EPA-HQ-OAR-2023-0262)
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: U.S. Environmental Protection Agency's Nonregulatory Rulemaking Docket "Protection of Visibility: Amendments to Requirements for State Plans Rule", Docket ID Number: EPA-HQ-OAR-2023-0262

To Whom It May Concern:

The Arizona Department of Environmental Quality (ADEQ) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) nonregulatory rulemaking docket "Protection of Visibility: Amendments to Requirements for State Plans Rule."¹

ADEQ was established under the Environmental Quality Act of 1986 by the Arizona State Legislature as the state's cabinet-level environmental agency. ADEQ carries out several core functions including: planning, permitting, compliance, management, monitoring, assessments, cleanups, and outreach. ADEQ's mission is to protect and enhance public health and the environment.

This comment letter will briefly discuss the background of the regional haze rule (RHR) and EPA's solicitation of comments to a nonregulatory docket to support development of a revised regional haze rule that would affect State Implementation Plans (SIPs) for the third planning period, currently due in 2028. The letter addresses both ADEQ's support for the regional haze rule and main difficulties with implementing the rule, and requests that EPA consider various potential changes or improvements to the rule.

¹ See EPA-HQ-OAR-2023-0262. Accessed at: www.regulations.gov/docket/EPA-HQ-OAR-2023-0262.

I. Background

In 1977, Congress amended the Clean Air Act (CAA) to add provisions to protect the scenic vistas of the nation's national parks and wilderness areas. In these amendments, Congress declared as a national visibility goal: "The prevention of any future, and the remedying of any existing impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution."² When the CAA was amended in 1990, Congress added § 169B, authorizing further research and regular assessments of the progress to improve visibility in Class I Federal areas.

The EPA promulgated the 1999 Regional Haze Rule (RHR) on July 1, 1999.³ The federal rule's objective was to achieve the national visibility goal of restoring natural visibility conditions to Class I Federal areas by 2064. The rulemaking addressed the combined visibility effects of sources over a broad geographic region and established that all states must participate in haze reduction efforts, including those states without Class I Federal areas.

On January 10, 2017, the EPA published the 2017 RHR amendments to update aspects of the reasonably available visibility impairment (RAVI) and regional haze programs including:

- Revised the requirement for states to consult with federal land managers (FLMs);
- Detailed a new way for states to select a set of days during each year for purposes of tracking progress toward natural visibility conditions;
- Extended the RAVI requirements so that all states must address situations where a single source or small number of sources is affecting visibility at a federal Class I area;
- Extended the SIP submittal deadline for the second planning period;
- Adjusted the interim progress report submission deadlines; and
- Changed the requirement that states submit progress reports as formal SIP revisions to documents that need not comply with SIP procedural requirements.⁴

II. EPA's nonregulatory docket soliciting feedback on potential RHR revisions

On March 27, 2024, EPA opened a new docket soliciting public comment on potential RHR revisions that would affect SIPs for the third planning period, currently due in 2028.⁵ The posting memorandum made clear that while EPA provided some questions and suggested topics to prompt discussion, the request for comment is not meant to remain limited to those provided prompts.⁶

Sample topics presented with the docket include reasonable progress, four factor analysis, long-term strategy, and future SIP obligations, with specific suggestions to discuss:

- Purpose and use of the Uniform Rate of Progress in SIPs;
- Determining what is necessary to make reasonable progress;
- Criteria for source selection and application of the four factors; and

² CAA § 169A.

³ 64 FR 35714 (July 1, 1999).

⁴ 82 FR 3078 (Jan. 10, 2017).

⁵ *supra* note 1.

⁶ See EPA-HQ-OAR-2023-0262-0001. Accessed at: www.regulations.gov/docket/EPA-HQ-OAR-2023-0262/document.

- Relationship of Regional Haze Program to NAAQS implementation programs.⁷

III. ADEQ requests that EPA provide early certainty regarding regional haze program requirements by issuing final guidance close to publication of the final rule revision

Development of a comprehensive regional haze SIP revision often takes five years of planning and is one of the most resource-intensive CAA planning requirements that states face. Staff time and other resources expended for regional haze SIP development often exceed those spent planning for criteria air pollutant plans.

While some states have no or few federal mandatory Class I areas, Arizona is home to 12, or ~7.7% of the nation's 156 areas. Arizona's Class I areas have seen substantial visibility progress resulting in part from the regional haze program, with resulting benefits to the many visitors and Arizonans who enjoy the unique natural resources and diverse landscapes of the state.

However, the current RHR requirements place a higher planning burden on states like Arizona who must complete statewide SIP revisions for multiple federal mandatory Class I areas that are currently meeting or exceeding the regional haze program's uniform rate of visibility progress.

Because of the lengthy timeline and significant investment of agency resources associated with regional haze plan development, it is crucial for EPA to provide certainty about expectations around plan requirements early during the development process.

In the most recent regional haze planning process for the second implementation period based on the 2017 RHR, there were significant delays between final publication of the RHR and the associated guidance, as well as later changes to EPA interpretation that came close to the plan submittal deadline.

Many interpretations and flexibilities of the RHR changed between publication of the Final Implementation Rule (January 10, 2017), Final Guidance (August 20, 2019), and the Clarifications Memo (July 8, 2021), which spanned three different federal administrations. It should also be noted that the Clarifications Memo was released 23 days before the SIP submission deadline (July 31, 2021), which resulted in uncertainty and rework late in the process of SIP development.

For example, the 2021 Clarifications Memo presented a new and greatly expanded interpretation on the requirements for "Determining When Existing Measures are Necessary for Reasonable Progress" very late in ADEQ's development of the comprehensive regional haze plan.⁸ EPA's revised guidance requires an unreasonably broad-reaching review of all existing control measures that are not separately included in the regional haze plan to evaluate whether those same measures should be duplicated in the regional plan to support reasonable visibility progress. ADEQ did not have the resources to undertake this comprehensive and duplicative

⁷ See EPA-HQ-OAR-2023-0262-0002. Accessed at: www.regulations.gov/document/EPA-HQ-OAR-2023-0262-0002.

⁸ US EPA "Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period," July 8, 2021. Section 4.1.

review of existing controls by the SIP submittal date, and EPA's May 31, 2024 partial approval/partial disapproval of Arizona's 2022 regional haze plan specifically mentions the absence of this analysis as partial grounds for disapproval.

For the next RHR revision, EPA should address several key issues central to the development of regional haze SIP revisions in final form in the rule implementation guidance, including:

- the selection of sources for control measure analysis;
- the selection of cost thresholds for control measure determinations;
- the selection of measures that were necessary to make reasonable progress;
- the determination of which sources are subject to effective existing controls and how to adequately demonstrate that the existing level of control is effective and adequate to achieve reasonable progress;
- the selection of which existing non-regional haze measures the state should add to the long-term strategy; and
- the use of the uniform rate of progress and other evidence of visibility improvement as a factor for control measure selection.

Ideally, this updated regional haze guidance should be released simultaneously with or shortly after publication of the final RHR revision, rather than years later, in order to maximize the time for states to develop regional haze plans with certainty concerning the requirements for those plans.

IV. ADEQ requests that EPA provide concrete, defensible guidance on source selection and control analysis thresholds to streamline analysis of reasonable progress

For this revision to the RHR, ADEQ requests further guidance on the development of approvable source selection and control measure analysis thresholds. These analyses were a significant area of uncertainty and rework for Arizona during the second implementation period, but greater certainty early in the development process could greatly reduce the costs and burdens associated with the regional haze program.

During the second implementation period, Arizona spent considerable planning resources on the development of appropriate determinations for:

- four factor cost effectiveness thresholds;
- incremental cost-effectiveness between control alternatives;
- appropriate interest rates for control measure analyses;
- source selection emissions thresholds (e.g., Q/d thresholds);
- point source process de minimis thresholds; and
- nonpoint source category de minimis thresholds.

Streamlining the requirements of the regional haze program through clear guidance related to the development of these planning thresholds would not only reduce the process and cost burdens of the program but also provide clarity and certainty to federal land managers, regional planning

organizations, industry, interest groups, and the public on regional or national visibility progress benchmarks.

As discussed above, ADEQ believes the shifting guidance and late-stage reinterpretation of guidance for the regional haze program in the 2021 Clarification Memo contributed to the partial disapproval of certain aspects of Arizona's 2022 regional haze plan. ADEQ expended several years of staff planning efforts working on a second-round regional haze plan under one set of guidelines and requirements, only for many requirements to change or expand late in plan development. It is unreasonable to disapprove reasonable and well-supported analyses and determinations made under guidance that was applicable when planning obligations began and during earlier stages of planning.

V. ADEQ requests that EPA consider including “safe harbor” or other provisions that would reduce planning obligations for states that meet or exceed visibility goals

As discussed above, for states like Arizona with a large number of federal Class I areas, the burdens associated with visibility and emission analysis for each area and a wide range of sources are significant. ADEQ requests that EPA explore avenues to reduce the planning obligations on states with Class I areas that meet or exceed the visibility goals established in the RHR, such as a “safe harbor” provision for areas below the uniform rate of progress (URP).

If EPA does not accept the URP as an indicator of whether an area has made reasonable progress toward the national visibility goal, the metric should be replaced with an alternative that states can defensibly rely on to determine whether to modify their existing long term-strategy in order to achieve reasonable progress for a particular federal Class I area (e.g., safe harbor).

The ability to use the URP or a similar planning metric as a way to either reduce the number of sources brought forward for a four-factor analysis, to reduce the number of federal Class I areas that need further analysis, or to remove the requirement to modify the long-term strategy altogether would greatly reduce the burdens associated with the Regional Haze Program. Reducing the analysis required for areas that meet or exceed visibility improvement goals would free staff resources and attention for more productive analysis of and planning for other areas that do not meet the visibility goal.

Therefore, ADEQ requests that EPA consider use of a *de minimis* visibility contribution threshold or similar metric as a brighter line rule to determine what level of visibility impact from a given source requires additional control.

Finally, ADEQ requests that EPA consider allowing states to evaluate and receive credit for the visibility impacts of emission reductions that result from programs other than regional haze, such as criteria pollutant and climate programs, without needing to separately codify those provisions into the regional haze plan. Significant reductions in visibility impairing pollutants have resulted from many regulations and programs outside of regional haze that nevertheless improve visibility at Arizona Class I areas.

VI. ADEQ requests that EPA coordinate with other federal partners to ensure complete and available visibility data for all federal Class I areas

Another issue that caused delay and difficulty with development of Arizona's second round regional haze SIP was a gap in availability for visibility data at certain federal Class I areas.

For multiple federal Class I areas in Arizona, funding and staffing shortfalls at the responsible federal land manager agencies resulted in missing visibility data from the IMPROVE network monitors associated with these areas.⁹ These data gaps made visibility analysis more difficult and introduced uncertainty into planning for the Arizona Class I areas covered by these monitors: Mazatzal Wilderness, Pine Mountain Wilderness, and Sierra Ancha Wilderness.

Because of the unreasonable burden of uncertainty resulting from insufficient data, ADEQ requests that EPA prioritize data completeness from the IMPROVE network and evaluate opportunities to assist other federal partners with ensuring complete data from the sites that those partners manage.

VII. ADEQ requests that EPA reevaluate the purpose and utility of the regional haze progress report elements

40 CFR §51.308(g) of the RHR requires periodic progress reports to summarize emissions and visibility information and analyze whether each state's regional haze strategy is sufficient to achieve visibility improvements. These progress reports must contain:

- A description of the status of implementation of all measures included in the implementation plan for achieving reasonable progress goals;
- A summary of the emissions reductions achieved throughout the State through implementation of the measures;
- An assessment of visibility conditions and changes for each federal Class I area, with values for most impaired, least impaired, and/or clearest days;
- An analysis tracking the change in emissions of visibility impairing pollutants;
- An assessment of the change in emissions of visibility impairing pollutants, whether these changes were anticipated, and whether they have impeded visibility progress;
- An assessment of whether the current implementation plan elements and strategies are sufficient to enable the State to meet all established reasonable progress goals; and
- A determination of adequacy and formal declaration that the current long-term strategy (LTS) is adequate to achieve the reasonable progress goals.

The progress report elements are required in both the regional haze SIP revisions under 40 CFR § 51.308(f)(5) and between SIP revisions under 40 CFR § 51.308(g). Reporting required under both CFR provisions is subject to changing deadlines and delays in EPA processing and approval. As a result, the same emission and visibility information must be assembled every few years for both progress report and SIP revision purposes.

⁹ The IMPROVE monitors at Ike's Backbone [IKBA1] and Sierra Ancha [SIAN1] were both missing data 2018-2022.

As a greater number of federal Class I areas meet or exceed the visibility glide path toward natural conditions in 2064, this frequent recompilation and analysis of substantially similar emission, visibility, and facility information may not be as productive a use of state agency resources as when the progress report requirements were first implemented.

Because the progress report requirements generally do not result in any change to the state's LTS for regional haze and rather summarizes progress since the last submittal, they do not produce additional emissions reductions or visibility improvements beyond the SIP provisions. State air planning resources could be more productively allocated to programs with greater direct emission impact, such as criteria pollutant/nonattainment area SIP planning and climate programs.

Therefore, ADEQ requests that EPA reevaluate the purpose and utility of the regional haze progress report elements and consider reducing or eliminating progress report obligations where doing so would not conflict with CAA requirements for regional haze, especially for Class I areas that meet or exceed their visibility goal.

VIII. Conclusion

ADEQ appreciates the opportunity to provide these comments on EPA's docket. ADEQ supports the regional haze rule's goal of reducing visibility impairment at federal Class I areas, while requesting that EPA evaluate opportunities to simplify regional haze planning requirements for states that meet or exceed certain visibility improvement targets. If you have any questions, please contact Air Quality Improvement Planning Section Manager Kelly MacKenzie at (602)-784-1603 or at mackenzie.kelly@azdeq.gov.

Thank you for your consideration of ADEQ's comments.

Sincerely,

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Daniel Czecholinski
Air Quality Division Director