

## RULEMAKING TOPICS

### Topic I: Due Date for Second Planning Period SIPs

#### Relevant Background

Under the current regional haze rule (RHR), states are required to submit their next regional haze SIP (RH SIP) in July 2018 addressing reasonable progress through 2028. During our outreach, the majority of states expressed a strong desire to integrate and coordinate their regional haze planning with planning for other current and upcoming EPA requirements. Examples of other regulatory requirements that are likely to affect the same sources as the RHR include the Mercury and Air Toxics Standards, the 2010 1-hour primary sulfur dioxide National Ambient Air Quality Standard (NAAQS), the 2012 annual fine particulate NAAQS, the proposed Clean Power Plan and the proposed 2015 ozone NAAQS. The additional time would enable a state to have a much better understanding of the collective reductions that will occur from these requirements. A state could then focus on achieving additional emission reductions that may still be needed to provide for reasonable progress at its own and neighboring Class I areas by 2028. While the majority of states supported a 2021 SIP submission date, a limited number of states indicated their preference to complete their next regional haze SIPs on the 2018 schedule specified by the existing RHR. Several other stakeholders favored the existing deadline for these SIPs.

EPA intends to propose amendments to the RHR to give states the option of submitting their RH SIPs for the next planning period as late as July 31, 2021, so that they can better align and interface these plans with other air quality planning requirements. Regardless of when the state submits its SIP, the SIP must address reasonable progress through 2028. We do not intend to propose any change in the submission dates for SIPs addressing future 10-year planning periods.

#### ***A. How can EPA maintain flexibility on second planning period SIP due dates while still expecting productive interstate consultation?***

EPA is seeking input on how to address interstate consultation for upwind and downwind states submitting on different schedules. For example, how should EPA address consultation where an upwind state that plans to submit its SIP in 2021 for its own Class I areas is otherwise required under the current RHR to provide four-factor analyses of its sources in 2016-2017, which is when downwind states submitting in 2018 would need the information? Whether this is likely to be a practical problem depends on which states follow which schedule and how they impact one another's Class I areas.

#### Questions

1. What is your state's preliminary thinking about when it would aim to submit the SIP covering the 2018-2028 planning period?
2. What are the emission inventory implications of a 2018 versus a 2021 submission date?
3. Do you expect there to be situations in which a state aiming to submit early in the 2018-2021 period has Class I areas for which an upwind state can be reasonably anticipated to cause visibility impairment, but that upwind state will be aiming for submittal late in the 2018-2021 period?

4. What thoughts or ideas do you have to address timely state-to-state consultation on what additional emission controls are necessary for reasonable progress where an upwind state and a downwind state choose to submit on different schedules?
5. Should any possible complications be addressed ahead of time through RHR revisions? For example, should EPA give the early-submitting downwind state a temporary “pass” on consultation with late-submitting upwind states, so that EPA can approve the downwind state’s RPGs and long term strategy even though the four-factor analysis for sources in upwind states will not have been assessed?
6. Where consultation might be delayed, how should EPA address the late-submitting upwind state’s consultation requirement in order for its own RPGs to be approved?
7. Please provide specific examples of how the ability to delay the SIP for the second planning period will allow states to integrate their air quality planning efforts, for a better result and/or reduced resource requirements.
8. What are your thoughts about how the regional haze rule can be improved in order to make the consultation requirements more productive? For example, if modeling shows a strong impact from an upwind state, should the rule (or guidance) presume that sources should be identified, control cost analysis be performed, and individual source impacts be calculated?

## Topic II: Progress Reports

### Relevant Background

Under the current RHR, states are required under 40 CFR 51.308 (g) to submit 5-year progress reports in the form of implementation plan revisions that comply with the procedural requirements of 40 CFR 51.102 and 51.103 and appendix V of 40 CFR part 51. The requirements for the 5-year progress reports include elements not required in 10-year SIPs such as an assessment of significant changes in anthropogenic emissions within or outside the state that have limited progress in Class I areas impacted by the state’s sources. Many states expressed concern about the need for this resource-intensive process, and recommended that regional haze progress reports not be required to be submitted as formal SIP revisions. Other stakeholders indicated a strong preference for leaving the current formal SIP revision process in place for the 5-year progress reports, because in their view this requirement provides for enhanced accountability for states and the EPA to ensure the RH SIPs are resulting in reasonable progress towards improving visibility in Class I areas. In response to this feedback, we intend to propose amendments to the RHR to change the process from a formal SIP submission to another mechanism that is less resource-intensive but still ensures there is an adequate public review process and accountability for states and the EPA on the 5-year progress reports.

### Issues

***A. If EPA removes the requirement that progress reports be submitted as SIP revisions, what additional state-level processes will be avoided?***

EPA is seeking additional information and examples of the burden states will experience if progress reports must be SIP revisions.

### Questions

1. Please provide some specific examples of the resource or other burden that states are experiencing because the progress reports currently are required to be SIP revisions. What additional requirements are triggered in your state because the reports are SIP revisions as opposed to a submission without a SIP revision to EPA? (Answers to this question may be detailed and better provided by email before or after the meeting.)

***B. How can the schedule for the submission of progress reports be adjusted to prevent progress reports from becoming due too close to a SIP?***

If progress reports continue to be due “every five years [from submission of the 2007 plan]” some reports will be due close to when “full” SIP revisions are due. Sometimes, two progress reports will be due between “full” SIPs. Below are two examples:

South Carolina		Hawaii	
Full SIP	Progress Report	Full SIP	Progress Report
12/17/2007			
	12/17/2012	10/9/2012	
	12/17/2017		10/9/2017

South Carolina		Hawaii	
Full SIP	Progress Report	Full SIP	Progress Report
7/31/2018 or 2021		7/31/2018 or 2021	
	12/17/2022		10/9/2022
	12/17/2027		10/9/2027
7/31/2028		7/31/2028	
	12/17/2032		12/17/2032
	12/17/2037		12/17/2037
7/31/2038		7/31/2038	
Etc.	Etc.	Etc.	Etc.

Questions

- Should the schedule for the progress reports be changed to a fixed schedule, with the following features, as in the next table?
  - Only one progress report between full SIPs.
  - A progress report along with each full SIP.<sup>1</sup>

Full SIP	Progress Report
	First progress report, as a SIP revision. Date Varies
7/31/2021 Also require retrospective assessment?	
	1/31/2025 Not a SIP revision.
7/31/2028 Also require retrospective assessment?	
	7/31/2033 Not a SIP revision.
7/31/2038 Also require retrospective assessment?	
	7/31/2043 Not a SIP revision.
Etc.	Etc.

<sup>1</sup> Note that under the current RHR, there are required elements for a progress report that are not required elements of a “full” SIP revision, so there is a material difference between requiring and not requiring a progress report at the same time as a full SIP revision.

2. If a progress report is due along with each full SIP, is there any significant burden to the states if that progress report remains a required SIP revision, given that the “full” SIP revision needs to go through the SIP submission process at the same time?
3. Do you see any advantage or disadvantage from requiring the next regional haze SIPs to include an explicit commitment to prepare and submit the progress reports?

***C. If progress reports are no longer SIP revisions, are any changes to the content and procedures (FLM consultation and public comment periods) for developing progress reports needed?***

Questions

1. Are any clarifications in the required content of progress reports appropriate? See 40 CFR 51.308(g)(1) through (7).
2. What should be the required federal land manager (FLM) consultation process?
3. What should be the required public comment process at the state level?
4. Is there any difficulty in continuing to require that the governor or his or her designee submit the progress report?

***D. What mechanisms and approaches could EPA use to deal with states that submit no progress report or an insufficient progress report?***

Questions

1. In the absence of a SIP revision context for progress reports, what approach should EPA use to review and approve progress reports?
2. If EPA does review and approve/disapprove progress reports, should EPA always invite a new round of public comment, or are there circumstances in which EPA review of public comments received and addressed by the state during the preparation of the report would be sufficient? How should EPA notify the public of the opening of a comment period if there is one?
3. How should EPA address situations in which a state fails to submit an adequate progress report in a timely manner?
  - What consequences for failure to submit a progress report and for EPA disapproval of a progress report are both (i) possible within the CAA framework and (ii) appropriate for giving states adequate incentive to prepare a good report on time?
  - In addition to whatever consequences you recommend, how else can EPA address the concerns expressed by NGOs that there should be a meaningful mechanism in place to provide recourse to the public where a state fails to submit a timely report or submits a report that is inadequate?
4. In a case in which a progress report includes a state’s determination that the SIP is not sufficient to enable the state, or other states with Class I areas affected by emissions from the state, to meet all established reasonable progress goals, is the requirement for a corrective SIP revision within 1 year reasonable?