



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

August 06, 2024

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
EPA Docket Center
1200 Pennsylvania Ave NW
Washington, DC 20460

Submitted electronically via: <https://www.regulations.gov>

RE: *Protection of Visibility: Amendments to Requirements for State Plans Rule*, Docket ID No. EPA-HQ-OAR-2023-0262

Dear Administrator Regan,

The New Mexico Environment Department (NMED) appreciates the opportunity to submit the attached comments to the U.S. Environmental Protection Agency (EPA) on the *Protection of Visibility: Amendments to Requirements for State Plans Rule*, Docket ID No. EPA-HQ-OAR-2023-0262 Regional Haze Rule revisions that would affect State Implementation Plan (SIP) revisions for the third planning period, currently due in 2028.

We look forward to further engagement as EPA develops updates for the third planning period and beyond.

Sincerely,

A handwritten signature in blue ink that reads "James C. Kenney".

James C. Kenney
Cabinet Secretary

Attachment (1)

Cc: Courtney Kerster, Senior Advisor, Office of Governor Michelle Lujan Grisham
Dr. Sydney Lienemann, Deputy Cabinet Secretary of Administration, NMED
Michelle Miano, Director, Environmental Protection Division, NMED
Zachary Ogaz, General Counsel, NMED

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Attachment

Comments on the Protection of Visibility: Amendments to Requirements for State Plans Rule Docket ID No. EPA-HQ-OAR-2023-0262

Comment 1: Efficiencies Needed in the Regional Haze Process.

The primary goal of the upcoming revisions should streamline the SIP revision requirements to reduce the immense resource burden the regional haze places on states. Nearly a third of the states, including New Mexico, failed to submit complete second planning period regional haze SIPs by the July 31, 2021, deadline even though EPA delayed the original July 31, 2018, deadline by three years.

In New Mexico's case, the existing requirements of the current rule were a significant factor in the state's inability to meet the deadline. Furthermore, despite committing at least three full-time staff plus contractors and additional resources to regional haze since 2019, New Mexico still has not completed its second planning period regional haze SIP revision due to the level of effort involved in meeting the current rule's requirements.

In the meantime, other important air quality rulemaking needs have languished such as implementing new clean power plant rules and addressing non-attainment issues. NMED appreciates the importance of protecting visibility in Class I areas but under the current rule, the regional haze planning process diverts too many of New Mexico's limited resources from other important planning efforts, including those necessary to implement the health-based National Ambient Air Quality Standards (NAAQS).

Comment 2: Extending SIP Revision Timelines.

To make regional haze planning more efficient, EPA should revise the current rule to make periodic comprehensive regional haze SIP revisions due a minimum of every 15 years instead of every 10 years. The current 10-year planning horizon does not allow sufficient time to realize the effects of all of the measures in SIP revisions, especially when compliance deadlines are at or near the end of a planning period. As a result, states may find themselves developing their next SIP revision before the measures in the previous revision have had a significant opportunity to impact visibility.

Given the resource-intensive nature of regional haze planning, each SIP revision should build on the progress resulting from the previous revision. A longer planning horizon would result in more efficient use of states' limited resources. EPA should also revise the current rule to extend the due date for the third planning period SIP revision submittals by at least three years from 2028 to 2031, and also align the requirements for periodic progress reports with a longer planning horizon. For example, if EPA revises the rule to make SIP revisions due every 15 years, periodic progress reports should also be due every 15 years, i.e., halfway through each planning period.

Comment 3: Considerations of Visibility Conditions.

EPA should also revise the current rule so that planning requirements more accurately reflect observed and projected visibility conditions in Class I areas. Areas where visibility conditions are improving and are projected to be below the uniform rate of progress (or other appropriate visibility tracking metric) at the end of a planning period, based on on-the-books and on-the-way measures, should be subject to less stringent requirements than areas projected to be above the uniform rate of progress and/or where visibility conditions are not improving. Requiring states to select sources and evaluate emission reduction measures that consider the four statutory factors irrespective of how observed and projected visibility conditions compare to the uniform rate of progress decouples regional haze planning requirements from the overarching goals of the Clean Air Act. Moreover, EPA should reconsider its current position and allow the uniform rate of progress to serve as a “safe harbor,” or build other flexibilities into the rule so the level of regional haze planning required for Class I areas appropriately considers what is already happening on the ground.

Comment 4: Sequence Limitations.

EPA should also consider limitations on sequences of events for state implementation of requirements. For example, NMED cannot add SIP requirements to permits until the SIP is approved by EPA, and yet EPA expects states to modify permits to incorporate SIP requirements before submitting the SIP to EPA for approval. This is an important obstacle that has caused confusion and made the development, submittal, and approval of regional haze SIP revisions much more time consuming and resource-intensive than necessary. There should be meaningful engagement opportunities between EPA and individual states to find more practical implementation mechanisms for achieving reasonable progress goals.