Comments by the Texas Commission on Environmental Quality,

Railroad Commission of Texas, and Public Utility Commission of Texas

Regarding Protection of Visibility:

Amendments to Requirements for State Plans; Proposed Rule

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Table of Contents

[I. Background 1](#_Toc456016507)

[II. Comments 1](#_Toc456016508)

[A. Historic Precedent 1](#_Toc456016509)

[B. Inadequate Notice 2](#_Toc456016510)

[C. §51.301 Definitions 2](#_Toc456016511)

[D. §51.302 Reasonably attributable visibility impairment 4](#_Toc456016512)

[E. §51.305 and §51.308 Monitoring 6](#_Toc456016513)

[F. §51.307 New source review 7](#_Toc456016514)

[G. §51.308(f)(1) Rate of progress 8](#_Toc456016515)

[H. §51.308(f)(2) Long-term strategy 11](#_Toc456016516)

[I. §51.308(f)(3) Reasonable progress goals 13](#_Toc456016517)

[J. §51.308(g) Progress reports 14](#_Toc456016518)

[K. §51.308(i) Changes to FLM Consultation Requirements 16](#_Toc456016519)

[L. Extension of SIP Submittal Deadline 16](#_Toc456016520)

# I. Background

On May 4, 2016, the United States (U.S.) Environmental Protection Agency (EPA) published in the *Federal Register* proposed amendments to its Regional Haze Rule (RHR or Rule) found at 40 Code of Federal Regulations (CFR) Part 51 and 52, §51.300 to §51.309 and §52.26 to §52.2781. Under the Federal Clean Air Act (FCAA) and the RHR, states are required to take actions for protection of visibility in mandatory Class I federal areas. The following comments on this proposed rule are provided by the Texas Commission on Environmental Quality (TCEQ), Railroad Commission of Texas, and the Public Utility Commission of Texas. For convenience in this document, comments are attributed to the TCEQ as the representative of these agencies.

# II. Comments

## Historic Precedent

The EPA, in its proposed amendments to the RHR, would turn 45 years of air pollution control policy under the FCAA on its head. From the formation of the EPA through the FCAA Amendments of 1990, the regulatory philosophy has been based on the premise that the protection of public health is the top priority and that preventing welfare impacts of air pollutants is an important but less urgent and expensive priority. When the FCAA Amendments of 1990 added a major new program to reduce adverse welfare effects of acid rain, the program was designed as an equitable and highly cost-effective cap and trade program.

The proposed amendments to the RHR would make it the principal driver of pollution control expenditures in the U.S., likely pushing them beyond the costs of meeting the National Ambient Air Quality Standards, which are set to protect public health.

The net impact of the proposed amendments would be to increase the burden on states in the preparation of the comprehensive state implementation plan (SIP) revisions, increase the frequency of comprehensive SIP revisions through amendments to the Reasonably Attributable Visibility Impairment (RAVI) rules, and increase the compliance costs for the program.

The EPA asserts that the proposed amendments would streamline the process of regional haze SIP development. They would not, and it is clear that the EPA knows that they would not. All that the amendments would streamline is the EPA’s disapproval of comprehensive SIP revisions submitted under the revised RHR.

## Inadequate Notice

**B.1 Lack of timely access to the revised guidance on developing regional haze SIPs thwarts the process of reviewing the proposed RHR changes and the effectiveness of the proposed rules.**

Texas believes that this proposal does not provide adequate notice since the guidance was not made available with sufficient time for reviewers to do a thorough analysis of how the draft guidance influences implementation of the proposed rule before the comment deadline. The guidance helps define and standardize approaches that are required for developing an acceptable SIP. A side-by-side review of the proposed rule with the draft guidance would allow states to more fully assess the impact of the proposed RHR; however, even with the extended comment deadline, the time allowed for this side-by-side review was insufficient.

In addition, the EPA estimates a reduction in effort for states as a result of the proposed rule. This is not likely when phrases such as “robust analysis” are substituted for “analysis” without the ability of a state to ascertain what is meant by “robust” due to the limited time to review the draft guidance.

**B.2 The EPA should have provided a derivation/disposition matrix to clearly indicate what parts of the modified rule were derived from existing rule language and what parts are new. The EPA should either provide a derivation/disposition matrix along with reopening the comment period or only adopt those changes that are specifically and clearly explained and justified in the preamble.**

The EPA’s proposed rule is a convoluted mixture of myriad relocated and modified existing provisions with entirely new provisions embedded within. It is difficult to review and understand the proposed rule due to the substantial restructuring and modifications the EPA has included in the proposal. Even more concerning are the new requirements that are embedded within these modified and relocated provisions. States cannot properly evaluate the proposal without a clear understanding of what provisions are existing requirements, what existing provisions the EPA is proposing to modify, and what new requirements the EPA is proposing to add. Furthermore, the EPA has provided little or no explanation in the preamble for some of these apparently new requirements. For such a complicated rule restructuring, the EPA should provide a derivation/disposition matrix with the proposal to clearly indicate what provisions are new, modified, and/or relocated and indicate where relocated provisions came from. Unless the EPA plans on providing some form of derivation/disposition matrix for the proposal coupled with reopening the comment period, the EPA should exclude from the final rule any new provisions or modifications based on the EPA’s “long-standing interpretations” that are not clearly explained and justified in the preamble.

## §51.301 Definitions

**The EPA is proposing to remove the discretion states have in determining appropriate techniques for certifying RAVI from a source or small group of sources at a Class I federal area. The TCEQ opposes the proposed change to the definition of *reasonably attributable* in §51.301 and the complete replacement of §51.302 that would remove the role of the state in identifying or concurring in the identification of RAVI and unduly expand Federal Land Manager (FLM) authority beyond what Congress intended under the FCAA.**

The proposed change in the definition of *reasonably attributable* would change the current definition:

*“Reasonably attributable* means attributable by visual observation or any other technique the State deems appropriate”

to read:

*“Reasonably attributable* means attributable by visual observation or any other appropriate technique.”

The EPA claims the change to the definition of *reasonably attributable* to take out the state’s discretion on the appropriate visibility impairment techniques to be used will make clear that states do not have complete discretion in RAVI certification. Yet, the proposal goes further to give the FLMs, and ultimately the EPA, the sole reviewing authority over appropriate other techniques used in the FLM certification of RAVI. The FCAA gives states the responsibility of developing RHR SIPs. The proposed replacement of §51.302 would require states to submit SIP revisions upon a certification, made exclusively by FLMs, for potential controls on a RAVI source or sources, regardless of whether the state agrees with the certification techniques employed by the FLM. It is not clear from the proposed changes to this definition if EPA intends for FLMs to certify based on techniques developed by the FLMs or allow them to rely on third-party techniques. The preamble seems to indicate that any technique the FLM deems sufficient, including modeling, can be used for certifications. The TCEQ is concerned that states will be required to address RAVI sources or groups of sources in their SIPs without first having the opportunity to review the reliability of the techniques employed in the certification. States need to have the authority to make a judgement call regarding if a SIP revision is warranted.

It is inappropriate to provide the FLMs the authority to require extensive work by the state to evaluate the four reasonable progress factors for a source with no threshold criteria for concluding that source has an effect on visibility impairment at a particular Class I federal area. If the FLM is authorized to identify specific sources to a state and recommend their analysis as part of developing the next long-term strategy (LTS), the state should be able to use technically sound impact analysis tools to judge which sources are the large contributors to visibility impairment at the Class I area and prioritize the analysis of the sources with the most impact on visibility impairment at that Class I federal area.

The EPA has not justified why states’ discretion should be curtailed and all power for RAVI certification rest with FLMs and the EPA. Congress established a limited role for FLMs in development of state regional haze plans that the EPA does not have the authority to expand by rule. Section 169A(d) of the FCAA (42 U.S. Code §7491(d)) requires states to “consult in person with the appropriate federal land manager or managers and shall include a summary of the conclusions and recommendations of the FLMs in the notice to the public” of a public hearing on the proposed implementation plan revision. It is clear that the FLM’s role in SIP development is limited to a consultative role. The proposed new definition of *reasonably attributable* in §51.301 gives more power to FLMs than Congress intended by forcing states to address RAVI sources identified by FLMs in their regional haze plans. The new definition takes discretion away from states in what techniques it deems are appropriate for FLM certification of a RAVI source.

The proposed changes to §51.301 and proposed new requirements in §51.302(d) force states to submit SIP revisions whether or not they agree with the certification techniques used and the conclusions reached. Title I of the FCAA created a state/federal relationship that gives the EPA review and approval authority and federal implementation plan (FIP) authority if the administrator, at FLM urging, disagrees with a state’s decision-making. This amended definition upsets the careful balance of responsibilities Congress intended for SIP development. The EPA has not identified a clear shortcoming of the current rule as it relates to past RAVI certifications, or why more authority is needed by FLMs in the broader context of state regional haze planning. Texas does not support changes to these sections of the RHR.

## §51.302 Reasonably attributable visibility impairment

**D.1 Texas opposes the proposed expansion of the RAVI program.**

When the EPA established the current regional haze program by adopting §51.308 in 1999**,** the EPA put in place a new program to replace the largely failed approach of using RAVI to improve visibility in the nation’s Class I areas. There is no regulatory need to resurrect and dramatically expand the largely failed program that the current §51.308 program replaced in 1999. A parallel and essentially duplicative new RAVI program would overwhelm state administrative capabilities to respond appropriately to the §51.308 regional haze program requirements, which the EPA is proposing to make substantially more burdensome on its own through several significant rule revisions.

**D.2 Texas urges the EPA to withdraw all the proposed changes to the RAVI rules and program with the possible exception of removing existing RAVI FIPs and the obligations on states and the EPA that they create.**

Because of the proposed substantial expansion of consultation between FLMs and the states, the proposed major expansion of the RAVI program is redundant and duplicative. In addition, it expands the number of comprehensive regional haze SIP revisions from one every 10 years to, potentially, a number of major revisions every 10 years.

The 1999 RHR expanded control requirements to include consideration of all sources contributing to visibility impairment at all Class I federal areas. Creating a parallel RAVI program will not include any additional sources that are currently not covered by the §51.308 program.

The current §51.308 requirements accomplish what the expanded RAVI requirements would without adding requirements for multiple, additional regional haze SIP revisions beyond the comprehensive ones already required every 10 years (with the 2021 to 2028 period being seven years because of the proposed three-year postponement in the due date of the 2018 comprehensive regional haze SIP revision).

The EPA proposes to expand applicability of RAVI requirements to all states, reasoning that the changes would “strengthen the visibility program.” In its proposed explanation of RAVI, the EPA notes that the provisions were developed when the technology needed to analyze visibility impairment was “in its infancy” and that “visual observation of ‘plume blight’ was the main method of determining whether a source was affecting a mandatory Class I area.” The EPA then goes on to explain that technology has advanced since that time and that those advances were incorporated into the RHR. The Interagency Monitoring of Protected Visual Environments (IMPROVE) program together with the IMPROVE equation incorporated the improvement in technology for measuring visibility impairment. The IMPROVE program already measures the impact of all potential RAVI sources in every Class I area with an IMPROVE monitor. For these reasons, any expansion of the RAVI program would be redundant and a waste of state resources in preparing the RAVI portion of SIP revisions and EPA resources in review of those portions of SIP revisions.

The expansion of technology has already occurred and was considered in developing the current RHR that directed the preparation of comprehensive SIP revisions due in 2007 and the preparation of the EPA guidance for developing the first comprehensive 10-year SIP revisions under §51.308.

**D.3 The TCEQ opposes any requirement for regional haze SIP revisions on a schedule shorter than the 10-year planning schedule laid out in §51.308 (with the exception of the seven-year period between July 31, 2021 and July 31, 2028).**

In the existing §51.308 the EPA appropriately adopted the requirement for comprehensive updates to each state’s regional haze plan on a 10-year timetable. That timetable is appropriate. Anything shorter is premature for a number of reasons. First, the compliance time for new requirements under each 10-year comprehensive regional haze SIP revision is typically three to six years. To be able to observe the improvements in visibility takes five years, the period over which §51.308 appropriately requires averaging of annual deciview averages for the least impaired (cleanest days after the amendment) and most impaired 20% of days. All of the visibility determinations are dependent on data from the IMPROVE network. Because of the delay in analysis of IMPROVE samples, validation of the IMPROVE data, and posting of IMPROVE data, the latest five-year averages of IMPROVE data become available one-to-two years after the IMPROVE samples are collected.

All this means that the subsequent 10-year comprehensive regional haze SIP revision can only partially represent the progress made under the current 10-year SIP revision. Any SIP revisions on a shorter time scale would be entirely unable to evaluate the amount of progress the current SIP revision will produce.

Additionally, the EPA’s proposal to expand RAVI applicability has the potential to increase the burden on states by requiring development of multiple additional SIP revisions, under a shorter timeline, while providing no additional visibility benefit at Class I areas beyond those provided by §51.308 following the current round of proposed amendments.

**D.4 The EPA fails to explain how expanding the number of states to which FLMs may provide a RAVI certification and removing any state role in determining RAVI provides additional improvement to visibility protection over meeting the existing requirements of §51.308 and the visibility transport requirements in FCAA, §110(a)(2)(D)(i)(II).**

The EPA states that “emissions occurring in states without Class I areas can affect downwind states with Class I areas”, and that the proposed change would “provide these areas with additional protection from reasonably attributable visibility impairment.” However, the RHR §51.301 and FCAA, §110(a)(2)(D)(i)(II) already require states without Class I areas to ensure that emissions from within that state do not impair visibility in other states.

If the EPA expands RAVI requirements to all states, Texas would be required to submit a SIP revision to address FLM certifications for emissions from sources that are deemed by the FLM to be reasonably attributable to visibility impairment at any Class I area, whether the certifications are merited or not. This burden is unnecessary and onerous as the proposed revision would provide no additional benefit to visibility in Class I areas beyond those that would be required under the proposed amendments to §51.308, the regional haze program requirements.

**D.5 Criteria must be established in §51.302 for determining sources that the FLMs certify for RAVI**.

Proposed **§**51.302(b) would require each state to revise its regional haze SIP to respond, for the sources identified by the FLM certification, with a significant effort. For each certified source or small number of sources identified by the FLM, the state will be obligated to submit a plan that considers the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting a reasonable progress goal (RPG). Because of the significant amount of effort needed for this required response, the FLMs should be required to include in their certification a reasoned justification for the sources to be evaluated. This justification should be based on modeling, technical analysis, or established percentage (such as 20%) of visibility impairment (measured in inverse megameters) at the Class I area to enable the states to both justify the increased effort and to avoid arbitrary certifications. The states and the public have a right to know how the FLMs will be determining that a particular source or group of sources is contributing to visibility impairment. The EPA imposes such specificity regarding criteria for the use of executive director discretion under a SIP rule and the FLMs should be held to the same standard.

## §51.305 and §51.308 Monitoring

**E.1 The EPA should remove this section; the basic premise of the monitoring section is incorrect. There are already reliable, scientifically sound methods that are in use for quantifying the impact of a source or a small group of sources on visibility impairment at each Class I area with an IMPROVE monitoring site.**

The IMPROVE monitoring network produces reliable, scientifically valid data on the components of particulate matter and the IMPROVE equation uses IMPROVE data to calculate the extinction coefficient, bext, in units of inverse megameters. The extinction coefficient is then used to calculate the deciview index. The RHR was issued in 1999 and is primarily codified in 40 CFR §51.308. The RHR effectively superseded the largely ineffectual RAVI program established in 1980.

The contribution of individual sources or small groups of sources to visibility impairment at a Class I federal area can already be quantified by using particulate matter source apportionment technology in a photochemical grid model to quantify that impact on individual days and on the average of the most impaired 20% of days in a year.

**E.2 Texas strongly objects to the EPA’s apparent attempt to give itself and the FLM the authority to require additional monitoring from the states under proposed §§51.305, 51.308(c), 51.308(f)(4), and 51.308(f)(6). If the proposed rule provisions in §§51.305, 51.308(c), 51.308(f)(4), and 51.308(f)(6) are intended to be a mandatory obligation for states to implement additional monitoring, then the EPA has not accounted for the corresponding additional costs to states and the proposed provisions should be removed in the final rulemaking**.

The proposed new §51.308(f)(4) states that if the Administrator, Regional Administrator, or affected FLM has advised a state of a need for additional monitoring to assess RAVI at a mandatory Class I federal area in addition to the monitoring currently being conducted then the state must include in the plan revision an appropriate strategy for evaluating RAVI in the mandatory Class I federal area by visual observation or other appropriate monitoring techniques. Similar provisions are proposed in §51.305 and §51.308(c). While states are required to include in the submitted plan a strategy for evaluating RAVI in any mandatory Class I federal area by visual observation or other monitoring techniques under §51.305, the current rule does not allow either the EPA or FLMs to require additional monitoring by the state by merely advising the state of need for additional monitoring. While the EPA states in the preamble (81 FR 26950) that states must consider any recommendations from the EPA or the FLM for additional monitoring for purposes of RAVI, the proposed rule text can be interpreted as a requirement for the plan to include additional monitoring. If, as the EPA states in the preamble, the state is advised of a need for additional monitoring it is only intended as a recommendation to be considered in the next revision of the plan, then §§51.305, 51.308(c), 51.308(f)(4)**, and 51.308(f)(6)** should be written to make clear that such advice is only a recommendation and the state is under no legal obligation to implement additional monitoring.

If the proposed rule changes to §§51.305, 51.308(c), 51.308(f)(4)**, and 51.308(f)(6)** are intended as a requirement and not as a recommendation, the EPA has not in any way accounted for the potential additional costs to states that could result from the additional monitoring imposed by proposed §§51.305, 51.308(c), 51.308(f)(4**), and 51.308(f)(6).** In fact, the EPA indicates under the Statutory and Executive Order Reviews section of the preamble (81 FR 26967) that the proposed changes will result in a reduction in state burden and that there is no unfunded mandate. However, if a state is required to implement additional monitoring as a result of being advised by the FLM or EPA, that state will incur costs. The fact that the EPA does not know for certain whether such a situation will occur or not does not alleviate the EPA of its obligation to estimate costs of its proposed actions on the states. The EPA should not assume that states can implement such requirements without giving any consideration to the cost burden to the state. States do not have unlimited resources. As the states have not had the opportunity to comment on the EPA’s assumptions regarding costs for the additional monitoring, other than the EPA’s apparent assumption of no cost, the provisions should be removed from the amendments that are adopted.

With regard to including FLMs in the proposed revisions to §§51.305, 51.308(c), 51.308(f)(4)**, and 51.308(f)(6)**, the TCEQ strongly objects to the EPA giving such authority over the states to the FLMs. The FCAA does not allow the EPA to delegate such power to the FLMs. While the TCEQ maintains that the provisions in §§51.305, 51.308(c), 51.308(f)(4)**, and 51.308(f)(6)** should be removed in the final rulemaking, if the EPA insists on retaining the provisions, even as just a recommendation, then the provisions should be limited to the EPA Administrator or Regional Administrator having the ability to advise the states of a need for additional monitoring. Furthermore, proposed §§51.305, 51.308(c), 51.308(f)(4**), and 51.308(f)(6)** do not actually specify that the Class I federal area that the EPA or a FLM has advised the state of a need for additional monitoring must actually be within that state. To avoid confusion, all the provisions should be written to make clear that the mandatory Class I federal area in question is located within that state.

Finally, the EPA does not propose to include any criteria by which such advice for additional monitoring would be justified. Even as just a recommendation from the EPA Administrator or Regional Administrator, the state would be required to consider that recommendation and put additional resources into the development of the next plan revision. The EPA already has excessive discretion under the Regional Haze planning process. Giving the Administrator and Regional Administrator the ability to impose additional factors for the state to consider in the SIP development process based solely on what could be one person’s unsubstantiated opinion without any justification or criteria is an abuse of federal discretion. If the EPA does decide to retain these provisions then the final rule should list the criteria that the Administrator or Regional Administrator will use to decide that additional monitoring is needed. The states and the public have a right to know how the EPA will be deciding that additional monitoring to assess RAVI at a mandatory Class I federal area is needed. Establishing such criteria for the EPA Administrator’s or Regional Administrator’s use of discretion in this situation is no different than when the EPA insists that states establish criteria for the use of executive director discretion under a SIP rule. The EPA should be holding itself to the same standards that it imposes on states.

Section “11.4. Monitoring strategy elements” in the Draft Guidance (EPA-457/P-16-001, July 2016) states, after quoting 40 CFR §51.308(f)(4) and (6):

“At the time this document was prepared, the EPA is not expecting that any state will need to address these requirements in a manner differently than in its SIP for the first implementation period. States with questions or concerns, or that receive public comments that raise issues related to these requirements, should consult with their EPA regional office and with the FLMs for affected Class I areas.”

To make 40 CFR §51.308(f)(4) consistent with this statement in the draft guidance document, the EPA should add the following language at the end of proposed 40 CFR §51.308(f)(4):

“Compliance with this requirement may be met through participation in the Interagency Monitoring of Protected Visual Environments network.”

## §51.307 New source review

**The TCEQ's SIP-approved major new source review (NSR) permitting program already provides for case-by-case consultation with FLMs for new or modified sources that may affect visibility in Class I federal areas.**

The TCEQ recognizes the requirement in §51.307(a)(1) to provide written notification to all affected FLMs of any proposed new major stationary source or major modification that may affect visibility in any Class I federal area. The TCEQ understands that no change is proposed for this requirement; therefore, no change to the TCEQ permitting and notification process is proposed.

The TCEQ provides for the requirement in §51.307(a)(1) in *TCEQ Form 10252: PI-1 General Application Form and Tables; Section IV. Public Notice Applicability*, which instruct the applicant to submit a copy of the Form PI-1, and all attachments, to any affected FLM. In addition, the appropriate FLMs receive a notification letter from the TCEQ as part of the first public notice package (Notice of Receipt of Application and Intent to Obtain Permit (NORI)), and again as part of the second public notice package (Notice of Application and Preliminary Decision (NAPD)). These notification letters include a Web link to the TCEQ’s Chief Clerk’s Commissioners Integrated Database (CID) to allow viewing of the public notice during NORI, and to allow viewing of the public notice, draft permit, Preliminary Determination Summary, and Air Quality Analysis during NAPD. The instructions in TCEQ Form 10252, along with the notification letters to affected FLMs during NORI and NAPD meet the requirement in 40 CFR §51.307(a)(1).

## §51.308(f)(1) Rate of progress

**G.1 Texas concurs with the EPA’s proposal that the uniform rate of progress line begins on December 31, 2004 at the end of the 2000 – 2004 base period and ends at December 31, 2064 for every implementation period.**

However, Texas also notes that the RHR allows states to adopt a LTS that would result in an extrapolated date for reaching natural conditions that is beyond 2064. Texas and other states hosting approximately 100 of the 156 Class I areas have calculated the year for achievement of natural conditions goals beyond EPA’s default year of 2064; three states have EPA-approved regional haze SIPs with achievement of the natural condition goal beyond the year 2690: Arizona (2771), Washington (2702) and New Mexico (2699). This flexibility is required given the year-to-year variation in the impacts of local and regional dust events, international transport, and fires and the challenge of the proposed unwieldy process for dealing with these factors that are largely or entirely beyond the state’s control.

**G.2 Texas asks that the EPA allow common sense approaches to considering the impact of natural events and international transport so that states can focus their efforts on anthropogenic point source emissions under the state’s control. For example, states should not be expected to provide the EPA with documentation of dust storms that have already been well documented by other federal agencies.**

Quite a few Class I federal areas are in or near the three southwestern deserts. Both of Texas’ Class I areas, one of New Mexico’s Class I areas and Northern Mexico contend with natural dust storms because they are located in the Chihuahuan Desert; two of Arizona’s Class I areas contend with natural dust storms because they are in the Sonoran Desert; and at least one of California’s Class I areas is in the Mohave Desert. Other Class I areas near these three deserts can also be affected by dust. The National Oceanic and Atmospheric Administration (NOAA) records the dust storms; must California, Arizona, New Mexico and Texas cut and paste NOAA’s recordings of the same dust storms and send them to EPA? It seems a waste of limited state resources to have us repeatedly prove that dust storms exist, over and over again as long as comprehensive regional haze SIP revisions are required to be submitted (60 through 700 years).

Texas, New Mexico, Arizona, and California also border Mexico and work to keep international relations amicable. All these border states also work with the EPA’s Border 2020 program, the Border Environment Cooperation Commission (BECC), and the North American Development Bank (NADB) assisting in projects to pave dirt roads, increase energy efficiency and renewable energy, and help educate the public about improving air quality. The United States federal government has a responsibility to develop and negotiate environmental terms with federal governments outside its borders. It is the EPA’s responsibility to document the technical basis of any projections of reduced impacts of international transport on visibility at Class I federal areas affected by international transport, whether natural or anthropogenic. Without such robust technical basis for projecting reductions in international impacts, the states with Class I areas affected by international transport should be allowed to project continuation of the current amount of visibility impairment produced by international transport.

**G.3 Separate approval by the Administrator should not be required for a state to adjust the uniform rate of progress for the impact of international transport on base period and projected visibility impairment at a Class I federal area significantly affected by international transport of visibility impairing pollution.**

In preparing its required comprehensive regional haze SIP revision, a state should be able to exclude the impact of international transport of visibility impairing pollution, both anthropogenic and natural. One reasonable way to do this would be to include only days when the back trajectories for the day do not go back to non-U.S. source areas.

The source attribution analysis capabilities in photochemical grid modeling, which were used in developing the first comprehensive SIP revisions prepared under §51.800 and due in 2007, provide the advanced, quantitative identification of source contributions to visibility impairment at Class 1 federal areas.

The same modeling and source attribution capabilities, which have been enhanced since the first round of comprehensive regional haze SIP revisions, are equally capable of quantifying the contribution of international transport to visibility impairment at Class I federal areas affected by such transport.

**G.4 The TCEQ supports allowing a state to use the 20% of days with the most impairment from U.S. anthropogenic emissions to track progress under the RHR. The TCEQ supports allowing states that choose to do so to continue to use the method allowed during the first planning period. Further, the TCEQ supports allowing states the choice to use the method laid out in the draft guidance or a different method that emphasizes the trends in visibility impairment caused by U.S. anthropogenic pollution.**

In the first round of comprehensive SIP revisions, the states used appropriate photochemical grid modeling with source apportionment tools to identify the contributions from U.S. anthropogenic emissions. The statements about uncertainties in techniques for calculating the impacts of international transport miss the mark for the following reasons: the uncertainty about emissions, trajectories, and impacts from U.S. anthropogenic sources on Class I federal areas is small and acceptable for regulatory purposes; and, on days with impacts primarily or exclusively from international transport, the uncertainty in international anthropogenic impacts is much less important because these days will infrequently, if at all, be included in the days with the largest U.S. anthropogenic impacts.

If the EPA requires special, advance approval by the Administrator of the analysis to determine the international transport impact at Class I areas significantly impacted by international transport, and if the seven years the EPA took to act on the first Texas comprehensive regional haze SIP revision is a predictor of EPA’s future response time, the extra administrative step of prior Administrator approval can be expected to result in lengthy delay in Texas submitting the required comprehensive regional haze SIP revisions. The advance Administrator approval would be counter to the EPA’s stated intention that states are not “obligated in any way to compensate for haze impacts from anthropogenic international emissions by adopting more stringent emission controls on their own sources.”

**G.5 §51.308(d)(3)(v)(E) requires that states consider, at a minimum, smoke management techniques for agricultural and forestry management purposes, including those that already exist, as part of its long term strategy. Air quality management agencies are not solely responsible for regulating and managing wildfire, prescribed burning, and agricultural burning to minimize smoke impacts both on members of the public and on regional haze affecting Class I federal areas. Smoke management programs are primarily the responsibility of other agencies and may be changed by those agencies; therefore requiring a state air quality agency to summarize the burning regulation practices of other agencies in its long term strategy is a burden that does not contribute to an actual visibility improvement.**

State and federal agricultural, forest management, and land management agencies have the expertise to consider together the objectives of smoke minimization, pest control, runoff control, catastrophic wildfire minimization, and other considerations that all must be weighed to make appropriate management decisions. Air quality management agencies do have an appropriate role in setting standards and requirements to minimize smoke from burning of waste from land clearing and natural disasters, such as floods and tornadoes, as well as minimizing emissions from incinerators and prohibiting burning at sanitary landfills, but they are not solely responsible.

**G.6 Rather than requiring concurrence of the Administrator in removing certain fire impacts from the most impaired 20% of days, the procedure for selecting the 20% most impaired days for each year should, as the default procedure, assume that the anthropogenic components contributing to visibility impairment are ammonium sulfate and ammonium nitrate.**

The default classification for organic carbon, elemental carbon, fine dust/soil, and coarse mass measured by the IMPROVE network should be that they are not anthropogenic. The default classification for these materials should only be reconsidered if the EPA Regional Administrator or FLM, using a scientifically valid methodology, recommends that a certain percentage be apportioned as anthropogenic. The state should have the opportunity to provide evidence and analysis bearing on the portions of these components of particulate matter that are natural and anthropogenic. The EPA should rely on the IMPROVE Steering Committee to recommend the way(s) to apportion organic and black carbon and coarse mass and fine soil to being anthropogenic or natural.

**G.7 The EPA should revise the text of 40 CFR §51.308(f)(1)(vi) to allow states to use scientifically valid methods to account for the impacts of all internationally transported pollution affecting visibility regardless of whether it is anthropogenic or natural in origin, especially if it is impractical to separate anthropogenic and natural portions of the pollution.**

The EPA is overly confident that the newly recommended way of reducing the impacts of natural emissions on the 20% days with the most visibility impairment will adequately account for natural pollution events. In some cases, for example fires related to agriculture in southern Mexico and Central America that are deliberately started sometimes trigger large wildfires that burn out of control. It is not practically possible to separate the anthropogenic and natural portions of the transported smoke. One way to account for international transport of visibility impairing pollution is to remove days from the most impaired 20% that have back trajectories that come entirely or mainly from foreign areas. This method for removing foreign impacts from current, past, and future conditions is effective and valid for both natural and anthropogenic causes of visibility impairment.

The draft guidance states, “For sources in Mexico and Canada, modeling approaches are well established and can be applied once robust emission inventory information for anthropogenic sources is available.” (EPA-457/P-16-001 July 2016 p. 54) The TCEQ suggests that “robust” emission inventories are unlikely to become available for large wildfires, for mixed wildfires and agricultural fires, or for dust storms from which dust is transported over either short or long distances into the U.S.

## §51.308(f)(2) Long-term strategy

**H.1 The EPA has not justified the proposed requirement in §51.308(f)(2)(i) that states must consider as part of the LTS any potentially affected groups of sources. The EPA should clarify how groups of sources should be considered.**

The current rule in §51.308(d)(1)(i)(A) requires states to consider the cost of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. The EPA’s proposed revision to §51.308(f)(2)(i) changes the requirement to include any potentially affected major or minor stationary source or group of sources. While existing §51.308(d)(3)(iv) does recommend states consider major and minor stationary sources, mobile sources, and area sources, the current rule does not require states to consider groups of sources. The preamble to the proposed rule provides no explanation or rational justification for these changes to what a state must consider as part of the LTS. The only mention of group of sources in the preamble of the proposed rule is in EPA’s discussion regarding RAVI in which the EPA describes the requirements of the EPA’s 1980 rulemaking (81 FR 26945). The EPA’s proposal to incorporate parts of RAVI into the RHR is not itself a justification for these changes and the EPA has provided no other justification for the proposed change.

The EPA has not provided sufficient guidance or any limitations on grouping sources for this evaluation, and even though not a requirement under the existing rule, the EPA has used grouping of sources as a basis for disapproval. Texas evaluated the benefits and costs for all the sources in its analysis as a group as part of Texas’ initial 2009 Regional Haze SIP submittal. However, in the currently stayed FIP on Texas for Regional Haze, EPA Region 6 indicated that Texas should have evaluated a subset of sources as the controls on a smaller group might provide similar benefit at lower total costs. In other words, while Texas did consider the sources as a group, the grouping approach used was not to the EPA’s satisfaction. If considering groups of sources is to be a requirement under the rule, then the EPA should provide specific guidance as to what grouping approach or approaches are acceptable. Based on the TCEQ’s initial review of the EPA’s recently released RHR guidance (Draft Guidance on Progress Tracking Metrics, Long-term Strategies, Reasonable Progress Goals and Other Requirements for Regional Haze State Implementation Plans for the Second Implementation Period, EPA-457/P-16-001, July 2016), the EPA has not adequately addressed how groups of sources should be evaluated such that states have a reasonable expectation of what the EPA will consider approvable. EPA Region 6 used a threshold of 0.3% of total visibility impairment as a cut point for screening out sources to create a subset of sources for its four-factor analysis. While the guidance discusses such screening processes in general and references the currently stayed Texas FIP in multiple places, the guidance is unclear as to if the approach and threshold used by EPA Region 6 for selecting a subgroup of sources for further evaluation would be presumptively approvable. Without specific guidance to follow as to how sources should be grouped for evaluation and given the EPA’s history of applying its own preferences of grouping after the fact when reviewing the SIP submittals, states could be forced to evaluate a wide range of grouping approaches in the hope of using an approvable approach.

**H.2 Texas takes issue with the EPA’s characterization of the changes to §51.308(f) as consistent with EPA’s ‘long-standing interpretation” of the existing requirements for RPG and LTS. Contrary to its assertion, this interpretation has not been well-known and was, in fact, first enunciated in the proposed FIP for Texas and Oklahoma in December 2014.**

The connection between the LTS and RPG is clearly spelled out in the current rule at §51.308(d)(1) and (d)(3). As written, the responsibilities of a state with sources that impact Class I federal areas outside its borders do not require a reasonable progress analysis including the statutory factors: costs of compliance; time necessary for compliance; energy and non-air quality environmental impacts of compliance; and remaining useful life of any potentially affected source. The EPA has only recently announced its current interpretation of that section of the RHR (specifically §51.308(d)(1) and (d)(3)) in its December 2014 proposal to partially disapprove the Texas regional haze SIP and issue a FIP. Because the initial Texas state plan met all RHR requirements for the LTS and state consultation, yet did not come to the conclusions the EPA wanted, the EPA found a new interpretation of the existing rule that requires use of the four factors in setting the LTS addressing impacts of its sources on Class I areas in other states. This interpretation is in direct contrast to the text of the RHR and guidance Texas and other states have relied upon in developing their RPGs and LTS.

The EPA’s claim that the proposed changes to §51.308 “do not create new requirements for states” is unfounded. Specifically, proposed new subsection (f)(2) indeed does add a new requirement to the LTS development. Namely, “states must, among other things, evaluate sources that impact visibility at one or more Class I areas for potential control measures by considering the four statutory factors.” Additionally, the proposed changes to this section expand the newly created four factor/LTS analysis requirement to all states, not just those with Class I areas. (81 FR 26952(2)) This is in contrast to current rule in §51.308(d)(3) that requires states to develop LTS with emission limits, compliance schedules, and other measures as necessary to achieve the RPGs established *by states having Class I areas*. Where emissions from a state contribute to visibility impairment in another state’s Class I area, the state must “consult with” the other affected states. Clearly then, the current rule requires the four-factor RPG analysis conducted by the state in which the impacted Class I area(s) is located. The EPA has provided no justification for the additional four-factor analysis for the LTS other than to say this is its “long-standing interpretation” of the current rule and the interplay between the RPG and LTS. The EPA has also not adequately explained how use of the four factors for an emission limit, compliance schedule or other measure, is necessary or appropriate to another state’s establishment of the unenforceable RPGs for that state’s Class I area. The RPG analysis conducted by states is a time-consuming, complicated process that now will be required under this proposal for a potentially large number of additional sources to be conducted by states new to the regional haze SIP process. It is difficult to imagine that the proposed changes do not expand the RHR requirements.

**H.3 The EPA proposes in §51.308(f)(2)(i) for a state to consider and analyze emissions reduction measures for affected “major or minor stationary sources” or group of sources based on several specifically listed factors. The EPA should clarify these sources are specifically stationary point sources.**

The current rule requires the analysis for “affected sources.” In this use of the phrase, the assumption was made that “sources” meant “stationary point sources.” Because they are specifically identified, located, and quantified, stationary point sources are the only reasonable category of sources that can be used to evaluate energy and non-air quality environmental impacts of compliance and remaining useful life. These factors (such as remaining useful life) are not easily identified for sources considered non-point or area. The EPA should specifically exclude mobile sources from consideration for additional controls beyond the federal Motor Vehicle Control Program and state inspection and maintenance programs required under ozone attainment and maintenance SIPs.

**H.4 Due to the potentially concurrent timing of states’ SIP revisions associated with the RHR, requiring states to consider measures being adopted by other states in establishing their LTS introduces confusion and problems rather than serving as the clarification the EPA claims. Consideration of other states’ measures should only be a recommendation through guidance and not a rule requirement.**

Proposed §51.308(f)(2)(ii) would require states to consider additional measures being adopted by other contributing states. The EPA states in the preamble in footnote 24 that it views this as a clarification of the requirement that states with sources affecting a given mandatory Class I federal area consult on the content of their LTS because such consultation, in EPA’s opinion, would be pointless if each state were not meant to consider the other states’ planned emission control measures (81 FR 26952). The EPA provides no other explanation or justification of the proposed change to support its claim that it is just a clarification. However, regardless of what the EPA may have intended by the consultation process, nowhere in the existing rule are states mandated to consider measures adopted or under consideration by other states involved in the consultation process. Imposing a new mandate for what states must consider in developing their LTS is not a clarification.

Furthermore, the EPA has not properly considered the potential implications of the revision it proposes to include. Even with the consultation process, states cannot know for certain what measures another state may adopt. A state may significantly change or ultimately not adopt a particular measure that it has already proposed. An accidental omission during the consultation process could result in a state not informing all the other states of a measure under consideration. Because these SIP revisions could all be occurring at the same time, states may not be able to adjust their SIP accordingly in time to account for changes in other states’ adopted SIP revisions. The consultation process cannot change this reality because the persons involved in the consultation process cannot guarantee the actions of the decision makers in their respective state agencies. Yet, as a mandate under the rule, the EPA could then use such an omission or difference between measures considered in one state’s LTS evaluation versus those adopted in other states as a point for disapproval in a SIP revision.

The EPA also has not provided a clear definition or expectation for how states should “consider” such measures and what the consequences of that consideration might be. If a state takes into consideration another state’s adopted measure in developing its own LTS and RPG, and that measure is subsequently repealed, would the EPA then consider the repeal a backsliding issue for both states? If the EPA decides to disapprove the SIP for the state that adopted the measure, would any state that gave consideration to that measure in their own SIP also be disapproved? If the EPA is going to mandate that states consider the controls measures in other states, then the EPA should make clear all the potential legal ramifications of such consideration so that states can weigh those factors along with any potential benefits of considering other states measures.

Finally, the text at §51.308(f)(2) is unclear. If read literally, the provision would mean that a state must consider measures being adopted by contributing states (i.e., those states that fall under proposed 40 CFR §51.308(f)(2)(iii)(A), *Contributing States*) but is not required to consider those measures being adopted by the state that actually contains the Class I federal area affected. Furthermore, “by other contributing states” the rule could be interpreted as only applying to states that are contributing to visibility impairment in a Class I federal area in another state. That is a state that is only affected by other contributing states is not required to consider the measures being adopted by those other states in its own LTS. By attempting to micromanage the consultation process as well as the Regional Haze SIP process itself through mandates in the rule, the EPA is actually only creating confusion for the states. While the TCEQ fundamentally agrees that states should consider measures that have been implemented and those under consideration in other states as part of the consultation process, the EPA should not be mandating such aspects by rule. Consideration of the measures that are under consideration for possible adoption by other states should only be a recommendation in the EPA guidance.

## §51.308(f)(3) Reasonable progress goals

**I.1 The EPA should not use ambiguous terminology for state requirements in the rule, such as requiring a “robust” demonstration.**

Under proposed §51.308(f)(3)(ii)(A), when the state establishes a RPG the EPA requires the state to submit a “robust” demonstration including the criteria used to determine which sources or groups of sources were evaluated and how the four factors required under §51.308(f)(2)(i) were considered in selected measures for the LTS. Various definitions of the term “robust” exist, such as: full of health and strength; powerfully built; requiring or suited for physical strength or endurance; boisterous or rough; marked by richness and fullness; capable of performing without failure. While the TCEQ might assume the EPA intends for a “robust” demonstration to be “marked by richness and fullness” or “capable of performing without failure,” none of these definitions provide any specificity as to what the EPA might expect for a “robust” demonstration versus a normal demonstration. Therefore, the criteria for a “robust” demonstration is completely subjective and will vary depending on the EPA staff reviewing that particular demonstration. It also would enable the EPA to reject a demonstration arbitrarily based solely on the demonstration being “not robust enough” in the eyes of the reviewer. If the EPA intends for the demonstrations required under §51.308(f)(3)(ii)(A) to be subject to additional requirements than other demonstrations, then those additional requirements should be specifically listed in the rule.

**I.2 No further analysis of additional potential controls should be required if the RPG for a mandatory Class I federal area is on or below the uniform rate of progress line at the end of a planning period.**

**Texas encourages the EPA to implement this suggestion by renumbering §51.308(f)(3)(ii) as §51.308(f)(3)(iii) and inserting a new §51.308(f)(3)(ii) that reads as follows:**

**“§51.308(f)(3)(ii) If a State in which a mandatory Class I Federal area is located establishes a reasonable progress goal for the most impaired days for that Class I area that is below the uniform rate of progress line at the end of the planning period, no additional emission reductions from sources affecting that Class I area need be considered for addition to the long term strategy for the planning period.”**

**The further analysis of controls is unnecessary because the logarithmic deciview function requires a greater than linear rate of reduction in impacts to achieve the uniform rate of progress. As a result, the rate of impact reduction required to achieve the uniform rate of progress line is greater than proportional to the length of the planning period.**

## §51.308(g) Progress reports

**J.1 Texas encourages the end of progress reports. However, if they are continued, Texas concurs with the one-time deadline change of the next progress report to midway between 2021 and 2028.**

Section IV. K. considers changes to scheduling of the Regional Haze Progress Reports, which the EPA has assessed as a streamlined, cost-saving, time-saving amendment. Texas is not opposed to the changes, but for the record, the EPA cannot claim many efficiencies in this change. Texas expects that even though the EPA is changing the words, the effect is no different, and the state will likely go through a SIP-like process for the next progress report, potentially taking 16 to 20 months. Nevertheless, Texas regards old or new progress reports to be less onerous than the 10-year SIP that requires modeling, and it appreciates that the EPA and the FLMs are considering options to try to help the states, territories, and tribes conserve resources.

The TCEQ supports eliminating the requirement in §51.308(g) that five-year progress reports must take the form of SIP revisions. However, given the remaining significant state resources involved in preparing and submitting the progress report and its limited usefulness in developing periodic comprehensive SIP revisions, the TCEQ suggests that the progress report requirement be eliminated from the rule entirely.

The TCEQ agrees with the proposal to remove the SIP procedural requirements for progress reports. This will reduce the burden on states to conduct notice and comment and public hearings on the progress reports. Although this will reduce time to develop the reports, significant requirements remain, including FLM consultation, assessment of visibility conditions in Class I federal areas in the state, emission trend analyses, and a monitoring strategy review. The SIP adequacy determination requirements in §51.308(h) also remain. The limited benefit of the progress reports argues for removal of this requirement from the rule.

It is necessary for a state to use IMPROVE visibility impairment data in preparing a regional haze SIP revision or progress report. On the other hand, states do not generate IMPROVE data. IMPROVE data are generated by the IMPROVE program directed by the IMPROVE Steering Committee. Any requirement that a state report IMPROVE data is completely inappropriate because states do not generate, validate, or control IMPROVE data. The EPA should remove any requirement or suggestion that states routinely report IMPROVE data since these data are not generated, validated, or controlled by states.

The EPA acknowledges that the progress report’s usefulness in assessing both progress toward the national visibility goal and providing helpful information in developing the next SIP revision is limited. (“…in practical terms a progress report would provide little additional information beyond that required to be addressed in a periodic SIP revision. (p. 26966(1)) Proposed new §51.308(f)(6)(vi) requires annual submittal of visibility monitoring data and a commitment to periodic updating of the emissions inventory of visibility impairing pollutants impacting Class I areas as part of the SIP revision. Because states neither generate, validate, nor control IMPROVE monitoring data, which are the only official data for judging progress under the RHR, reporting of IMPROVE data should be excluded from the requirements of §51.308(f)(6)(vi). This will give the EPA and the public the visibility trend information the progress reports are intended to provide to determine the adequacy of the SIP. Further, the EPA’s years-long review time for regional haze SIP revisions will likely culminate immediately prior to or after the due date for the interim progress report. The EPA would need to complete review of the regional haze SIP revisions at least 24 months prior to the due date to avoid wasting state resources should the EPA require any changes to the SIP revision.

The preamble on page 26966(2) states that the EPA “review of progress reports will not result in formal approval or disapproval of them,” as a result of the proposed change to §51.308(g). The TCEQ is concerned that the EPA’s proposal in §51.308(f) that periodic SIP revisions must contain a commitment to submit the progress reports will still have the same effect as a formal approval or disapproval. If, as pointed out on page 26967, “EPA would still have discretion to assess the adequacy of the SIP, relying in part on the information in the progress report,” a finding of inadequacy would “create the non-discretionary duty for EPA to issue a SIP call requiring the state to correct the inadequacy.” With the periodic SIP revision and progress reports linked in this fashion, it is difficult to see the advantage to the elimination of a formal EPA action on the progress reports themselves.

**J.2 Eliminating the requirement for progress reports would conserve state agency resources for the much expanded scope of four-factor analysis and other analyses that the proposed amendments would require in the periodic comprehensive SIP revisions.**

It is not clear in any case that progress reports are necessary. In proposing to keep the requirement for midpoint progress reports, the EPA did not note whether any state determined that its LTS was inadequate and adopted more emission control requirements.

Furthermore, the tracking of visibility changes is available through the Western Governors Association Technical Support System. If the EPA does not eliminate the requirement for midpoint reports, the reports should be reduced to reporting emissions inventory changes in emissions that contribute to visibility impairment and reporting the year-to-year changes in visibility impairment at each Class I area in the state preparing the report.

**J.3 The EPA asked how much time is needed to include the “most recent available data,” including three, nine, or 12 months. The TCEQ would likely need 12 to 18 months lead time**.

The EPA knows that the answer to the question depends on the quality of the data it will require for approval: Does the EPA want data that have been through quality assurance and quality control? How long does it take to write the report? Who is reviewing the report?

The TCEQ would likely need to use data collected 12 to 18 months before the progress report’s delivery because developing the report can be expected to take 12 to 18 months, accounting for data compilation, summarization, and review. Updating data impacts every aspect of a draft report (all tables, charts, text, appendixes, etc.) so drafting with one set of data and then updating with more recent data increases the resource demand and the possibility of error.

**J.4 A 60-day public review and comment period for progress reports is unnecessary.**

The EPA proposes in §51.308(g) to require a 60-day public review and comment period for progress reports. The TCEQ believes that 60 days is unnecessary. The TCEQ generally provides only a 30-day comment period for SIP revisions, and similar non-SIP plans, such as the Annual Monitoring Network Plan, also only require a 30-day comment period. The EPA provides no explanation as to why regional haze progress reports are so unique as to need an additional 30 days for public review and comment.

## §51.308(i) Changes to FLM Consultation Requirements

**The EPA’s proposed changes to FLM consultation requirements should be clarified, but appear to be burdensome to states and unnecessary to achieve the goals of the regional haze program.**

The EPA’s proposed revisions to §51.308(i)(2) requires states to provide an opportunity for FLM consultation no less than 60 days prior to a public hearing or public comment opportunity. It is not clear if EPA intends this to mean that a state must allow 60 days prior to the beginning of a public comment period opening or 60 days prior to holding a public hearing. Further, the EPA also states that “The opportunity for consultation will be deemed to have been early enough if the consultation has taken place at least 120 days prior to holding any public hearing or other public comment opportunity…” It is unclear whether the EPA is actually requiring that the consultation take place 120 days, rather than 60 days prior to the public hearing or comment deadline. The EPA should clarify its intent on both these points. However, any extension of FLM consultation requirements on regional haze SIP revisions or progress reports is burdensome to states because it only extends the amount of time necessary to develop the required plans. That time could be better spent incorporating the latest emissions, monitoring, or other data into the SIP revision.

As described in comment J.3, progress reports will likely need to be based on data collected 12 to 18 months before delivery because the process of developing the report takes 12 to 18 months (from data collection to compilation, summarization, analysis, and review). The resource demand and possibility of error increases substantially with a compressed timeline for developing the report.

## Extension of SIP Submittal Deadline

**Texas supports the** **EPA’s proposed extension of the deadline to submit the next comprehensive regional haze SIP revision from 2018 to 2021.**

Regarding amendments to §51.308(f), described in the preamble at Section IV. J., Texas considers the deadline change from 2018 to 2021 a reasonable decision. Other federal and state programs are expected to reduce emissions from multiple pollutants within the next five years, and Texas supports the three-year extension to help our state and other states be better positioned for the next implementation period.