

Inter-RPO State/Tribal and FLM Consultation Framework

I. Introduction

In the preamble for the Regional Haze Regulations (“Rule”), published in the Federal Register on July 1, 1999, the U.S. Environmental Protection Agency (“EPA”) strongly encourages States and Tribes to participate in the regional planning process. (See, 64 FR 35714). The preamble also describes the role of regional planning organizations indicating that, “[t]he EPA expects that much of the consultation, apportionment demonstrations, and technical documentation will be facilitated and developed by regional planning organizations.” (See, 64 FR 35735). The goals of instituting consultation procedures are mainly:

1. To help develop a common technical basis and apportionment for long-term strategies that could be approved by individual state participants and translated into regional haze SIPs for submission to EPA,
2. To demonstrate that states are working together to develop acceptable approaches for addressing regional visibility problems to which they jointly contribute, and
3. To provide information on areas of agreement and disagreement among States that the Administrator will take into account in the review of a State’s implementation plan to determine whether the State’s goal for visibility improvement provides for reasonable progress towards natural visibility conditions.

For the purposes of this Inter-Regional Planning Organization (“RPO”) Consultation Framework, the term “consultation” refers solely to the consultation requirements, of the Regional Haze Rule, and is not intended to refer to or address the Tribal government/Federal government consultation process.

II. Goal of Inter-RPO Consultation Framework

The primary goal of this Inter-RPO Consultation Framework is to delineate, by consensus, the basic consultation requirements for states, tribes, RPOs, and Federal Land Managers (“FLMs”) required under 40 CFR Part 51, during the regional haze State Implementation Plan (SIP) development process. The consultation process is a documented process that must be included in the “core requirements” of the Regional Haze SIP submittal. In fact, the preamble of the Regional Haze Rule states that “[t]he EPA is requiring States to document their analyses, including **any** consultations with other States in support of their conclusions....” (64 FR 35721). (emphasis added). Formal consultation, as required by the Regional Haze Rules in 40 CFR Part 51, Subpart P, may be built upon prior, documented informal consultations.

The consultation process explicitly applies to the development of the first regional haze implementation plans due to EPA in 2008 as well as comprehensive periodic revisions every 10 years thereafter. The Consultation Framework may also be useful as states develop their required periodic reports describing progress towards the reasonable progress goals which are due every 5 years.

One of the key purposes of the consultation framework is to better define the consultation process within the context of regional haze planning, and to create greater certainty and understanding among RPOs. The process should be consistent across RPOs, and be well documented such that it positively contributes to improving visibility in mandatory Class 1 areas.

III. Consultation Requirements Specified in 40 CFR Part 51, Subpart P (relating to protection of visibility)

A. Development of the Reasonable Progress Goal:

Section 51.308(d) of the Regional Haze Rule specifies that “[I]n developing each reasonable progress goal, the State must consult with those States which may reasonably be anticipated to cause or contribute to visibility impairment in the mandatory Class I Federal area. In any situation in which the State cannot agree with another such State or group of States that a goal provides for reasonable progress, the State must describe in its submittal the actions taken to resolve the disagreement. In reviewing the State's implementation plan submittal, the [EPA] Administrator will take this information into account in determining whether the State's goal for visibility improvement provides for reasonable progress towards natural visibility conditions.” [40 CFR §51.308(d)(1)(iv)].

B. Development of Long-term Strategy:

The Regional Haze Rule provides that – “[w]here the State has emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal area located in another State or States, the State must consult with the other State(s) in order to develop coordinated emission management strategies. The State must consult with any other State having emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal area within the State.” [40 CFR § 51.308(d)(3)(i)].

C. State and Federal Land Manager Coordination:

–According to Section 51.308(i)(2) of the Regional Haze Rule, “ “[t]he State must provide the Federal Land Manager [FLM] with an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on an implementation plan (or plan revision) for regional haze required by this [Subpart P]”. The purpose of the consultation in person is to allow the affected FLM to discuss: (1) The FLM’s “assessment of impairment of visibility in any mandatory Class I Federal area;” and (2) “Recommendations on the development of the reasonable progress goal and on the development and implementation of strategies to address visibility impairment.” [40 CFR §51.308(i)(2)].

The Rule also provides that – “[t]he plan (or plan revision) must provide procedures for continuing consultation between the State and Federal Land Manager on the implementation of the visibility protection program required by[Subpart P], including development and review of implementation plan revisions and 5-year progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in mandatory Class I Federal areas.” [40 CFR §51.308(i)(4)].

IV. Types of Consultations

- A.) State/Tribal-to-State/Tribal Inter-RPO Consultations.
- B.) State/Tribal-to-Federal Land Manager (FLM) Consultations.

V. Suggested Discussion Topics during consultation process

A. State-to-State and State-Tribal regional haze consultations are required for the development of the reasonable progress goal and long-term strategies. Suggested discussion topics include the following:

- 1) Reasonable Progress Goal:
 - a. Natural background
 - b. Baseline conditions
 - c. Uniform Rate of Visibility Improvement
 - d. Contribution determination
 - e. Other factors (regarding reasonable progress goals)
- 2) Long-term Strategies:
 - a. Emissions inventory/smoke management plans
 - b. Model performance
 - c. Control measures
 - d. Monitoring strategy

B. The preliminary listing of discussion topics is subject to change based on the recommendations of States/Tribes, RPOs and federal participants including EPA and the FLMs.

VI. Consultation Principles

- 1) All State, Tribal, RPO, and Federal participants are committed to continuing dialogue and information sharing in order to create understanding of the respective concerns and needs of the parties.
- 2) Continuous documentation of all communications is necessary to develop a record for inclusion in the SIP submittal to EPA.
- 3) States alone have the authority to undertake specific measures under their SIP. This inter-RPO framework is designed solely to facilitate needed communication, coordination and cooperation among jurisdictions but does not establish binding obligation on the part of participating agencies.
- 4) There are two areas which require State-to-State and/or State-to-Tribal consultations (“formal” consultations): (i) development of the reasonable progress goal for a Class I area, and (ii) development of long-term strategies. While it is anticipated that the formal consultation will cover the technical components that make up each of these policy decision areas, there may be a need for the RPOs, in coordination with their State and Tribal members, to have informal consultations on these technical considerations.

- 5) During both the formal and informal inter-RPO consultations, it is anticipated that the States and Tribes will work collectively to facilitate the consultation process through their respective RPOs, when feasible.
- 6) Technical analyses will be transparent, when possible, and will reflect the most up-to-date information and best scientific methods for the decision needed within the resources available.
- 7) The State with the Class I area retains the responsibility to establish reasonable progress goals. The RPOs will make reasonable efforts to facilitate the development of a consensus between the State with a Class I area and other States affecting that area. In instances where the State with the Class I area can not agree with such other States that the goal provides for reasonable progress, actions taken to resolve the disagreement must be included in the State’s regional haze implementation plan (or plan revisions) submitted to the EPA Administrator as required under 40 CFR §51.308(d)(1)(iv).
- 8) All States whose emissions are reasonably anticipated to contribute to visibility impairment in a Class I area, must provide the Federal Land Manager (“FLM”) agency for that Class I area with an opportunity for consultation, in person, on their regional haze implementation plans. The States/Tribes will pursue the development of a memorandum of understanding to expedite the submission and consideration of the FLM’s comments on the reasonable progress goals and related implementation plans. As required under 40 CFR §51.308(i)(3), the plan or plan revision must include a description of how the State addressed any FLM comments.
- 9) States/Tribes will consult with the affected FLMs to protect the air resources of the State/Tribe and Class I areas in accordance with the FLM coordination requirements specified in 40 CFR §51.308(i) and other consultation procedures developed by consensus..
- 10) The consultation process is designed to share information, define and document issues, develop a range of options, solicit feedback on options, develop consensus advice if possible, and facilitate informed decisions by the Class I States.
- 11) The collaborators, including States, Tribes and affected FLMs, will promptly respond to other RPO’s/States’/Tribes’ requests for comments.

VII. Consultation Processes

A) Formal State/Tribal-to-State/Tribal Inter-RPO Consultations*:

- 1) Any State or group of States initiating a consultation with another State/States on visibility-related concerns needs to designate a contact person to handle expeditiously the administrative aspects of the consultation, including scheduling and notifying participants, and providing documentation.
- 2) The State initiating the consultation is responsible for coordination of all aspects of the consultation.
- 3) This process is designed chiefly to apply to consultations involving States consulting across RPO lines, whether the consultation is initiated by one or more Class I States or by a State or group of States without a Class I area. States consulting with other States within the same RPO are encouraged to follow this process to maintain consistency and achieve good documentation of outcomes.

- 4) It is assumed that most consultations will be initiated by States with Class I areas. All States (or their RPOs on their behalf) are responsible for initiating the required consultation with affected FLMs according to the procedures in 40 CFR §51.308(i) and this document. At the request of the State or group of States initiating the consultation, the RPO for the region in which the Class I area is located may serve as facilitator to help the Class I States consult with other states and participating tribes. The RPO will assist with all administrative, logistical and documentation aspects of the consultation process for the State or States that have requested facilitation by their RPO.
- 5) Consultations are a government-to-government transaction. Stakeholders are not participants in these consultations.
- 6) The consultation process will occur as part of the regional haze SIP development cycle. It may also be initiated as a part of a mid-course adjustment in the middle of a SIP cycle. This Framework does not apply to individual regulatory, enforcement or permitting activities and should not be understood to be of any relevance to those activities.
- 7) The consultation process as a whole may involve several types of meetings, conference calls, and information sharing. An initial consultation will usually occur in the form of a conference call among all parties, unless the parties agree to an alternative format.
- 8) The timing of consultations will be coordinated with the production of component work products and the process of offering opportunities for comments on those products. All parties will be sensitive to the time line of the Class I area State or Tribe.
- 9) For consultations on the regional haze reasonable progress goal and the long-term strategy, and on their component topics, the Class I States may request that an initial consultation be conducted via conference call. When feasible, web meeting tools or videoconferencing technology may be used to enable parties to share information more easily.
- 10) Preparation and notification:
 - a. The State designates a contact (which may be the RPP Director/staff) that will have responsibility for scheduling and notifying all parties about the consultation, and making sure all necessary materials are promptly provided to the participants.
 - b. Who gets notified: Those parties associated with what is indicated in the rule as “reasonably anticipated to contribute to a Class I area” – more specifically, the appropriate State Commissioners, State Air Directors, and RPO designated contacts. Affected FLM representative(s) and EPA representative(s) will also be invited to participate in such consultations. If appropriate, the State Commissioner or the State Air Director may wish to notify appropriate state or local government staff regarding any and all consultations.
 - c. How scheduled: the State contact or RPO designee sends out an e-mail to the other State or States to arrange for available dates/times. Once arrangements are settled, the initiating State or its RPO designee then sends out formal notification via certified mail with an agenda, list of participants and call for additional materials. Thirty (30) calendar days will be allowed for all parties

to review the technical materials prior to the date of a formal consultation unless otherwise all parties mutually agree, in writing, to adhere to a longer or shorter time frame.

- 11) During consultation, the participants should:
 - a. Explain the issue/proposal and supporting technical information
 - b. Provide answers to clarifying questions
 - c. Request that any issues that are not addressed or resolved be submitted in writing to the State contact and RPO designee.
 - d. The State contact or RPO designee will takes notes and prepares a summary of the consultation.
- 12) Post-consultation and follow up:
 - a. The summary will be distributed for review and comment, along with the consultation notification e-mail and letter, agenda, and list of participants. The finalized documentation will be provided to all participants and other interested stakeholders upon request. The summary notes for any consultation should indicate areas/items of agreement and disagreement.
 - b. The State contact or RPO designee is responsible for compiling an ongoing record of the consultation, including any additional meetings/calls that occur on outstanding concerns. The State contact or RPO designee will distribute documentation on additional meetings/calls to all relevant parties.
 - c. Issues that cannot be further discussed or resolved without additional information can be taken through pertinent committees involving stakeholders to get feedback.
- 13) Each RPO will develop a consultation page on their website where the documentation will be posted. Each RPO will post all documentation on behalf of the initiating State.

*Note: No specifics on Tribal consultations are referred to in this section at this time.

VIII. Formal State/Tribal-to-FLM Consultation Process:

- A. As required under 40 CFR §51.308(i)(2), the state must provide the FLM with an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on any regional haze implementation plan (or plan revision).
- B. As previously described in VII(A) above, a State or group of States initiating a consultation with the FLM may request that their RPO serves as a facilitator for such consultations.
- C. As noted in the process described in VII(A) above, the affected FLMs will be invited to participate in the formal State/Tribal to State/Tribal consultations that occur on reasonable progress goals and the long-term strategy. I
- D. Unless required pursuant to applicable statute or regulation, nothing herein should be interpreted to require consultation with FLM with respect to any regulatory, enforcement or permitting actions.
- E. FLM will be urged to respond in an efficient and timely fashion to the opportunity to consult on a regional haze plan and on the specifics of the plan.