6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2024-0541; FRL-12449-02-R10]

Air Plan Approval; Washington; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the regional haze State implementation plan (SIP) revision, submitted by Washington on January 28, 2022, to address applicable requirements under the Clean Air Act (CAA) and the EPA's Regional Haze Rule (RHR) for the regional haze program's second implementation period.

DATES: This final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2024-0541. All documents in the docket are listed on the *https://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov*, or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-0256 or *hunt.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we" or "our" is used, it means the EPA.

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I. What Is Being Addressed in This Document?

The EPA is approving a SIP revision submitted by the State of Washington to the EPA on January 28, 2022, addressing the Regional Haze Rule (RHR) requirements for the regional haze program's second implementation period. As required by section 169A of the CAA, the RHR calls for state and Federal agencies to work together to improve visibility in 156 national parks and wilderness areas. The RHR requires the states, in coordination with the EPA, the Federal Land Managers (FLMs), and other interested parties, to develop and implement air quality protection plans to reduce the pollution that causes visibility impairment in mandatory Class I Federal areas (Class I areas). Visibility impairing pollutants include fine and coarse particulate matter (e.g. sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., sulfur dioxide, oxides of nitrogen, and, in some cases, volatile organic compounds and ammonia). As discussed in further detail in our proposed action published on July 24, 2025 (90 FR 34792), in this document, and in the accompanying Response to Comments (RTC) document, the EPA finds that Washington submitted a SIP revision that meets all RHR requirements for the second implementation period. Washington's SIP revision, the proposed action, and the accompanying RTC document may be found in the docket for this action.

II. Summary of the Proposed Action and the EPA's Reasons for This Final Action

A. Summary of the Proposed Action

On January 28, 2022, Washington submitted a SIP revision to address its regional haze obligations for the second implementation period (2018–2028). Washington made this revision to satisfy the requirements of the CAA's regional haze program pursuant to CAA sections 169A and 169B and 40 Code of Federal Regulations (CFR) 51.308.

On July 24, 2025, the EPA proposed to approve Washington's 2022 SIP revision (90 FR 34792). Specifically, the EPA proposed to approve Washington's 2022 SIP revision as satisfying the requirements of 40 CFR 51.308(f)(1): calculations of baseline, current, and natural visibility conditions, progress to date, and the uniform rate of progress; 40 CFR 51.308(f)(2): long-term strategy; 40 CFR 51.308(f)(3): reasonable progress goals; 40 CFR 51.308(f)(4): reasonably attributable visibility impairment; 40 CFR 51.308(f)(5) and 40 CFR 51.308(g): progress report requirements; 40 CFR 51.308(f)(6): monitoring strategy and other implementation plan requirements; and 40 CFR 51.308(i): FLM consultation. Our public comment period closed on August 25, 2025. We received 5 comments, the full text of which may be found in the docket for this action.

Our July 2025 proposed action provided background on the requirements of the CAA and RHR, a summary of Washington's regional haze SIP revision and related EPA actions, and the EPA's rationale for its proposed action. That background and rationale will not be restated here.

B. Reasons for This Final Action

In this final action, the EPA is affirming that it is now the Agency's policy that, where visibility conditions for a Class I area impacted by a state are below the uniform rate of progress (URP) and the state has considered the four statutory factors, the state will have presumptively demonstrated reasonable progress for the second implementation period for that Class I area. The EPA acknowledges that this final action reflects a change in policy as to how the URP should be used in the evaluation of regional haze second

implementation period SIP revisions but believes that this policy better aligns with the purpose of the statute and RHR: achieving "reasonable" progress towards natural visibility.

As described in the final rule approving West Virginia's regional haze plan, the EPA has discretion and authority to change its policy.[1] In *FCC* v. *Fox Television Stations, Inc.,* the U.S. Supreme Court plainly stated that an agency is free to change a prior policy and "need not demonstrate . . . that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better." 566 U.S. 502, 515 (2009) (referencing Motor *Vehicle Mfrs. Ass'n of United States, Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983)). *See also Perez* v. *Mortgage Bankers Assn.,* 135 S. Ct. 1199 (2015).

The Class I areas impacted by emissions from Washington are all below the 2028 URP, and Washington's SIP revision demonstrated that the state took into consideration the four reasonable progress factors listed in CAA section 169A(g)(1)[2] with respect to an adequate number of emissions sources. Thus, the EPA has determined that Washington's SIP revision is fully approvable under the Agency's new policy. Indeed, we think this policy better aligns with the statutory goal because it recognizes the considerable improvements in visibility impairment that have been made by a wide variety of state and Federal programs in recent decades.

In developing the regulations required by CAA section 169A(b), the EPA established the concept of the URP for each Class I area. The URP is determined by drawing a straight line from the measured 2000–2004 baseline conditions (in deciviews)

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[1] 90 FR 29737 (August 6, 2025).

[2] The four statutory factors required to be taken into consideration in determining reasonable progress are: the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements. CAA section 169(g)(1).

for the 20% most impaired days at each Class I area to the estimated natural conditions (in deciviews) for the 20% most impaired days in 2064. From this calculation, a URP value can be calculated for each year between 2004 and 2064. The EPA developed the URP to address the diverse concerns of Eastern and Western states and account for the varying levels of visibility impairment in Class I areas around the country while ensuring an equitable approach nationwide. For each Class I area, states must calculate the URP for the end of each implementation period (*e.g.,* in 2028 for the second implementation period).[3] 40 CFR 51.308(f)(1)(vi)(A). States may also adjust the URP to account for impacts from anthropogenic sources outside the United States and/or impacts from certain wildland prescribed fires. 40 CFR 51.308(f)(1)(vi)(B). Then, for each Class I area, states must compare the reasonable progress goal (RPG) for the 20% most impaired days to the URP for the end of the implementation period. If the RPG is above the URP, then an additional "robust demonstration" requirement is triggered for each state that contributes to that Class I area. 40 CFR 51.308(f)(3)(ii)(B).

In the 2017 RHR Revisions, the EPA addressed the role of the URP as it relates to a state's development of its second implementation period SIP (82 FR 3078, January 10, 2017). Specifically, in response to comments suggesting that the URP should be considered a "safe harbor" that relieve states of any obligation to consider the four statutory factors, the EPA explained that the URP was not intended to be such a safe harbor (82 FR 3078, January 10, 2017, at page 3099). "Some commenters stated a desire for corresponding rule text dealing with situations where RPGs are equal to ("on") or better than ("below") the URP or glidepath. Several commenters stated that the URP or

[3] We note that RPGs are a regulatory construct that we developed to address the statutory mandate in CAA section 169B(e)(1), which required our regulations to include "criteria for measuring 'reasonable progress' toward the national goal." Under 40 CFR 51.308(f)(3)(ii), RPGs measure the progress that is projected to be achieved by the control measures a state has determined are necessary to make reasonable progress. Consistent with the 1999 RHR, the RPGs are unenforceable, though they create a benchmark that allows for analytical comparisons to the URP and mid-implementation-period course corrections if necessary (82 FR 3078, January 10, 2017, at pages 3091-92).

glidepath should be a "safe harbor," opining that states should be permitted to analyze whether projected visibility conditions for the end of the implementation period will be on or below the glidepath based on on-the-books or on-the-way control measures, and that in such cases a four-factor analysis should not be required." *Id.*

Other comments indicated a similar approach, such as "a somewhat narrower entrance to a 'safe harbor,' by suggesting that if current visibility conditions are already below the end-of-planning-period point on the URP line, a four-factor analysis should not be required." *Id.* The EPA stated in its response that we did not agree with either of these recommendations. "The CAA requires that each SIP revision contain long-term strategies for making reasonable progress, and that in determining reasonable progress states must consider the four statutory factors. Treating the URP as a safe harbor would be inconsistent with the statutory requirement that states assess the potential to make further reasonable progress towards natural visibility goal in every implementation period." *Id.*

Importantly, the EPA's recently adopted policy does not make the URP a safe harbor. The policy merely creates a presumption that the State's second implementation period SIP is making reasonable progress for a Class I area if the state has taken into consideration the four statutory factors of CAA section 169A(g)(1) and that area is below the URP. As discussed in our proposed action, the Class I areas impacted by emissions from Washington are all below the 2028 URP, and Washington's SIP revision demonstrated that the state took into consideration the four reasonable progress factors listed in CAA section 169A(g)(1)[4] with respect to an adequate number of emissions sources. Thus, the EPA has determined that Washington's SIP revision is fully approvable under the Agency's new policy. This is consistent with the CAA and RHR.

4 The four statutory factors required to be taken into consideration in determining reasonable progress are: the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements. CAA section 169(g)(1).

III. Public Comments and EPA Responses

The public comment period on our proposed action closed on August 25, 2025. During the public comment period, we received 5 comments. The commenters were: a coalition of conservation groups,[5] the Mid-Atlantic/Northeast Visibility Union (MANEVU),[6] the Power Generators Air Coalition,[7] a coalition of park advocates,[8] and one anonymous member of the public.[9] The full text of the comments received may be found in the docket for this action, at *https://www.regulations.gov*. The accompanying RTC document, which is also included in the docket for this action, provides detailed responses to all significant comments received.

IV. Final Action

For the reasons stated in our July 24, 2025, proposed action, in the accompanying RTC document, and in this document, we are approving Washington's 2022 SIP revision. Specifically, we are approving the following aspects of Washington's 2022 SIP revision relating to CAA section 169A:

- Calculations of baseline, current, and natural visibility conditions, progress to date, and uniform rate of progress (40 CFR 51.308(f)(1));
- Long-term strategy (40 CFR 51.308(f)(2));
- Reasonable progress goals (40 CFR 51.308(f)(3));
- Reasonably attributable visibility impairment (40 CFR 51.308(f)(4));
- Progress report requirements (40 CFR 51.308(f)(5) and 40 CFR 51.308(g));
- Monitoring strategy and other implementation plan requirements (40 CFR 51.308(f)(6)); and

5 Letter dated August 25, 2025, from the Coalition to Protect America's National Parks, the National Parks Conservation Association, the North Cascades Conservation Council, the Olympic Park Advocates, the Puget Soundkeeper and the Sierra Club.
6 Letter dated August 25, 2025, from MANEVU.
7 Letter dated August 25, 2025, from the Power Generators Air Coalition.
8 Letter dated August 25, 2025, signed by 160 individuals.
9 Submitted via Regulations.gov.

- FLM consultation (40 CFR 51.308(i)).

We are also finalizing our proposed determination to update certain outdated provisions in the Washington SIP. As part of the regional haze SIP for the first implementation period, the EPA approved Administrative Order No. 7837, Revision 1, for the Alcoa Intalco Works facility located in Ferndale, Washington (79 FR 33438, June 11, 2014). In the same action, the EPA promulgated Federal implementation plan (FIP) requirements under 40 CFR 52.2500 *Best available retrofit technology requirements for the Intalco Aluminum Corporation (Intalco Works) primary aluminum plant—Better than BART Alternative* and 40 CFR 52.2502 *Best available retrofit technology requirements for the Alcoa Inc.—Wenatchee Works primary aluminum smelter*. Our proposed action explained that the two Alcoa aluminum smelters in Washington have both permanently closed with termination of the operating permits.[10] Therefore, we are removing from incorporation by reference in 40 CFR 52.2470(d), Administrative Order No. 7837, Revision 1, for the Alcoa Intalco Works in Ferndale. We are also removing the FIP requirements for both closed facilities in 40 CFR 52.2500 and 52.2502, and we are revising cross references to these provisions in 40 CFR 40 CFR 52.2470(e) and 52.2498(c).

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are removing the incorporation by reference of source-specific provisions for the Alcoa Intalco Works facility located in Ferndale, Washington, as described in section IV. of this preamble and set forth in the amendments to 40 CFR part 52 in this document. The EPA has made, and will continue to make, incorporation by reference materials generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person

[10] 90 FR 34792 (July 24, 2025), at pages 34806 and 34812.

identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, revisions to the materials incorporated by reference have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[11]

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP revision that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP revisions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L.

[11] 62 FR 27968 (May 22, 1997).

104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, this action is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal Governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Nevertheless, we provided an opportunity for consultation to all Tribes in Washington in letters dated June 27, 2022, included in the docket for this action.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not

postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 15, 2025.

Emma Pokon,
Regional Administrator, Region 10.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq*.

Subpart WW—Washington

2. In § 52.2470:

a. Amend the table in paragraph (d) by removing the entry for "Alcoa Intalco Works"; and

b. Amend table 2 in paragraph (e), under the heading "Visibility and Regional Haze Plans", by:

i. Revising the entry "Regional Haze SIP"; and

ii. Adding an entry for "Washington Regional Haze SIP Revision for the Second Implementation Period (2018–2028)" immediately after the entry for "Regional Haze Progress Report".

The revision and addition read as follows:

§ 52.2470 Identification of plan.

* * * * *

(e) * * *

TABLE 2—ATTAINMENT, MAINTENANCE, AND OTHER PLANS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
* *	*	*	*	* *
VISIBILITY AND REGIONAL HAZE PLANS				
* *	*	*	*	* *

Regional Haze SIP	Statewide	12/22/10	6/11/14, 79 FR 33438	The Regional Haze SIP including those provisions relating to BART incorporated by reference in § 52.2470 'Identification of plan' with the exception of the BART provisions that are replaced with a BART FIP in § 52.2498 Visibility protection and § 52.2501 Best available retrofit technology (BART) requirement for the Tesoro Refining and Marketing Company oil refinery—Better than BART Alternative.
* * *	*	*	*	* *
Washington Regional Haze SIP Revision for the Second Implementation Period (2018–2028)	Statewide	1/28/22	**[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]**	
* * *	*	*	*	* *

3. In § 52.2498, revise paragraph (c) to read as follows:

§ 52.2498 Visibility protection.

* * * * *

(c) The requirements of sections 169A and 169B of the Clean Air Act are not met because the plan does not include approvable provisions for protection of visibility in mandatory Class I Federal areas, specifically the Best Available Retrofit Technology (BART) requirement for regional haze visibility impairment (§ 51.308(e)). The EPA BART requirements are found in § 52.2501.

§§ 52.2500 and 52.2502 [Removed and Reserved]

4. Remove and reserve §§ 52.2500 and 52.2502.

[FR Doc. 2025-18599 Filed: 9/24/2025 8:45 am; Publication Date: 9/25/2025]