



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2025-0101; FRL-12600-02-R9]

Approval and Promulgation of Air Quality Implementation Plans; Nevada; 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 portions of the regional haze state implementation plan (SIP) revisions submitted by the Nevada Division of Environmental Protection (NDEP) on August 12, 2022 (“2022 Nevada Regional Haze Plan”) and on May 28, 2025 (“2025 SIP Supplement”), as satisfying applicable requirements under the Clean Air Act (CAA) and the EPA’s Regional Haze Rule (RHR) for the program’s second implementation period. These revisions address the requirement that states must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The revisions also address other applicable requirements for the second implementation period of the regional haze program.

DATES: This final rule is effective on [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-R09-OAR-2025-0101. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure 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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR**

FURTHER INFORMATION CONTACT section for additional availability information.

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SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Background

On August 12, 2022, NDEP submitted the 2022 Nevada Regional Haze Plan, titled “Nevada Regional Haze State Implementation Plan for the Second Planning Period” as a revision to the Nevada SIP to address regional haze for the second implementation period. NDEP made this SIP submission to satisfy the requirements of the CAA’s regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308. The EPA found this submission complete on August 16, 2022. On July 27, 2023, NDEP withdrew the reasonable progress determinations for Tracy Generating Station’s Piñon Pine Unit (also known variously as Tracy Unit 4 and Tracy Unit 7) and North Valmy Generating Station’s Unit 1 and Unit 2. On May 28, 2025, NDEP submitted the 2025 SIP Supplement, titled “Nevada Regional Haze Revision to the State Implementation Plan for the Second Planning Period,” which includes revised reasonable progress determinations for those two sources. The 2025 Supplement also includes updated permits for three sources, replacing those submitted as part of the 2022 Nevada Regional Haze Plan. On October 23, 2025, the EPA proposed to approve the 2022 Nevada Regional Haze Plan (excluding the portions withdrawn on July 27, 2023) and appendix A (“Air Quality Permits

Incorporated by Reference”) of the 2025 Supplement (collectively “the Plan”) into the Nevada SIP.¹ The October 23, 2025 proposal provided background on the requirements of the CAA and RHR, summarized the Plan, and explained the rationale for our proposed action. That background and rationale will not be restated in full here.

II. Public Comments and EPA Responses

The EPA’s October 23, 2025 proposal provided a 30-day public comment period that ended on November 24, 2025. The EPA received nine comments during the comment period: three anonymous comments; one comment from a private individual; a comment from Mid-Atlantic/Northeast Visibility Union (MANEVU); a comment from Citizens Rulemaking Alliance; a comment from Idaho Power Company; a comment from NV Energy; and a joint comment letter signed by the National Parks Conservation Association (NPCA), Sierra Club, Center for Biological Diversity, and Coalition to Protect America’s National Parks. After reviewing the anonymous comments and the comment from the private individual, the EPA has determined that they fail to raise issues germane to the approval of the Plan, which is based on the criteria set forth in the CAA, the RHR and relevant policy documents. Therefore, we have determined that these comments do not necessitate a response, and the EPA will not provide specific responses to these comments. The comments from Idaho Power Company and NV Energy supported the EPA’s proposed action. The EPA acknowledges these supportive comments, which are included in the docket for this action. We respond to the issues raised in the three remaining comment letters received on our proposed rulemaking in this document and the associated response to comments (RTC) Document, which is included in the docket for this rulemaking.

We briefly address in this section the following topics that were raised by commenters: (1) whether the EPA’s new policy is consistent with the CAA and RHR; (2) whether the EPA sufficiently justified its basis for the new policy; (3) whether the action is nationally applicable

¹ 90 FR 48481.

or based on a determination of nationwide scope and effect; (4) whether the action departs from national policy without complying with the EPA’s consistency regulations at 40 CFR part 56; and (5) whether the Plan meets the applicable statutory and regulatory requirements in accordance with the new policy.

As stated in the proposal, it is now the EPA’s policy that, where visibility conditions for a Class I Federal 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 planning period for that area.² As detailed at length in the RTC Document section III., the EPA’s new policy is consistent with the CAA. Pursuant to CAA 169A(a)(4), Congress explicitly delegated to the EPA the authority to promulgate regulations regarding reasonable progress towards meeting the national goal. As some commenters note, to determine the measures necessary to make reasonable progress towards the national visibility goal under 169A(a)(1), Congress mandated “tak[ing] into consideration the cost of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirement.”³

The EPA emphasizes that just because a Class I area is below the URP does not mean that a state is relieved of its obligations under the CAA and the RHR to make reasonable progress. In other words, the URP is not a “safe harbor,” as that phrase has sometimes been used, because the EPA still must review a state's determination whether additional control measures are necessary to make reasonable progress, determine whether the state submitted those measures for incorporation into the SIP, and evaluate whether the measures are consistent with other provisions in the CAA.

Regarding the basis for the new policy, under *FCC v. Fox Television*, 556 U.S 502 (2009), an agency’s change in policy is permissible if the agency acknowledges the change,

² 90 FR 48481, 48496 (citing, e.g., 90 FR 29737, 29738 (July 7, 2025); 90 FR 20425, 20434 (May 14, 2025)).

³ CAA 169A(g)(1).

believes it to be better, and “show[s] that there are good reasons for the new policy.”⁴ In section IV.E.7. of our proposal for this rulemaking, we referred to previous actions, in which we stated our reasons for implementing this new policy.⁵

The decision in *FCC v. Fox* turned primarily on whether the FCC’s change in policy would lead to the FCC “arbitrarily punishing parties without notice of the potential consequences of their action.”⁶ In this instance, the changed policy is prospective, which addresses the primary concern in *FCC v. Fox*. Additionally, the new policy “aligns with the purpose of the statute and RHR, which is achieving ‘reasonable’ progress, not maximal progress, toward Congress’ natural visibility goal.”⁷ Furthermore, we note that the legislative history of CAA section 169A is consistent with our change in policy. The reconciliation report for the 1977 CAA amendments indicates that the term “maximum feasible progress” in section 169A was changed to “reasonable progress” in the final version of the legislation passed by both chambers.⁸

Some commenters also state that this action is incompatible with the EPA’s consistency regulations. As discussed in the West Virginia final action⁹ and the RTC Document for this action in response section III.D.1., the EPA’s Regional Consistency regulations at 40 CFR part 56, and in particular 40 CFR 56.5(b), are not relevant to this action. 40 CFR 56.5(b) requires that a “responsible official in a Regional office shall seek concurrence from the appropriate EPA Headquarters office on any interpretation of the Act, or rule, regulation, or program directive when such interpretation may result in application of the act or rule, regulation, or program directive that *is inconsistent* with Agency policy.” (emphasis added). As we expressly indicated in the proposal, the approval is *consistent* with the change in agency policy, first announced in *Air Plan Approval; West Virginia; Regional Haze State Implementation Plan for the Second*

⁴ 556 U.S. 502, 515.

⁵ 90 FR 48481, 48496 (citing e.g., 90 FR 29737, 29738 (July 7, 2025); 90 FR 20425, 20434 (May 14, 2025)).

⁶ 556 U.S. at 517.

⁷ 90 FR 16478, 16483.

⁸ See Legislative History of the Clean Air Act Amendments of 1977 P.L. 95-95 (1977), *H.R. Rep. No. 95-564*, at 535.

⁹ 90 FR 29737, 29740 (July 7, 2025).

Implementation Period. Therefore, there is no obligation under the plain language of the EPA’s Regional Consistency regulations for anyone in the Region to seek concurrence from EPA Headquarters to take action consistent with EPA policy. Because these regulations are not relevant to this action, the docket for this rulemaking does not include materials related to compliance with the Regional Consistency process. In addition, this action is not a significant regulatory action subject to a review by the Office of Management and Budget under Executive Order (EO) 12866, because it is a SIP approval, which is a category of regulations that has been exempted from review under section 3(d)(4) of EO 12866.

This action is “locally or regionally applicable” under CAA section 307(b)(1) because it applies only to a SIP submission from a single state, Nevada.¹⁰ To determine whether an action is “nationally applicable” or “locally or regionally applicable,” “court[s] need look only to the face of the agency action, not its practical effects”¹¹ As discussed in the West Virginia final action¹² and the RTC Document for this action in response III.D.4, comments that claim that the EPA “must” publish a finding that this action is “based on a determination of nationwide scope [or] effect” are also unsupported and incorrect. The Supreme Court has recognized that “[b]ecause the ‘nationwide scope or effect’ exception can apply only when ‘EPA so finds and publishes’ that it does, EPA can decide whether the exception is even potentially relevant.”¹³ As the D.C. Circuit has also stated, the “EPA’s decision whether to make and publish a finding of

¹⁰ See *Oklahoma v. EPA*, 605 U.S. 609, 620 (2025) (a SIP is “a state-specific plan” and “the CAA recognizes this limited scope in enumerating a SIP approval as a locally or regionally applicable action”); see also, *Am. Rd. & Transp. Builders Ass’n*, 705 F.3d 453, 455 (D.C. Cir. 2013) (describing EPA action to approve a single SIP under CAA section 110 as the “[p]rototypical” locally or regionally applicable action).

¹¹ *EPA v. Calumet Shreveport Refining, L.L.C.*, 605 U.S. 642 (2025) (“[W]e determine an action’s range of applicability by ‘look[ing] only to the face of the [action], rather than to its practical effects.’”) (quoting *Am. Rd. & Transp. Builders Ass’n*, 705 F.3d at 456) and *Oklahoma*, 605 U.S. at 621-22 (2025) (basis for EPA action is not relevant to determining its applicability); see also *Sierra Club v. EPA*, 926 F.3d 844, 849 (D.C. Cir. 2019) and *RMS of Georgia, LLC v. EPA*, 64 F.4th 1368, 1372 (11th Cir. 2023) (“our sister circuits have established a consensus that we should begin our analysis by analyzing the nature of the EPA’s action, not the specifics of the petitioner’s grievance”).

¹² 90 FR 29737, 29740 (July 7, 2025).

¹³ *Calumet Shreveport Refining, L.L.C.*, 605 U.S. at 646 (slip op. at 16), citing *Sierra Club v. EPA*, 47 F.4th 738, 746 (D.C. Cir. 2022).

nationwide scope or effect is committed to the agency's discretion and thus is unreviewable."¹⁴

The Administrator has not made and published a finding that this action is based on a determination of nationwide scope or effect. Accordingly, any petition for review of this action must be filed in the United States Court of Appeals for the appropriate regional circuit.

Finally, as detailed in section III.B. of the RTC Document, the Plan meets the applicable statutory and regulatory requirements. As required by the statute, Nevada took into consideration the four statutory factors in CAA section 169A(g)(1) and determined that several existing and new controls for stationary sources were necessary to make reasonable progress.

In addition, the RHR requires states to submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area within the State and for each mandatory Class I Federal area located outside the State that may be affected by emissions from the State,¹⁵ and the statute refers to "a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area."¹⁶ However, there is no specific statutory or regulatory requirement to identify the precise set of Class I areas that are affected by emissions from Nevada, and there is no requirement to establish a source contribution threshold in identifying those areas. In this case, NDEP appropriately identified affected out-of-state Class I areas, as we explain in section IV.A.3. of the RTC Document. The EPA believes NDEP has reasonably documented its out-of-state Class I area contributions, and that, with one possible exception discussed in the RTC at response section IV.B., emissions from Nevada do not impact any Class I area whose 2028 RPG for the most impaired days is above the URP.

In conclusion, as discussed in more detail in the responses at section III.B. of the RTC Document, Nevada took into consideration the four statutory factors in CAA section 169A(g)(1)

¹⁴ *Sierra Club v. EPA*, 47 F.4th at 745; *see also Texas v. EPA*, 983 F.3d 826, 835 (5th Cir. 2020) ("when a locally applicable action is based on a determination of nationwide scope or effect, the EPA has discretion to select the venue for judicial review").

¹⁵ 40 CFR 51.308(f)(2).

¹⁶ CAA section 169A(b)(2).

and selected several control measures as necessary for reasonable progress.

The full text of comments received is included in the publicly posted docket associated with this action at <https://www.regulations.gov>. The RTC Document, which is also included in the docket associated with this action, provides detailed responses to all significant comments received. The RTC Document is organized by topic. Therefore, if additional information is desired concerning how the EPA addressed a particular comment, the reader should refer to the appropriate section in the RTC Document.

III. Final Action

For the reasons set forth in the October 23, 2025 proposal, the RTC Document, and in this final rule, the EPA is approving the Plan as satisfying the regional haze requirements for the second planning period contained in 40 CFR 51.308(f), (g), and (i). Specifically, we are proposing to approve the 2022 Nevada Regional Haze Plan (excluding the portions withdrawn on July 27, 2023) and appendix A of the 2025 SIP Supplement into the Nevada SIP. Thus, we are incorporating by reference in 40 CFR 52.1470(d) (“EPA-approved State source-specific permits”), the following source-specific requirements:

- NDEP Permit No. AP4911-0194.04 (for Tracy Generating Station), Conditions IV.B.1.a, IV.B.3.f, IV.D.1.a, IV.D.3.f, IV.F.1, IV.L.1.a, IV.L.3.g, IV.M.1.a, IV.M.3.g, V.A, and V.C.
- Clark County DES Authority to Construct Permit for a Major Part 70 Source, Source ID: 3 (for Lhoist North America Apex Plant), Conditions 2.1.1, 2.2.1, 2.2.2, 2.2.3, 3.2.1, 3.2.2, 4.1, 4.3, 4.4.7, 4.4.8, 4.4.15, and 4.4.16.
- NDEP Permit No. AP3274-1329.03 (for Graymont Pilot Peak Plant), Conditions IV.K.1.a, IV.K.3.b, IV.K.4.q, IV.K.4.u, IV.N.1.a, IV.N.3.b, IV.N.4.q, IV.N.4.u, V.S.1.a, IV.S.3.b, IV.S.4.q, IV.S.4.u, and V.B-C.

IV. 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, the EPA is incorporating by reference the regulatory and source-specific provisions described in section III. of this preamble and set forth in the amendments to 40 CFR part 52 in this document. Therefore, these materials 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 rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹⁷ The EPA has made, and will continue to make, these documents available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations.¹⁸ Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. 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 Orders 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

¹⁷ See 62 FR 27968 (May 22, 1997).

¹⁸ 42 U.S.C. 7410(k); 40 CFR 52.02(a).

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. 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 proposes to approve 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 CAA.

In addition, the SIP 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).

This action is subject to the Congressional Review Act (CRA), 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 CAA, 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, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: January 27, 2026.

Michael Martucci,
Acting Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations 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 DD—Nevada

2. In § 52.1470:

a. Revise paragraph (d); and

b. In the table in paragraph (e), under the heading “Air Quality Implementation Plan for the State

of Nevada” add the entry “Nevada Regional Haze State Implementation Plan for the Second Planning Period” before the entry “Small Business Stationary Source Technical and Environmental Compliance Assistance Program”.

The revision and addition read as follows:

§ 52.1470 Identification of plan.

* * * * *

(d) EPA approved state source-specific requirements.

EPA-APPROVED NEVADA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Order/permit no.	Effective date	EPA approval date	Explanation
Nevada Division of Environmental Protection				
Tracy Generating Station	AP4911-0194.04, conditions IV.B.1.a, IV.B.3.f, IV.D.1.a, IV.D.3.f, IV.F.1, IV.L.1.a, IV.L.3.g, IV.M.1.a, IV.M.3.g, V.A, and V.C.	3/23/2022	91 FR [insert Federal Register page where the document begins], [insert date of publication in the Federal Register]	Submitted as appendix A.2 of the Nevada Regional Haze Revision to the State Implementation Plan for the Second Planning Period on May 28, 2025.
Graymont Pilot Peak Plant)	AP3274-1329.03, conditions IV.K.1.a, IV.K.3.b, IV.K.4.q, IV.K.4.u, IV.N.1.a, IV.N.3.b, IV.N.4.q, IV.N.4.u, V.S.1.a, IV.S.3.b, IV.S.4.q, IV.S.4.u, and V.B-C.	6/14/2024	91 FR [insert Federal Register page where the document begins], [insert date of publication in the Federal Register]	Submitted as appendix A.3 of the Nevada Regional Haze Revision to the State Implementation Plan for the Second Planning Period on May 28, 2025.
Clark County Department of Environment and Sustainability				
Lhoist North America Apex Plant,	Authority to Construct Permit for a Major Part 70 Source, Source ID: 3, Conditions 2.1.1, 2.2.1, 2.2.2, 2.2.3, 3.2.1, 3.2.2, 4.1, 4.3, 4.4.7, 4.4.8, 4.4.15, and 4.4.16.	4/30/2025	91 FR [insert Federal Register page where the document begins], [insert date of publication in the Federal Register]	Submitted as appendix A.1 of the Nevada Regional Haze Revision to the State Implementation Plan for the Second Planning Period on May 28, 2025.

(e) * * *

EPA-APPROVED NEVADA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
AIR QUALITY IMPLEMENTATION PLAN FOR THE STATE OF NEVADA¹				
**	*	*		***
Nevada Regional Haze State Implementation Plan for the Second Planning Period	State-wide	8/12/2022	91 FR [insert Federal Register page where the document begins], [insert date of publication in the Federal Register]	Excluding Executive Summary; subsection 5.4.7; table 5-5; section 5.5, section 5.6, section 7.7; and appendices A, B.5 and B.6
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* * * * *

¹The organization of this table generally follows from the organization of the State of Nevada's original 1972 SIP, which was divided into 12 sections. Nonattainment and maintenance plans, among other types of plans, are listed under Section 5 (Control Strategy). Lead SIPs and Small Business Stationary Source Technical and Environmental Compliance Assistance SIPs are listed after Section 12 followed by nonregulatory or quasi-regulatory statutory provisions approved into the SIP. Regulatory statutory provisions are listed in 40 CFR 52.1470(c).

3. In § 52.1488, add paragraph (h) to read as follows:

§ 52.1488 Visibility protection.

* * * * *

(h) *Approval*. On August 12, 2022, the Nevada Division of Environmental Protection (NDEP) submitted the “Nevada Regional Haze State Implementation Plan for the Second Planning Period” (“2022 Nevada Regional Haze Plan”). On May 28, 2025, NDEP submitted the “Nevada Regional Haze Revision to the State Implementation Plan for the Second Planning Period,” (“2025 SIP Supplement”). The 2022 Nevada Regional Haze Plan and appendix A (“Air Quality Permits Incorporated by Reference”) of the 2025 SIP Supplement meet the requirements of Clean Air Act sections 169A and 169B and the Regional Haze Rule in 40 CFR 51.308 for the second implementation period.

