6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2025-0915 and EPA-R01-OAR-2020-0562; FRL-13065-02-R1]

Air Plan Approval; Rhode Island; Regional Haze State Implementation Plan for the Second Implementation Period; Prong 4 (Visibility) for the 2015 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island on March 7, 2025, as satisfying the applicable requirements under the Clean Air Act (CAA) and EPA's Regional Haze Rule (RHR) for the program's second implementation period. Rhode Island's SIP submission addresses 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 SIP submission also addresses other applicable requirements for the second implementation period of the regional haze program. EPA is also approving the remaining element of Rhode Island's September 23, 2020, infrastructure SIP (ISIP) submittal for the 2015 ozone National Ambient Air Quality Standard (NAAQS). The approval of Rhode Island's second implementation period regional haze plan addresses ISIP requirements related to visibility protection. The EPA is taking this action pursuant to sections 110 and 169A of the Clean Air Act.

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

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2025-091. 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, i.e., 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Ayla Martinelli, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code 5-MI), Boston, MA 02109-3912, tel. (617) 918-1057, email martinelli.ayla@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ‘‘we,’’ ‘‘us,’’ or ‘‘our’’ is used, we mean EPA.

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I. Background and Purpose

On November 20, 2025, EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Rhode Island (90 FR 52270). The NPRM proposed approval of the second implementation period regional haze requirements contained in CAA sections 169A, 169B and 40 CFR 51.308, as well as the remaining element of the ISIP under CAA section 110(a)(2)(D)(i)(II) regarding visibility protection (also known as “prong 4”). EPA is now

finalizing its proposed determination that the Rhode Island regional haze SIP submission for the second implementation period meets the applicable statutory and regulatory requirements and is thus approving Rhode Island's submission into its SIP. With the approval of the regional haze plan, EPA is also finalizing its proposed determination that Rhode Island has met prong 4 of the ISIP for the 2015 ozone NAAQS. Other specific requirements of the Rhode Island submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. Two public comments were received on the NPRM.

II. Response to Comments

EPA received two comments during the comment period. The first comment we received, from the Citizen Rulemaking Alliance (CRA), opposes the proposed action. The second comment we received, from MANEVU, supports EPA's proposed action to approve Rhode Island's regional haze plan submittal. However, the comment from MANEVU also objected to EPA's recently adopted policy referenced in the NPRM regarding the "Uniform Rate of Progress" (URP).

***Comment**:* The CRA argues that the "record as posted appears insufficient for meaningful comment under the [Administrative Procedure Act] APA and to support an approval under CAA section 110(k)." According to the commenter, 5 U.S.C. 553(b)-(c) requires that commenters "have access to the 'critical factual material' on which the Agency relies to formulate and justify its proposal." "For Regional Haze second planning period SIPs, the essential elements include, at a minimum: The State's identification of emissions units 'reasonably anticipated to cause or contribute to visibility impairment' at affected Class I areas and the basis for source selection (40 CFR 51.308(f)(2)(i), (f)(2)(iii)); The four-factor reasonable progress analyses for each selected source or emissions unit (costs of compliance, time necessary for compliance, energy and non-air quality environmental impacts, and remaining useful life), and the rationale for selected (or rejected) control measures (40 CFR 51.308(f)(2)(i), (f)(2)(ii)(A), (f)(2)(iii)); Baseline and

projected emissions inventories and any modeling inputs/outputs used to establish or evaluate reasonable progress goals (40 CFR 51.308(f)(1), (f)(2)(vi)); Documentation of interstate consultation and consultation with Federal Land Managers and responses to their comments (40 CFR 51.308(f)(2)(i), (i)); The State's public notice, comments received, and responses (40 CFR 51.102; 51.308(i)(2))." The comment claims that "without these materials, the public cannot meaningfully test whether the State's source selection was reasonable, whether cost estimates are current and complete, whether less costly controls were improperly dismissed, whether interstate and FLM consultations were adequate, or whether reasonable progress goals are supported by the record" and requests that EPA supplement the docket and or clearly identify the materials, and extend the comment period accordingly.

Response: EPA disagrees that the docket is missing the necessary information. Rhode Island's Regional Haze plan satisfies the applicable elements of the RHR and other EPA regulations listed in the comment, including but not limited to, 40 CFR 51.102 and 40 CFR 51.308 (f)(1), (f)(2)(i), (f)(2)(ii)(A), (f)(2)(iii), (i), (i)(2).[1]

- Regarding 40 CFR 51.308 (f)(1), it establishes requirements for "each mandatory Class I Federal area *located within the State*." (emphasis added). As stated in Rhode Island's submittal, which is in the docket, and in Section IV(D) of the NPRM, Rhode Island does not contain any Class I areas. Thus, Rhode Island did not have any obligations to submit materials under 51.308(f)(1) and is not responsible for establishing reasonable progress goals. *See also* 40 CFR 51.308(f)(3). Moreover, EPA generally disagrees that all technical modeling files, including large visibility modeling input and output files, must be in the docket. Large modeling files are generally too large to upload to the electronic docket on regulations.gov, however, these types of files are made available upon request. Furthermore, the RHR allows states to rely on technical analyses developed by regional planning organizations (RPOs) when that analysis is approved by all state participants,

[1] The comment also refers to 40 CFR 51.308(f)(2)(vi), but the regulations contain no such provision.

does not require RPOs to provide notice and comment for their work products, and does not require States to provide notice and comment during the technical development of their Regional Haze plans. *See* 40 CFR 51.308(f)(2)(iii). Modeling analyses developed and used by the MANEVU states were available in the docket. See, for example, appendix 21 to Rhode Island's submittal.

- Regarding 40 CFR 51.308(f)(2)(ii)(A): As stated in the state's submittal and in Section (IV)(E)(c) of the NPRM, Rhode Island participated in the MANEVU intra- and inter-RPO consultation and included in its SIP submittal the measures identified and agreed to during those consultations. Documentation of the interstate consultation was included in the docket and noted in the NPRM 90 FR at 52282 & n.76 (discussing interstate consultation and referring the public to appendix 20 of Rhode Island's submittal).
- Regarding 40 CFR 51.308(f)(2)(i), (f)(2)(iii): As explained in the state's submittal and throughout the NPRM, MANEVU performed source selection and/or four-factor analyses for its member states, and Rhode Island chose to rely on this technical information, modeling, and analyses for the purpose of satisfying regional haze requirements and developing its long-term strategy. The MANEVU technical analyses on which Rhode Island relied are listed in the state's SIP submission and were posted in the associated docket and include source contribution assessments, information on each of the four factors and visibility modeling information for certain EGUs, and evaluations of emission reduction strategies for specific source categories. *See, e.g.*, 90 FR at 52280 through 52281 & n.66 (discussing the four-factor analysis associated with Ask 3 and referring the public to appendix 6 of Rhode Island's submittal).
- Regarding 40 CFR 51.102 and 51.308(i), (i)(2): As explained in the state's submittal and in Section (IV)(I) of the NPRM, Rhode Island conducted an FLM consultation process pursuant to 40 CFR 51.308(i), (i)(2) before making the submittal available to the public. Contrary to the comment, the FLM correspondence is well documented in the NPRM and

the docket. 90 FR at 52282 & n.72 through 75; *id*. at 52286 through 52287 & n.97 through 98. Similarly, the docket included a copy of the state's public notice of the opportunity to request a hearing and submit comments on the submittal. And as EPA expressly noted in the NPRM, no comments were received during the subsequent public comment period, and there was no request for a public hearing. *Id*. 90 FR at 52287.

All "critical factual materials" requested by the comment can be found in the NPRM and the associated docket, ID No. EPA-R01-OAR-2025-0915. Thus, a public comment period extension is not warranted.

Comment: The CRA claims the EPA has not complied with requirements under the Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (RFA/SBREFA), the Unfunded Mandates Reform Act (UMRA), the Paperwork Reduction Act (PRA), and Executive Order (E.O.) 12866.

***Response*:** The RFA and SBREFA are inapplicable to this rulemaking because the EPA has certified that this rule will not have a significant economic impact on a substantial number of small entities. The regulatory analysis provisions of the RFA are only triggered by a threshold determination by the Agency that this rule will have a significant economic impact on a substantial number of small entities. Because the Agency has certified this rule will not have a significant economic impact, section 603 and 604 of the RFA do not apply to this rulemaking. 5 U.S.C. 605(b). This action merely approves State choices as meeting the Clean Air Act and does not impose any additional requirements beyond those required by State law. Furthermore, the comment's claim that EPA approval of this SIP revision "makes specific emission limits and associated monitoring, recordkeeping, and reporting federally enforceable against covered entities" is factually incorrect. That is, no new "emission limits" or "associated monitoring, recordkeeping, and reporting" requirements are being added to the SIP. Thus, even according to

its own reasoning, the comment does not demonstrate that additional analysis under the RFA/SBREFA is required.

With regard to the UMRA, the EPA has complied by making its own determination that approval will not result in expenditures of $100M+, and therefore the Agency does not need to complete a statement under 2 U.S.C. 1532. Similar to the RFA/SBREFA claim above, no "new control measures or enhanced monitoring/reporting" will become federally enforceable through this approval. Thus, by the comment's own terms, EPA need not "identify expected compliance costs and explain why UMRA section 202 does or does not apply."

The EPA has complied with the PRA by certifying in the rule that the PRA does not apply because the action does not involve an information collection burden as defined by the Act. *See* 44 U.S.C. 3502(2). The PRA generally provides that every Federal agency must obtain Office of Management and Budget approval before using identical questions to collect information from 10 or more persons. *See* 44 U.S.C. 3502(3), 3507. The EPA is not conducting nor sponsoring the collection of information from 10 or more persons. The EPA is approving the Rhode Island Regional Haze SIP submission, which merely approves state choices as meeting the Clean Air Act and does not impose any additional requirements.

Lastly, the Agency has complied with E.O. 12866 by determining that this rulemaking is not a significant regulatory action as defined in E.O. 12866. And while the comment cites Executive Orders 14094 and 12898 as bases for requiring additional information, those Executive Orders are no longer in place. E.O. 14148, 90 FR 8237 (January 28, 2025); E.O. 14173, 90 FR 8633 (January 31, 2025).

Comment: MANEVU states that CAA section 169A(g)(1) sets forth the four factors a state must apply in evaluating potential emission reductions from sources within its borders. They then note that the EPA in its new policy "now invokes an extra-statutory fifth factor, the Uniform Rate of Progress (URP)" which "[a]s framed by the EPA, . . . can override a statutory four factor analysis

finding that while additional requirements placed on visibility-impairing sources constitute 'reasonable progress,' these can be dismissed because the impacted Class I area is below the URP." The Commenters note that "[b]ecause the URP is a regulatory creation outside the CAA section 169A(g)(1) definition of determining reasonable progress, . . . the URP as a factor to override a statutory four factor analysis is not permissible." Commenters state that "CAA section 169A(g)(1) explicitly defines how to determine reasonable progress, and the EPA has received no authority from Congress to impose an additional overriding regulatory criterion that goes beyond the statutory factors [see, e.g., Loper Bright Enterprises, et al. v. Raimondo, et al. 603 U.S. 369 (2024)]."

Response: As MANEVU recognizes, Rhode Island's Regional Haze submission satisfies Clean Air Act requirements.[2] The EPA disagrees, however, with MANEVU's comment that the URP policy articulated in our proposed approval of Rhode Island's submission allows states and EPA to override a statutory four-factor analysis to determine how to make reasonable progress toward the national visibility goal in the second planning period. CAA section 169A(b)(2) requires SIPs to "contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward the national visibility goal" and CAA section 169A(g)(1) requires that "in determining reasonable progress there shall be taken into consideration the costs 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 requirements." Rhode Island considered the four statutory factors, as required by the Clean Air Act, and EPA did not dismiss the state's four factor analysis.

III. Final Action

[2] MANEVU noted that "approval of Rhode Island's haze SIP is justified without resort to an impermissible fifth factor not found in the statute, and the EPA acknowledges Rhode Island does not rely on the Agency's URP policy in its SIP submittal (90 FR at 52279, November 20, 2025)."

EPA is approving Rhode Island's March 7, 2025, regional haze plan for the second implementation period, and Prong 4 of the September 23, 2020, ISIP for the 2015 ozone NAAQS as a revision to the Rhode Island SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air 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 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 (Public Law 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, the SIP is not approved to apply on any Indian reservation land or in any other area where 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq*., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. 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 CAA 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.

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

Dated: April 1, 2026.

Mark Sanborn,
Regional Administrator,
EPA Region 1.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52 of chapter I, title 40 of the Code of Federal Regulations is amended 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 OO - Rhode Island

2. In § 52.2070(e), amend the table by revising the entry "Infrastructure SIP for the 2015 ozone NAAQS"; and by adding an entry for "Rhode Island Regional Haze Plan for 2nd planning period 2018-2028" to the end of the table to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(e) * * *

Rhode Island Non Regulatory

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
**	*	*	*	**
Infrastructure SIP for the 2015 ozone NAAQS	Statewide	Submitted on 9/23/2020 and 10/15/2020	10/14/2021, 86 FR 57060 and **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER],** **91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]**	This submittal is approved with respect to the following CAA elements or portions thereof: 110(a)(2)(A); (B); (C); (D) except (D)(i)(I); (E); (F); (G); (J); (K); (L); and (M). This submittal is disapproved for element (H). See § 52.2077.
**	*	*	*	**

Rhode Island Regional Haze Plan for 2nd planning period 2018-2028	Statewide	3/7/2025	**[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER],** **91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]**	Approves full plan.

[FR Doc. 2026-06838 Filed: 4/8/2026 8:45 am; Publication Date: 4/9/2026]