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Re: Comments on Visibility Protection: Regional Haze State Plan Requirements Rule Revision, Advanced Notice of Proposed Rulemaking, 90 Fed. Reg. 47677 (October 2, 2025) [Docket ID No. EPA-HQ-OAR-2025-1477]

Dear Ms. Wantlin,

The National Parks Conservation Association, Sierra Club, Clean Air Task Force, Environmental Defense Fund, Earthjustice, Montana Environmental Information Center, Utah Physicians for a Healthy Environment, Coalition to Protect America's National Parks, Southern Environmental Law Center, Environmental Law and Policy Center, Center for Biological Diversity, and Healthy Environment Alliance of Utah (collectively, the "Environmental Groups") submit the following comments on the United States Environmental Protection Agency's ("EPA's") Advanced Notice of Proposed Rulemaking ("ANPRM") for revisions to the Regional Haze Rule, 40 C.F.R §§ 51.300 et seq.¹

¹ 90 Fed. Reg. 47677 (Oct. 2, 2025).

The Environmental Groups are active nationwide in advocating for strong air quality requirements to protect our national parks and wilderness areas. These groups have long participated in Regional Haze State Implementation Plan (“SIP”) comment periods, rulemakings, and litigation across the country to ensure that states and EPA satisfy their obligations under the Clean Air Act (“CAA” or “the Act”) and the Regional Haze Rule (“RHR”). The Environmental Groups collectively represent millions of members across the United States who use and enjoy Class I areas that are impacted by haze pollution.

In the ANPRM, EPA seeks feedback on numerous questions and “alternative approaches” to revising the Regional Haze Rule in three broad topics: (1) development and implementation of a reasonable progress metric and consideration of the four statutory factors; (2) development of criteria used to determine when a SIP revision is necessary; and (3) determining SIP content requirements. The ANPRM indicates that EPA is poised to allow states to evade the Clean Air Act’s requirements to periodically develop and implement regional haze SIPs identifying the emission reduction measures that are necessary to make reasonable progress at Class I national parks and wilderness areas across the United States. As explained in detail below, the various alternative approaches EPA raises are designed to enable states to evade those requirements, and so, violate the Clean Air Act.

Rather than off-ramping states from the Regional Haze Program, EPA should aim to provide more clarity and certainty for states in developing their regional haze SIPs. The Environmental Groups have previously submitted numerous recommendations to EPA detailing how the agency can improve the Regional Haze Rule to ensure that states achieve needed reductions in haze-forming emissions while also providing clarity and regulatory certainty for states in developing their regional haze SIPs. To date, the Regional Haze Program has achieved significant reductions in haze-forming pollution, resulting in improved visibility conditions at Class I areas across the country. But the job is not done yet—not a single Class I area has reached the Act’s goal of achieving natural visibility conditions. In order to build on earlier emission reduction successes and provide for state plans that deliver meaningful emission reductions in the third planning period and beyond, EPA must provide clarity and detailed direction to states in regulatory amendments and thorough discussion in the preamble to the Regional Haze Rule revision, as the Environmental Groups have previously recommended.

The Environmental Groups respond to each of EPA’s three topics in the ANPRM below. In Section I, we provide context and background information on the Clean Air Act’s Regional Haze Program. In Section II, we explain how EPA’s alternative approaches under all three topics are aimed at letting states avoid the Act’s requirement to develop and implement regional haze SIPs and thus violate the plain language of the Act. In Sections III through V, we address the myriad ways EPA’s alternative approaches under each topic are unlawful. In Section VI, we raise numerous technical issues with some of the alternative approaches raised under each of the three topics. And finally, in Section VII, we discuss the Environmental Groups’ prior recommendations on how EPA can improve the Regional Haze Rule.

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I. The Clean Air Act’s Regional Haze Program.

The Regional Haze Program is a time-tested, effective program that requires federal and state agencies, federal land managers (“FLMs”), and stakeholders to work together to restore clear skies at Class I areas. To that end, the Regional Haze Rule has delivered significant cost-effective clean air benefits to parks across the nation in the past 15 years. As EPA recognizes in the ANPRM, “[s]ince the RHR was finalized in 1999, Class I areas in all regions of the contiguous U.S. have experienced measurable improvements in visibility impairment.”² These visibility improvements have garnered significant benefits for the nation’s most beloved public lands and the millions of people who visit them each year. For example, a National Parks Conservation Association (NPCA) analysis of Interagency Monitoring of Protected Visual Environments (“IMPROVE”) summary data shows that there has been a significant increase in the standard average visual range at Great Smoky Mountains National Park of nearly 40 miles from reducing haze-forming pollution.³

But the job still is not done. Not a single one of the 48 Class I national parks or 108 Class I wilderness areas protected by the Regional Haze Program has achieved the Clean Air Act’s goal of natural visibility conditions.⁴ In fact, photochemical modeling conducted for the current second planning period shows that a handful of Class I areas are still projected to be *above* the uniform rate of progress (“URP”) glidepath, meaning these Class I areas are not on track to achieve natural conditions in the coming decades.⁵ EPA suggests in the ANPRM that it believes a revised Rule should be “informed by current visibility conditions at Class I areas.”⁶ Current visibility conditions fall far short of Congress’s goal of achieving natural visibility. Thus, any revised Rule must acknowledge that additional improvement in visibility conditions is needed at all Class I areas.

Indeed, NPCA’s 2024 Polluted Parks Report found that 98% of national parks still have “unsatisfactory” or “significant concern” levels of hazy skies.⁷ Although conditions in Class I

² 90 Fed. Reg. at 47679.

³ IMPROVE, RHR Summary Data, <https://vista.cira.colostate.edu/Improve/rhr-summary-data/> (last visited Nov. 18, 2025) (the visual range improvement was calculated by filtering the spreadsheet titled “Means for Impairment Metric” for GRSM (column A), the years 1999 and 2023 (column B), and impairment group 50 (column C), and then computing the difference in Standard Visual Range (SVR) reported in column AN (in kilometers), and then converting that value to miles).

⁴ See, e.g., NPCA, Average Visibility in Miles (2024) (attached as Ex. 1); Niko Kommenda, *How Clean Is the Air in America’s National Parks?*, Washington Post (July 14, 2025), <https://www.washingtonpost.com/climate-environment/interactive/2025/national-parks-pollution-air-haze/>.

⁵ See, e.g., WRAP, Adjustment Options for End of URP Glidepath: Arizona (last visited Nov. 16, 2025) (projecting that Sycamore Canyon Wilderness Area will be above both the unadjusted and adjusted URP in 2028) (attached as Ex. 2); WRAP, Adjustment Options for End of URP Glidepath: New Mexico (last visited Nov. 16, 2025) (projecting that Salt Creek Wilderness Area will be above both the unadjusted and adjusted URP in 2028) (attached as Ex. 3).

⁶ 90 Fed. Reg. at 47680.

⁷ NPCA, Polluted Parks: How Air Pollution and Climate Change Continue to Harm America’s National Parks at 6 (2024), <https://www.npca.org/reports/air-climate-report> [hereinafter “Polluted Parks 2024”] (attached as Ex. 4).

areas have improved overall since the EPA promulgated the 1999 Regional Haze Rule, numerous parks and wilderness areas have seen more limited improvement or even worsened conditions. For example, EPA explains that improvements in visibility conditions were smaller for Class I areas in Alaska and Hawaii, and conditions actually worsened at Class I areas in the Virgin Islands.⁸ According to the National Park Service’s (“NPS”) Air Quality Conditions & Trends information, visibility at Sequoia and Kings Canyon National Parks in California is poor and relatively unchanging.⁹ Trends at Everglades National Park, though better than Sequoia and Kings Canyon with fair visibility, are also relatively unchanging.¹⁰ The administration’s deregulatory efforts¹¹ threaten not only to undo the visibility gains achieved under the Regional Haze Program to date but worsen visibility impairment at Class I areas that are not on track to achieve natural visibility.

People across the country are united in their love for our national parks, and park visitors place a premium on clean air and clear skies. Numerous national¹² and local¹³ polls show that Americans universally agree that more must be done to protect our national parks, including better protections for the air and waters that flow through them and the wildlife that calls them home. NPS visitor studies conducted between 1988 and 2011 resoundingly confirm that park visitors value clean air and clear views. Of the 30,319 separate visitor groups surveyed at 49 different NPS-administered units over this time frame, 88% of visitors ranked clean air as “extremely important” or “very important.”¹⁴ Similarly, of the 13,110 separate visitor groups

⁸ 90 Fed. Reg. at 47679 n.13.

⁹ NPS, Air Quality Conditions & Trends: Sequoia & Kings Canyon National Parks (last visited Nov. 16, 2025), [https://www.nps.gov/subjects/air/park-conditions-trends.htm?tabName=summary&parkCode=SEKI¶mCode=Overall%20Air%20Quality&startYr=2009&endYr=2023&monitoringSite=SEQU1%20\(IMPROVE\)&timePeriod=Summary](https://www.nps.gov/subjects/air/park-conditions-trends.htm?tabName=summary&parkCode=SEKI¶mCode=Overall%20Air%20Quality&startYr=2009&endYr=2023&monitoringSite=SEQU1%20(IMPROVE)&timePeriod=Summary) (attached as Ex. 5).

¹⁰ NPS, Air Quality Conditions & Trends: Everglades National Park (last visited Nov. 16, 2025), [https://www.nps.gov/subjects/air/park-conditions-trends.htm?tabName=summary&parkCode=EVER¶mCode=Overall%20Air%20Quality&startYr=2009&endYr=2023&monitoringSite=EVER1%20\(IMPROVE\)&timePeriod=Summary](https://www.nps.gov/subjects/air/park-conditions-trends.htm?tabName=summary&parkCode=EVER¶mCode=Overall%20Air%20Quality&startYr=2009&endYr=2023&monitoringSite=EVER1%20(IMPROVE)&timePeriod=Summary) (attached as Ex. 6).

¹¹ See, e.g., Press Release, EPA, EPA Launches Biggest Deregulatory Action in U.S. History (Mar. 12, 2025), <https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history> (attached as Ex. 7).

¹² Press Release, NPCA, Nobody Wants This: New Poll Finds Majority of Americans Oppose Attacks on National Parks and Park Staff (Nov. 12, 2025), <https://www.npca.org/resources/4301-nobody-wants-this-new-poll-finds-majority-of-americans-oppose-attacks-on> (attached as Ex. 8); Press Release, NPCA, New Poll Shows United Support for National Park Wildlife (Nov. 8, 2023), <https://www.npca.org/articles/3610-new-poll-shows-united-support-for-national-park-wildlife> (attached as Ex. 9).

¹³ Florida Atlantic University Business and Economics Polling Initiative, Floridians and Miami Dade County Residents’ Opinion on Climate Change and Protection of Florida’s Natural Areas (Mar. 31, 2024) (attached as Ex. 10); NPCA, Florida National Parks Polling (May, 21, 2024), <https://www.npca.org/resources/3505-florida-national-parks-polling> (attached as Ex. 11); NPCA, West Virginia Voters Support Their National Parks: An In-Depth Report Proves Supporting National Parks Is a Top Priority for West Virginia Voters (2022) (attached as Ex. 12); NPCA, West Virginia Voters Support Their National Parks (Mar. 22, 2022), <https://www.npca.org/resources/3378-west-virginia-voters-support-their-national-parks> (attached as Ex. 13).

¹⁴ NPS, National Park Service Visitor Values & Perceptions of Clean Air, Scenic Views & Dark Night Skies: 1988-2011 at 7 (2013) (attached as Ex. 14).

surveyed at 14 NPS-administered Class I parks, 91% of visitors listed scenic views as “extremely important” or “very important”¹⁵ with 95% of these same visitors ranking scenic views as the first, second, or third most important attribute out of 14 attributes evaluated.¹⁶ Additionally, a 2016 American Association of Retired Persons Travel Research Report found that 70% of American adults have visited a national park in their lifetime.¹⁷ And 35% of those surveyed said they visit national parks to enjoy fresh air, making clean air one of the top 3 reasons out of 13 given for visiting a park.¹⁸ The public expects to see clear skies and to breathe clean air when they visit parks.

But visitors are still besieged by air pollution even when they seek the pristine landscapes of Class I areas. Beyond visibility, pollution that mars scenic views also causes public health and environmental harms. For example, nitrogen oxides (“NO_x”) pollution is a precursor to ground-level ozone, which is associated with respiratory diseases, asthma attacks, and decreased lung function.¹⁹ Particulate matter (“PM”) can penetrate deep into the lungs and cause a host of health problems, such as aggravated asthma, decreased lung function, and heart attacks.²⁰ NO_x and sulfur dioxide (“SO₂”) emissions also harm terrestrial and aquatic plants and animals through acid rain and nitrogen deposition, which in turn causes ecosystem changes, like eutrophication of mountain lakes.²¹ Thus, EPA recognizes in the ANPRM that “[p]articulate matter can also cause serious health effects in humans and contribute to environmental effects such as acid deposition and eutrophication.”²² Unsurprisingly then, park visitation decreases when air quality in parks is poor.²³

Declines in visitation because of poor air quality threaten the significant economic benefits that parks and wilderness areas provide to local and regional economies. Class I parks and wilderness areas draw millions of visitors from around the world each year, providing a boon to gateway communities and local recreation businesses.²⁴ NPS reported that, in 2024, nearly

¹⁵ *Id.* at 16-17.

¹⁶ *Id.* at 17.

¹⁷ American Association of Retired Persons, Travel Research: National Parks at 3, 7 (2016), https://www.aarp.org/content/dam/aarp/research/surveys_statistics/life-leisure/aarp-travel-research-natl-parks.doi.10.26419-2Fres.00120.001.pdf (attached as Ex. 15).

¹⁸ *Id.* at 28.

¹⁹ EPA, Health Effects of Ozone Pollution (last updated Mar. 13, 2025), <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution> (attached as Ex. 16).

²⁰ EPA, Health and Environmental Effects of Particulate Matter (PM) (last updated May 23, 2025), <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> [hereinafter “EPA PM Health and Environmental Effects”] (attached as Ex. 17).

²¹ Polluted Parks 2024 at 8-9; EPA PM Health and Environmental Effects; EPA, Ecosystem Effects of Ozone Pollution (last updated Sept. 30, 2025), <https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution> (attached as Ex. 18).

²² 90 Fed. Reg. at 47679.

²³ See David Keiser et al., Air Pollution and Visitation at U.S. National Parks, 4 Sci. Advances 3-6 (July 18, 2018), <https://www.science.org/doi/10.1126/sciadv.aat1613> (finding that park visitation can decrease by 8% when air quality is poor) (attached as Ex. 19).

²⁴ U.S. Forest Service, National Visitor Use Monitoring Survey Results: National Summary Report (Sept. 2023), <https://www.fs.usda.gov/sites/default/files/2022-National-Visitor-Use-Monitoring-Summary-Report.pdf> (providing information on visitation to national forests and wilderness areas from FY 2018 through FY 2022) (attached as Ex. 20); NPS, 2024 National Park Visitor Spending Effects (Sept. 2025),

332 million people visited national parks across the country, bringing in more than \$29 billion in visitor spending in local gateway regions and supporting more than 340,000 jobs.²⁵ In 2024 alone, park visitation added \$33.7 billion in value to the economy and accounted for \$56.3 billion in economic output.²⁶ The United States Bureau of Economic Analysis also reported that, in 2023, outdoor recreation accounted for 2.3% of the United States' gross domestic product ("GDP"), or \$639.5 billion in value added to the economy.²⁷ At the state level, outdoor recreation accounted for up to 6.3% of state GDP.²⁸ In 49 states, outdoor recreation-related employment increased in 2023 by as much as 7.5% (in Alaska).²⁹ Protecting air quality in parks and wilderness areas is critical to preserving these economic drivers for local communities and recreation businesses.³⁰

The United States economy has thrived in the decades since Congress enacted the Clean Air Act. The Clean Air Act has a proven record of simultaneously producing pollution reductions and allowing for economic growth. Since 1970, when the modern Clean Air Act was enacted, emissions of the air pollutants regulated by the statute have dropped while GDP has tripled.³¹ Numerous studies have shown that air pollution negatively affects cognitive abilities and economic productivity.³² At the same time, studies have found that the costs of air pollution regulations are often overstated. One academic study found that "[o]ne defining feature of the research on the costs of the Clean Air Act is that predicted costs of the regulations are often higher than the costs that actually occur."³³ In fact, EPA itself has repeatedly found that, looking both retrospectively and prospectively, the benefits of the Clean Air Act significantly exceed the

<https://www.nps.gov/subjects/socialscience/vse.htm> [hereinafter "2024 Visitor Spending Report"] (attached as Ex. 21).

²⁵ 2024 Visitor Spending Report at 10-12.

²⁶ *Id.* at 12, tbl.3.

²⁷ Press Release, U.S. Bureau of Economic Analysis, Outdoor Recreation Satellite Account, U.S. and States, 2023, <https://www.bea.gov/news/2024/outdoor-recreation-satellite-account-us-and-states-2023> (last visited Nov. 16, 2025) (attached as Ex. 22).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Letter from A Walk in the Woods et al., to Michael Regan, Administrator, U.S. Environmental Protection Agency (Apr. 2, 2023), <https://www.npca.org/resources/3439-56-businesses-from-22-states-sent-a-letter-to-epa-to-protect-clean-air> (attached as Ex. 23).

³¹ EPA, Our Nation's Air: Trends Through 2022 (2023), <https://gispub.epa.gov/air/trendsreport/2023/#home> (last visited Nov. 21, 2025).

³² See, e.g., Sandra Aguilar-Gomez et al., Air Pollution: The Invisible Effects on Productivity, Health and Economic Output, World Econ. Forum (July 6, 2022), <https://www.weforum.org/stories/2022/07/damage-from-air-pollutants-you-won-t-hear-about-from-your-doctor/> (attached as Ex. 24); Mullen, Casey et al., Effects of PM_{2.5} on Third Grade Students' Proficiency in Math and English Language Arts, 18 Int'l J. Env't Res. and Public Health 6931 (2020), <https://doi.org/10.3390/ijerph17186931> (attached as Ex. 25).

³³ Janet Currie & Reed Walker, What Do Economists Have to Say About the Clean Air Act 50 Years After the Establishment of the Environmental Protection Agency?, 33 J. of Econ. Perspectives 3, at 19 (2019), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.33.4.3> (attached as Ex. 26); see also Matthew E. Kahn, The Beneficiaries of Clean Air Act Regulation, 24 Regulation 34, 36 (2001), <https://www.cato.org/sites/cato.org/files/serials/files/regulation/2001/4/kahn.pdf> (finding that no "significant negative effects on employment in the tightly regulated L.A. basin" and noting that a then-forthcoming study suggested that "local air quality regulations . . . probably increased labor demand slightly") (attached as Ex. 27).

costs.³⁴ History has shown that good public health and environmental protection policy is also good economic policy.

Not only is faithful implementation of the Act's haze provisions necessary to protect Class I areas and the visitors to those areas, it also secures health benefits for communities that surround polluting sources. EPA recognizes that "emissions sources that contribute to visibility impairment in Class I areas also may contribute to air pollution in other areas."³⁵ The same pollutants emitted by these facilities that obscure scenic views at national parks and wilderness areas also contribute to disparate public health impacts for the people living on the facilities' doorsteps. These communities are impacted first and worst by the pollution emitted by these facilities. And polluting facilities are often located in low-income communities and communities of color, disproportionately exposing them to the severe and negative impacts of air pollution.³⁶ Requiring facilities to continue to reduce dangerous emissions is essential to protecting the health of the public when visiting our most precious public lands and at home.

II. EPA's Attempts to Exclude States from the Regional Haze Program Violate the Clean Air Act.

As noted above, the Regional Haze Program requires reasonable progress towards the national goal of preventing and remedying visibility impairment in Class I areas.³⁷ The primary statutory tool for achieving these goals is the requirement that states must submit regional haze plans that "contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal."³⁸ To determine reasonable progress, states must take 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."³⁹ The most recent, second round state haze plans were due by July 31, 2021; the next state plans are due by July 31, 2028.⁴⁰

³⁴ EPA, Benefits and Costs of the Clean Air Act (last updated Oct. 14, 2025), <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act> (attached as Ex. 28).

³⁵ 90 Fed. Reg. at 47679.

³⁶ See, e.g., Michael J. Cheeseman et al., Disparities in Air Pollutants Across Racial, Ethnic, and Poverty Groups at US Public Schools, 6 GEO Health, 1-14 (2022) ("We find that in most regions of the US, students who attend schools with higher percentages of racial-ethnic minority students and higher levels of poverty . . . are associated with higher concentrations of both PM_{2.5} and NO₂ compared to schools with lower percentages of racial-ethnic minority students and lower levels of poverty.") (attached as Ex. 29); Ihab Mikati et al., Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status, 108 Am. J. Pub. Health, 408-85 (April 2018) (attached as Ex. 30); EPA, Research on Health Effects from Air Pollution (last updated June 11, 2025), <https://www.epa.gov/air-research/research-health-effects-air-pollution> (attached as Ex. 31); Asthma and Allergy Found. Am., Asthma Disparities in America at 14, 53-63 (2020), <https://aafa.org/wp-content/uploads/2022/08/asthma-disparities-in-america-burden-on-racial-ethnic-minorities.pdf> (excerpt attached as Ex. 32).

³⁷ 42 U.S.C. § 7491(a)(1), (4).

³⁸ *Id.* § 7491(b)(2).

³⁹ *Id.* § 7491(g)(1).

⁴⁰ 40 C.F.R. § 51.308(f).

Instead of implementing these statutory requirements, EPA's ANPRM invents new ways to avoid the Act's reasonable progress requirements, indeed, to avoid any progress at all towards the statutory goals. Although the statute requires every state to prepare a state plan providing for reasonable progress, EPA instead seeks comments on program approaches that would effectively excuse states from submitting such plans. EPA recognizes that any Regional Haze Rule revision must be "consistent with applicable requirements in CAA sections 169A and 169B" regarding haze and visibility.⁴¹ Instead, EPA's ANPRM is directly contrary to the intent of Congress reflected in section 169A (42 U.S.C. § 7491)⁴² and in legislative history showing that the 1990 Clean Air Act Amendments were intended to compel implementation of the Act's regional haze provisions.⁴³ The agency must abandon all approaches that conflict with the plain language and purpose of the statute and change direction to implement its statutory mandate to ensure states make reasonable progress towards haze goals.

A. Alternative Approaches Letting States Evade the Requirement to Develop Regional Haze SIPs Violate the Text of the Act.

Under 42 U.S.C. § 7491(b)(2), each state must develop a haze plan if any Class I area is located within their borders, or if emissions from their state may reasonably be anticipated to cause or contribute to *any* impairment of visibility in any Class I area. Under the terms of this broad, protective standard, all 50 states and the District of Columbia, including those states that do not have Class I areas within their borders, must submit regional haze plans.⁴⁴ Emissions mapping by NPCA demonstrates that sources in all 50 states impair visibility in Class I areas,⁴⁵ and no Class I area has yet achieved "natural visibility conditions."⁴⁶ Effective third round plans are essential to achieving the goals of the Regional Haze Program.

Further, the Clean Air Act requires states to determine the emission limits, schedules of compliance, and other measures that are necessary to make reasonable progress for sources that are "reasonably. . . anticipated to cause or contribute to *any* impairment of visibility in *any*" Class I area.⁴⁷ States must "[c]onsider[] 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*."⁴⁸ Thus, the Act requires that, for any existing source subject to the requirements of the Regional Haze Program, states must determine the emission reduction measures that are necessary to make reasonable progress based on the four statutory factors. EPA's suggestion that it might read some of these requirements out of the Act is thus contrary to the plain language of the statute and to the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

⁴¹ 90 Fed. Reg. at 47678.

⁴² Clean Air Act sections 169A and 169B are 42 U.S.C. § 7491 and 42 U.S.C. § 7492, respectively.

⁴³ A Legislative History of the Clean Air Act Amendments of 1990, 5796 (Env't'l Policy Div., C.R.S., Nov. 1993).

⁴⁴ 40 C.F.R. § 51.300(b).

⁴⁵ NPCA, Regional Haze Interactive Map (last visited Nov. 18, 2025), <https://experience.arcgis.com/experience/46dd650b65284b64bf38ccba0e90af8b/?org=npca>.

⁴⁶ 40 C.F.R. § 51.308(d)(1).

⁴⁷ 42 U.S.C. § 7491(b)(2).

⁴⁸ *Id.* § 7491(g)(1).

The Act does not provide any exemptions to the reasonable progress requirements of section 7491. When Congress intended to create an exemption, that exemption was written into the Act. For example, Congress did provide a mechanism for EPA to grant case-by-case exemptions from haze requirements for certain sources of air pollution in 42 U.S.C. § 7491(c). However, no such off-ramp applies to the reasonable progress analyses that states are required to perform under 42 U.S.C. § 7491(b)(2). Courts have long presumed that “Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another.”⁴⁹ Thus, EPA cannot alter the Regional Haze Rule in ways that allow states to evade the statutory requirements carefully laid out by Congress.

Not only are these requirements clear in the statute, EPA has long confirmed their force in rulemaking. In 1993, the United States Court of Appeals for the Ninth Circuit found that the language ‘may reasonably be anticipated to cause or contribute’ establishes an ‘extremely low triggering threshold’ for requiring a source to control emissions.⁵⁰ In the Regional Haze Regulations rulemaking in 1999, EPA adopted this language, noting that the requirement for states to submit haze plans leads to “further technical analysis by the State” and that “EPA believes the concept of an ‘extremely low triggering threshold’ can also apply in determining which States should submit SIPs for regional haze.”⁵¹ EPA has since cited the “extremely low triggering threshold” language many times in support of actions on regional haze.⁵²

B. The Clean Air Act Only Authorizes EPA to Promulgate Regulations that “Assure” Reasonable Progress Toward the National Goal.

The Clean Air Act requires the Administrator to “promulgate regulations to assure . . . reasonable progress toward meeting the national goal” of preventing and remedying impairment of visibility in Class I areas.⁵³ This directive plainly shows that Congress intended EPA to implement the Regional Haze Program in a manner that achieves necessary improvements in visibility impairment for Class I areas—i.e., by requiring states to adopt SIPs that contain the emission reduction measures necessary to make reasonable progress based on the four statutory factors. Nothing in the Clean Air Act permits EPA to issue regulations that are contrary to the plain text and purpose of section 7491.⁵⁴ Thus, EPA cannot escape its mandate to find the “best reading” of the provision and issue regulations that abide by that reading.

⁴⁹ *Intel Corp. Inv. Pol’y Comm. v. Sulyma*, 589 U.S. 178, 186 (2020) (citation omitted); see also *United States v. Russello*, 464 U.S. 16, 23 (1983) (“[When] Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”); *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 509 (2014) (explaining that practical difficulties in implementation or administrative efficiency do not justify departure from the Act’s plain text; courts “must presume that a legislature says in a statute what it means and means in a statute what it says there.”).

⁵⁰ *Central Arizona Water Conservation District v. EPA*, 990 F.2d 1531, 1541 (9th Cir. 1993).

⁵¹ 64 Fed. Reg. 35714, 35721 (July 1, 1999).

⁵² See, e.g., 88 Fed. Reg. 80655, 80659 (Nov. 20, 2023); 87 Fed. Reg. 51016, 51019 (Aug. 19, 2022). Any departure from these prior statements would be inconsistent with EPA’s prior determinations. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

⁵³ 42 U.S.C. § 7491.

⁵⁴ *Loper Bright*, 603 U.S. at 399-400.

Had Congress intended that states be exempt from the requirement to develop period SIPs and identify necessary measures to make reasonable progress based on the four factors, it would have said so. In fact, Congress explicitly set forth a procedure for EPA to grant facility-specific exemptions to certain regional haze requirements, but did not provide any exemptions from the Act's reasonable progress requirements.⁵⁵ As noted above, it is generally presumed that Congress acts intentionally and purposely when it includes specific authority in one section, but excludes such authority from another provision of the same statute.⁵⁶ Here, nothing in the Clean Air Act indicates that Congress intended for EPA to create exemptions that effectively obviate the need for states to develop SIPs "contain[ing] . . . emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress."⁵⁷ Nor does anything in the Act allow EPA to issue regulations that evade the Act's directive for states to take 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" when evaluating the pollution reduction measures necessary to ensure reasonable progress.⁵⁸

Additionally, under section 7491(a)(4), EPA must "promulgate regulations to *assure* [] reasonable progress toward meeting *the national goal*."⁵⁹ The national goal is "the prevention of *any* future, and the remedying of *any* existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution."⁶⁰ "The word 'any' has an expansive meaning,"⁶¹ and its use here requires that EPA's haze regulations provide for the elimination of all visibility impairment resulting from manmade pollution. Thus, EPA's mandate to issue regulations only extends to regulations that *assure* reasonable progress will be made, not ones that impede it. Yet, the alternative approaches EPA raises throughout the ANPRM would do exactly that by letting states entirely avoid adopting into their SIPs any measures necessary for reasonable progress based on consideration of the four factors.

III. EPA's Alternative Approaches for Developing a "Reasonable Progress Metric" Are Unlawful.

The alternative approaches discussed in EPA's ANPRM would violate the plain language and intent of the Clean Air Act, create more uncertainty and implementation challenges for stakeholders, and undermine the visibility protection program and progress toward the national goal of preventing and remedying visibility impairment in Class I areas. While the lack of detail regarding EPA's potential alternative approaches makes it difficult to provide thorough feedback on specifics, any alternative approaches that involve a potential "reasonable progress metric" raise serious issues. EPA claims to be "seeking comment and input in restructuring existing regulations in a manner consistent with applicable requirements in CAA sections 169A and 169B pertaining to the protection of visibility at the 156 Class I areas addressed under the Regional

⁵⁵ 42 U.S.C. § 7491(c).

⁵⁶ *Russello*, 464 U.S. at 23.

⁵⁷ 42 U.S.C. § 7491(b)(2).

⁵⁸ *Id.* § 7491(g)(1).

⁵⁹ *Id.* § 7491(a)(4) (emphasis added).

⁶⁰ *Id.* § 7491(a)(1) (emphasis added).

⁶¹ *Babb v. Wilkie*, 589 U.S. 399, 405 n.2 (2020).

Haze program.”⁶² Tellingly, EPA asks for “specific suggestions on program restructuring and revisions along with a legal rationale and policy objective”—revealing that EPA itself has not been able to identify a clear legal rationale or authority for “restructuring” the visibility program. No purported legal rationale or policy objective here could justify changes in approach that would violate the statute, particularly a dramatic restructuring of the program that would alter “foundational parts of the current Regional Haze program.”⁶³

A. The Clean Air Act Requires Consideration of the Four Factors to Determine Which Measures are Necessary to Make Reasonable Progress and Does Not Provide Authority For EPA to Adopt a Metric to Allow States to Evade the Act’s Requirements.

EPA asks for comments on several approaches for creating a “reasonable progress metric,” each of which is problematic and unlawful. The intent appears to be to create a “safe harbor” that eliminates the statutory obligations set forth in section 7491(b)(2) and (g)(1). Other commenters have suggested this approach in the past, and EPA has emphatically and unambiguously rejected that approach as contrary to the statutory text. In particular, EPA previously explained that “[t]he 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”; as such, adopting regulations that create “a safe harbor” from the Act’s haze requirements “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.”⁶⁴ EPA now appears inclined to change its longstanding position and statutory interpretation, but any approach that fails to require consideration of these factors and implementation of necessary emission reduction measures via a SIP revision by every state would contravene the statute’s plain text. Any attempt to eliminate the Act’s requirement for states to develop SIPs that contain all measures deemed necessary to make reasonable progress by taking into consideration the four factors would require legislation from Congress.

1. The Plain Language of the Clean Air Act Requires States to Develop SIPs and Take the Four Factors into Consideration When Determining Reasonable Progress, and the Plain Text Does Not Permit EPA to Ignore These Requirements.

The United States Supreme Court has made clear that statutory provisions should be interpreted using “the traditional tools of statutory construction” to arrive at the provision’s “best reading.”⁶⁵ As noted above, section 7491(b)(2) requires states to develop SIPs that contain the limits and measures necessary to make reasonable progress.⁶⁶ Section 7491(g)(1), in turn, clearly directs 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

⁶² 90 Fed. Reg. at 47678.

⁶³ *Id.* at 47680.

⁶⁴ 82 Fed. Reg. 3078, 3099 (Jan. 10, 2017).

⁶⁵ *Loper Bright*, 603 U.S. at 400-01.

⁶⁶ *See supra* Section II.A.

subject to such requirements.” Any alternative approach to determining reasonable progress under section 7491(b)(2) that ignores the text of (g)(1) and does not require the four statutory factors to be taken into consideration would be directly contrary to the plain language of the statute and, thus, unlawful. EPA acknowledges that if “such a metric is used as the exclusive method for determining whether a Class I area is making reasonable progress” the agency “anticipates a need to explain the relationship between the metric and consideration of the four statutory factors.”⁶⁷ But the Act already defines the means by which states, and EPA, are to assess what is needed to make reasonable progress. EPA cannot choose to deviate from the path Congress has set in favor of its own, separate metric—whether or not it provides an explanation for doing so. As EPA has previously recognized, “[t]he 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.”⁶⁸

EPA suggests that creating a metric to determine if reasonable progress is being made is “aligned with the CAA’s direction in section 169B(e)(1) to include ‘criteria for measuring reasonable progress towards the national goal.’”⁶⁹ But, as EPA previously recognized, Congress directed EPA to develop a tracking metric under “a separate statutory mandate in section 169B(e)(1),”⁷⁰ not as an amendment to substantive visibility requirements. In response, EPA created the uniform rate of progress as a purely tracking metric, but recognized that the statutory text does not authorize EPA to substantively amend the Act’s requirements with the criteria required by this provision.⁷¹ There is no indication from the text of section 7492 that Congress authorized an approach to determining reasonable progress that overrides or negates consideration of the statutory factors in section 7491(g)(1). Indeed, as EPA notes in the ANPRM, section 7492(e)(1) authorizes EPA to create a metric for the sole purpose of “*measuring* reasonable progress”⁷²—nothing more.

Congress’s precise direction to EPA must be given effect. As such, the agency cannot now claim to find in the text some implicit authority to interpret and administer the statute’s visibility provisions in a way that directly contradicts the statute’s requirements. That is especially true here, where any interpretation EPA could adopt to justify its alternative approaches would be a clear departure from EPA’s past practice and the agency’s interpretation that was “issued contemporaneously with the statute at issue, and which ha[s] remained consistent over time.”⁷³ EPA has previously interpreted the Clean Air Act to require that SIPs addressing visibility consider the four factors in determining what is needed to make reasonable progress. Any new interpretation EPA could adopt to justify its alternative approaches would

⁶⁷ 90 Fed. Reg. at 47681.

⁶⁸ 82 Fed. Reg. at 3099 (emphasis added).

⁶⁹ 90 Fed. Reg. at 47681.

⁷⁰ 82 Fed. Reg. at 3091.

⁷¹ 90 Fed. Reg. 40272, 40287 (Aug. 19, 2025) (“In developing the regulations required by CAA section 169A(b), EPA established the concept of the URP for each Class I area.”); Memorandum from Peter Tsirigotis, Director, EPA, to Regional Air Directors, Regions 1-10, at 15 (July 8, 2021) [hereinafter “2021 Clarification Memo”] (explaining that EPA established the URP as a tracking metric) (attached as Ex. 33).

⁷² 90 Fed. Reg. at 47681 (emphasis added).

⁷³ *Loper Bright*, 603 U.S. at 394.

clearly not be the best reading of the statute, as it would violate the canon against surplusage by relying on a tenuous interpretation of one provision—7492(e)(1)—of the statute to cause the absurd and easily avoidable result of rendering other provisions of the statute—7491(b)(2) and (g)(1)—superfluous.⁷⁴ Such an interpretation is particularly suspect because it represents a novel understanding of the agency’s authority that creates a conflict with a clear statutory mandate.

The agency refers to this process as “fundamentally revising the Regional Haze program,”⁷⁵ but the Clean Air Act, including section 7492, contains no language that would permit fundamentally revising the program in a way that would violate clear statutory directives. Indeed, EPA appears to recognize the significance of its alternative approaches, which would effectively change the agency’s interpretation of the Act’s requirements and change key parts of the program, as the agency “observes that a restructuring of the program would likely necessarily address these topic areas, which are foundational parts of the current Regional Haze program.”⁷⁶ These “foundational parts” of the Program were created based on the agency’s longstanding interpretation of the statute, which included interpreting the statute as not allowing for a “safe harbor” that enables avoidance of statutory requirements.

EPA’s alternative approaches would require a significant departure from its past interpretation of the statute, and in fact would require the agency to interpret the statute in a way that it had previously found to be unlawful. EPA has clearly stated in the past that the statute “requires states to determine what emission limitations, compliance schedules and other measures are necessary to make reasonable progress by considering the four factors” and “does not provide that states may then reject some control measures already determined to be reasonable if, in the aggregate, the controls are projected to result in too much or too little progress.”⁷⁷ As EPA recognized, “the rate of progress that will be achieved by the emission reductions resulting from all reasonable control measures is, by definition, a reasonable rate of progress.”⁷⁸

EPA’s alternative approaches bear some resemblance to the “reasonable progress targets” the agency previously considered and rejected. For the 1999 Regional Haze Rule, EPA initially considered adopting “reasonable progress targets,” expressed in deciviews, that would specify how much visibility improvement satisfied the requirement to make progress on the worst days and allow no degradation on the best days.⁷⁹ However, the agency ultimately rejected this proposal, explaining that the states should instead “conduct certain analyses to ensure that they

⁷⁴ *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.” (internal quotation marks omitted)); *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (“[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.”); *Armstrong Paint & Varnish Works v. Nu-Emanuel Corp.*, 305 U.S. 315, 333 (1938) (explaining that “to construe statutes so as to avoid results glaringly absurd, has long been a judicial function”).

⁷⁵ 90 Fed. Reg. at 47678.

⁷⁶ *Id.* at 47680.

⁷⁷ 82 Fed. Reg. at 3093.

⁷⁸ *Id.*

⁷⁹ 64 Fed. Reg. at 35730.

consider the possibility of setting an ambitious” reasonable progress goal “that is aimed at reaching natural background conditions in 60 years.”⁸⁰ As with EPA’s (still standing) national policy on the URP,⁸¹ the agency has previously determined that there was no way to determine reasonable progress consistent with the Clean Air Act without identifying necessary measures based on consideration of the four factors and adopting those measures as federally enforceable requirements in a SIP. The language in the statute remains the same, and there is no reason why that longstanding position and interpretation would no longer be correct. An administration’s policy priorities cannot overrule the plain language of the statute. As EPA has stated, “regulatory certainty . . . should [not] be achieved by bypassing the statutory analysis and relieving states of the requirement to consider the four factors for a reasonably chosen set of sources.”⁸²

2. EPA’s Prior, Contemporaneous Interpretation of the Statute Reflects the Best Reading.

Under *Loper Bright*, an agency’s understanding of a statutory provision that was developed roughly contemporaneously with the provision’s enactment may warrant respect in interpreting that provision.⁸³ EPA’s previous understanding of the Clean Air Act’s regional haze requirements was developed contemporaneously with the legislative enactment of those requirements, and it is also the best reading of those statutory provisions. That interpretation confirms that the statute’s text prohibits any approach that allows states to avoid taking the four factors into consideration and adopting all emission limits and other measures deemed necessary to make reasonable progress via regional haze SIPs.

EPA’s 1999 Regional Haze Rule, which was EPA’s first significant attempt at implementing the Clean Air Act’s 1990 visibility amendments, is the best evidence of EPA’s “contemporaneous” understanding of the Clean Air Act’s requirements. That Rule tracks the statutory text and provides that:

In establishing a reasonable progress goal for any mandatory Class I Federal area within the State, the State must: [c]onsider 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 the goal.⁸⁴

⁸⁰ *Id.* at 35731.

⁸¹ See NPCA et al., Comments on Proposed Air Plan Approval; Tennessee; Second Planning Period Regional Haze Plan, 90 Fed. Reg. 40272 (proposed August 19, 2025) [Docket ID No. EPA-R04-OAR-2019–0308] at 36 (Oct. 20, 2025) [hereinafter “Tennessee Comments”] (explaining that EPA’s national policy on the URP as embodied by the 1999 Regional Haze Rule, 2017 Regional Haze Rule, and guidance and memorandum issued for the second planning period provides that the agency cannot create a safe harbor from the Act’s visibility provisions) (attached as Ex. 34).

⁸² EPA, Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016), at 165-66 (Dec. 2016), <https://www.regulations.gov/document/EPA-HQ-OAR-2015-0531-0635> [hereinafter “2017 RHR RTC”] (attached as Ex. 35).

⁸³ *Loper Bright*, 603 U.S. at 430.

⁸⁴ 64 Fed. Reg. at 35766 (emphasis added).

Furthermore, in finalizing the 1999 Rule, EPA explicitly rejected presumptive reasonable progress targets which would have functioned similar to EPA's reasonable progress metric, explaining that "[i]n considering whether reasonable progress will continue to be maintained, States will need to consider during each new SIP revision cycle whether additional control measures for improving visibility may be needed to make reasonable progress based on the statutory factors."⁸⁵ And as EPA noted in more recent guidance, "[g]iven the regulatory structure, it would not be consistent with the Regional Haze Rule as well as the accepted practice during the first implementation period, to establish [reasonable progress goals] first, as some stakeholder comments have suggested, and then work backwards to develop a [long-term strategy] that supports such [reasonable progress goals]."⁸⁶

3. The Context, Purpose, and History of the Visibility Provisions Confirm the Best Reading of the Statute.

The context, purpose, and history of the Clean Air Act's visibility provisions confirm that the best reading of the statute is that the four factors set forth in section 7491(g)(1) must be taken into consideration when determining what is needed to make reasonable progress and that states must adopt SIPs containing necessary measures as identified based on those factors. As EPA has recognized, "Congress required the EPA to promulgate regulations requiring reasonable progress toward [remediating existing and preventing future visibility impairment], and it would be antithetical to allow states to avoid implementing reasonable measures until and unless that goal is achieved."⁸⁷

The statutory text and legislative history for the 1990 Clean Air Act Amendments also show that Congress intended to force EPA to adopt regulations that ensure progress is made toward achieving the natural visibility goal. Although the reasonable progress provisions were enacted in the 1977 Amendments, EPA initially ignored them. In response, Congress forced EPA to act with its 1990 Amendments to the Act. Senator Tim Wirth of Colorado explained that the 1990 amendments to the Act's visibility provisions were "necessary . . . to require EPA to do what [Congress] thought we had required them to do in 1977. This amendment is designed to ensure that agency inaction and delay does not again frustrate implementation of effective protection for our national parks and wilderness."⁸⁸

Thus, it is clear that Congress did not intend for EPA to avoid the Act's requirements. Rather, Congress set a goal of clearing the air of human-caused visibility impairment by reducing emissions when it is reasonable to do so based on the four statutory reasonable progress factors. Congress thereby set a framework for EPA to establish iterative planning periods during

⁸⁵ *Id.* at 35733.

⁸⁶ Memorandum from Peter Tsirigotis, Director, EPA, to Regional Air Directors, Regions 1-10, at 46 n.82 (Aug. 20, 2019), https://www.epa.gov/sites/default/files/2019-08/documents/8-20-2019_-_regional_haze_guidance_final_guidance.pdf [hereinafter "2019 Guidance"] (attached as Ex. 36).

⁸⁷ 82 Fed. Reg. at 3094.

⁸⁸ A LEGISLATIVE HISTORY OF THE CLEAN AIR ACT AMENDMENTS OF 1990, 5796 (Env't'l Policy Div., C.R.S., Nov. 1993).

which states develop SIPs that build on emission reductions achieved in each successive planning period and continually make progress toward achieving the national visibility goal.

B. EPA’s Alternative Approaches Would Violate the Clean Air Act Because They Read the Four Factors Out of the Statute.

In the ANPRM, EPA claims that its alternative approaches “would be aligned” with the direction in section 7492(e)(1) that EPA develop “criteria for measuring reasonable progress towards the national goal.”⁸⁹ EPA claims that a “reasonable progress metric” would “provide an objective way to determine the progress of the program and provide certainty to states regarding the amount of visibility improvement that is needed to meet the requirements of the Regional Haze program at specific points in time, and if/when further analysis of emissions control measures is needed.”⁹⁰ But, as noted above, nothing in the text of section 7492(e)(1) suggests it authorizes the agency to create a metric that undermines substantive requirements or renders superfluous the statutory text of section 7491(b)(2) and (g)(1). And while regulatory certainty might be a policy priority for the agency, EPA’s attempt at achieving supposed regulatory certainty by relieving states and polluting industries of ongoing statutory obligations is in derogation of the Act’s requirements.

1. EPA Requests Feedback on How to Incorporate the Four Factors Under Section 7491 into a “Reasonable Progress Metric.”

In Question 1.a.i, EPA asks for feedback on how it could “take the four factors under CAA section 169A(g)(1) into account when developing a reasonable progress metric.”⁹¹ The language of section 7491(g)(1) clearly requires that any lawful approach to determining what is necessary to make reasonable progress must, at a minimum, “take[] 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.” EPA has previously recognized that states must “evaluate and determine the emission reduction measures. . . that are necessary to make reasonable progress by considering the four statutory factors,”⁹² and has provided states with specific guidance on how to consider those factors in determining the measures necessary to make reasonable progress.⁹³

Rather than continuing to require states to engage in robust analyses of potential emission reduction measures as required by the Act, EPA’s alternative approaches would effectively subsume the four statutory factors into a metric that is designed to let states entirely avoid conducting the required analyses of the four factors. As noted above, EPA has repeatedly explained that creating a “safe harbor” from the Act’s requirements to analyze the four statutory factors and develop SIPs to implement the measures identified as necessary to make reasonable progress, as the alternative approaches here would do, violates the Act. The agency asks for input on how this metric could be created and used, but the core concept is inherently problematic

⁸⁹ 90 Fed. Reg. at 47681.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² 2021 Clarification Memo at 6.

⁹³ *See* 2019 Guidance at 31-34.

because any determination that reasonable progress has been achieved without a detailed analysis of the four factors would violate the statute. Any approach that involves avoiding detailed analysis as EPA describes in Question 1.a would effectively read section 7491(g)(1) out of the statute because it would not require states to take the four factors into consideration.

Additionally, the first alternative approach raised under Question 1.a purports to incorporate the four factors into the metric itself. The intent of this metric appears to be to exempt states from “more detailed analyses” if they “achieve reasonable progress with measures already in the regulatory portion of the SIP for a particular time period.”⁹⁴ Under this approach, if a state does not qualify for that exemption, more detailed analyses would be required, and those “analyses would be consistent with CAA section 169A(g)(1) and would be used to identify additional controls or demonstrate that no additional controls are reasonable.”⁹⁵ In other words, not all states would be required to apply the Act’s text under section 7491(g)(1) to identify necessary measures to make reasonable progress. But any changes to the rule that would make the statute’s text superfluous in some cases but not in others would be absurd and unlawful.⁹⁶

EPA’s second alternative approach (Question 1.b) is particularly egregious, as it would allow states to entirely avoid consideration of the four factors based on a reasonable progress metric that has no connection to the statutory factors whatsoever. As EPA notes, under this approach, the Four-Factor Analysis would only be a “backstop” and therefore would not come into play unless and until a Class I area fails to achieve the so-called reasonable progress metric. This approach clearly contravenes the statutory requirements for determining what is needed to make reasonable progress under section 7491(g)(1). EPA asks how the four factors could be taken into consideration in this kind of approach (Question 1.b.i), but the approach itself is inherently unlawful because it would allow states to determine reasonable progress is being achieved without analyzing the four factors at all. Additionally, as with the alternative approach suggested in Question 1.a., this approach would render the four statutory factors superfluous in some cases but not in others.⁹⁷ The four factors cannot merely serve as a backstop and must be taken into consideration by every state to identify the emission limits and other measures that are necessary to make reasonable progress.

Moreover, adopting a “reasonable progress metric” to let states avoid developing regional haze SIPs is effectively the same as developing reasonable progress “targets”—which are also inconsistent with the Clean Air Act. As noted above, EPA previously considered adopting presumptive reasonable progress targets in promulgating the 1999 Regional Haze Rule, when the

⁹⁴ 90 Fed. Reg. at 47681.

⁹⁵ *Id.*

⁹⁶ *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”) (internal quotation marks omitted); *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (“[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.”); *Armstrong Paint & Varnish Works v. Nu-Emanuel Corp.*, 305 U.S. 315, 333 (1938) (explaining that “to construe statutes so as to avoid results glaringly absurd, has long been a judicial function”).

⁹⁷ *TRW Inc.*, 534 U.S. at 31; *Griffin*, 458 U.S. at 575; *Armstrong Paint & Varnish Works*, 305 U.S. at 333.

agency “proposed to establish presumptive reasonable progress targets of 1.0 deciview of improvement for the most impaired days and no degradation for the least impaired days and to require states to develop emission reduction strategies to achieve the reasonable progress targets.”⁹⁸ EPA ultimately rejected the use of presumptive targets, instead requiring states “to determine the rate of progress for remedying existing impairment that is reasonable, taking into consideration the statutory factors.”⁹⁹

Stakeholders expressed concern that the presumptive targets would not give states flexibility, pointing out that the proposed presumptive target was arbitrary and would have been inadequate in some areas. As the agency recognized, “[a]t the proposed presumptive rate of progress of 1 deciview per 10 years, it would take 200 years or more to reach the national visibility goal in many Eastern Class I areas.”¹⁰⁰ Numerous comments on this issue had expressed concern that a rate of progress that takes 200 years to achieve the national goal should not be considered reasonable.¹⁰¹ EPA instead chose to adopt the RPG approach which was “designed to address the concerns of those commenters interested in greater State flexibility in setting visibility goals, as well as the concerns of those commenters who believed that the presumptive 1 deciview target approach could actually provide a disincentive for some States to pursue more ambitious rates of progress, particularly for the most impaired Class I areas in the East.”¹⁰²

It appears that EPA’s alternative approaches to reasonable progress metrics are intended to replace the reasonable progress goals—but the RPGs cannot be separated from the four factors, and EPA has explicitly recognized that reasonable progress goals “are not a concept that is included in the Clean Air Act itself. Rather, they are a regulatory construct that we developed to satisfy a separate statutory mandate in section 169B(e)(1)” and “are unenforceable, but they create a benchmark that allows for analytical comparisons to the URP and mid-implementation-period course corrections.”¹⁰³ Thus, EPA’s past use of RPGs has been consistent with the Clean Air Act and appears to be distinct from how the agency intends to use the alternative approaches to create a reasonable progress metric. Moreover, EPA cannot plausibly argue that section 7492(e)(1) is a “separate statutory mandate” or that this reasonable progress metric can be used to override or satisfy section 7491(g)(1).

Furthermore, EPA’s alternative approaches raised under Question 2a are effectively the same as the agency’s recently-created policy for presumptively approving second planning period SIPs. EPA suggests under Question 2a that “being at or below the URP line indicates the reasonable progress requirement has been met, so long as the state has adequately considered the four statutory factors in developing its SIP submission.”¹⁰⁴ Similarly, EPA’s new policy for presumptively approving second planning period SIPs provides that “where visibility conditions

⁹⁸ 82 Fed. Reg. at 3092 (discussing the 1997 proposal in the 2017 final rule preamble); 62 Fed. Reg. 41138, 41146-47 (Jul. 31, 1997).

⁹⁹ 64 Fed. Reg. at 35731.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ 82 Fed. Reg. at 3091-92.

¹⁰⁴ 90 Fed. Reg. at 47681.

for a Class I area impacted by a State are below the URP and the State has considered the four statutory factors, the State will have presumptively demonstrated reasonable progress.”¹⁰⁵ However, as a number of the Environmental Groups have extensively explained in detailed comments to the agency, EPA’s new policy violates the plain text, context, and purpose of the Clean Air Act.¹⁰⁶ For all the same reasons, EPA’s alternative approaches raised under Question 2.a would also violate the Act. To the extent the agency is approving SIPs based on the URP framework regardless of the outcome of any Four-Factor Analysis, the URP acts, in effect, as a safe harbor. And revising the URP framework’s technical considerations is also problematic, particularly where (as suggested under Question 2.b) the revisions are merely intended to make it easier for states and facilities to avoid the required statutory analyses. Indeed, EPA clearly explained that the URP cannot answer what constitutes reasonable progress.¹⁰⁷

2. Existing Measures Cannot Justify Allowing States to Avoid a Four-Factor Analysis, As Congress Did Not Intend for Regulation Under Other Sections of the Act to Preclude or Displace Visibility Protection Requirements.

EPA appears to suggest that control measures already in place to satisfy other requirements could be incorporated into and presumably satisfy a reasonable progress metric (Question 1.a.i) on their own. For instance, EPA asserts that measures adopted under different technology-based standards for purposes of different Clean Air Act programs “have similar considerations to those of the four statutory factors.”¹⁰⁸ But the considerations for reasonably available control technology (“RACT”), best available control technology (“BACT”), and lowest achievable emissions rate (“LAER”) are not identical to the four factors. There is no language in the statute that suggests Congress intended regulation of a particular pollutant or source category under a different provision of the Clean Air Act to preclude or displace requirements for states to address visibility impairment. Rather, where Congress intended regulation under one section of the Act to preclude regulation under another section, it made that preclusion explicit.¹⁰⁹

Any approach that allows states to rely on existing measures to satisfy the visibility requirements of the Clean Air Act, without requiring further analysis to determine reasonable progress based on the four statutory factors, would be unlawful. EPA has previously recognized that a “state should generally not reject cost-effective and otherwise reasonable controls merely because there have been emission reductions since the first planning period owing to other ongoing air pollution control programs or merely because visibility is otherwise projected to improve at Class I areas.”¹¹⁰ Indeed, allowing states to rely on existing measures to avoid

¹⁰⁵ See, e.g., 90 Fed. Reg. 16478, 16483 (Apr. 18, 2025) (proposing to approve West Virginia’s second planning period SIP).

¹⁰⁶ See e.g., Tennessee Comments at 21-33.

¹⁰⁷ 2021 Clarification Memo at 15 (“The URP is a planning metric used to gauge the amount of progress made thus far and the amount left to make. It is not based on consideration of the four statutory factors and, therefore, cannot answer the question of whether the amount of progress made in any particular implementation period is ‘reasonable progress.’”).

¹⁰⁸ 90 Fed. Reg. at 47681.

¹⁰⁹ See 42 U.S.C. § 7411(d)(1).

¹¹⁰ 2021 Clarification Memo at 13.

conducting Four-Factor Analyses and adopting SIPs that include measures necessary to make reasonable progress would read out sections 7491(b)(2) and (g)(1) from the statute, as discussed above.

Furthermore, the set of factors that must be considered in determining RACT, BACT, and LAER are each distinct from one another and from the four factors in section 7491(g)(1). They are also intended for different purposes, such as limiting emissions from new major sources and addressing attainment of the national ambient air quality standards (“NAAQS”). For example, unlike reasonable progress, RACT is not defined in the Clean Air Act and has no statutory connection to the four factors. EPA has defined RACT as the “[l]owest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economical feasibility.”¹¹¹ At most, some of the four factors may overlap with this description, but others clearly do not.¹¹² Additionally, cost analyses conducted as part of the reasonable progress Four-Factor Analyses must adhere to the “overnight” method provided in EPA’s Control Cost Manual,¹¹³ unlike control cost analyses conducted for other technology-based standards under the NAAQS and permitting programs.

Congress created the Regional Haze Program because the NAAQS and permitting programs were not sufficient to address visibility impairment in Class I areas.¹¹⁴ Therefore, existing measures cannot serve as a justification for reading the required consideration of the four factors out of the statute. As EPA has recognized, while “[t]here exist many opportunities for states to leverage both ongoing and upcoming emission reductions under other CAA programs . . . [the agency] also expect[s] states to undertake rigorous reasonable progress analyses that identify further opportunities to advance the national visibility goal consistent with the statutory and regulatory requirements.”¹¹⁵ As discussed further in Section IV.B, the statute and legislative history suggest Congress was aware that other Clean Air Act requirements were not designed or adequate to address visibility impairment, so states must consider whether additional measures and reductions are required to achieve reasonable progress.

C. EPA Has Previously Determined that No Safe Harbor Is Permitted Under the Act, and Congress Deliberately Did Not Include Such a Provision.

EPA solicits feedback on a “safe harbor” approach (Question 3), but as the agency has long recognized, creating a “safe harbor” from the Act’s visibility provisions violates the Act, as there is no “safe harbor” provision in the Clean Air Act. As EPA has previously recognized, “[i]t would bypass the four statutory factors and undermine the fundamental structure and purpose of the reasonable progress analysis to treat the URP as a safe harbor, or as a rigid requirement.”¹¹⁶

¹¹¹ 44 Fed. Reg. 53761, 53762 (Sept. 17, 1979); *Sierra Club v. EPA*, 972 F.3d 290, 294-95 (3d Cir. 2020).

¹¹² 42 U.S.C. § 7491(g)(1).

¹¹³ 2019 Guidance at 31-32; *see also Oklahoma v. EPA*, 723 F.3d 1201, 1212 (10th Cir. 2013) (upholding EPA’s decision to reject cost estimates under the Regional Haze Program that did not follow the Control Cost Manual’s overnight method).

¹¹⁴ H.R. Rep. No. 95-294 at 205.

¹¹⁵ 2021 Clarification Memo at 2.

¹¹⁶ 82 Fed. Reg. at 3100.

EPA’s recently revised approach of effectively using the URP as a safe harbor is problematic because it contravenes the statute, and it is similar to EPA’s second alternative approach in that it uses a metric that is not based on the four factors to determine what is needed to make reasonable progress and creates a presumption or safe harbor that in effect negates the role of the factors in determining necessary measures. As EPA has previously recognized, the URP “is not based on consideration of the four statutory factors and, therefore, cannot answer the question of whether the amount of progress made in any particular implementation period is ‘reasonable progress.’”¹¹⁷ The statute does not authorize use of the URP in a way that negates the statutory factors, and EPA has previously acknowledged that “[i]f the 2028 RPG for the 20 percent most impaired days is below the URP glidepath, that does not exempt states from any of the requirements of the CAA or the Regional Haze Rule.”¹¹⁸ As EPA previously recognized, “[e]ven if a state is currently on or below the URP, there may be sources contributing to visibility impairment for which it would be reasonable to apply additional control measures in light of the four factors.”¹¹⁹ A Four-Factor Analysis necessarily requires states to undertake rigorous technical analyses to determine measures necessary to make reasonable progress. Rather than creating exemptions or ways to avoid this rigorous analysis, Congress intended that significant analytical work would be required in each SIP process and thus enacted section 7491(b)(2)(B) to ensure that states develop SIPs with long-term strategies that cover 10 to 15 years, setting a framework for iterative planning periods during which states must build on emission reductions achieved in each planning period and continuously make progress towards the goal of natural visibility conditions at every Class I area.

D. Creating a Reasonable Progress Metric Would Introduce Additional Uncertainty and Implementation Challenges to the Regional Haze Program and Undermine and Delay Achievement of the Natural Visibility Goal.

EPA refers to this effort as a “restructuring” of the foundations of the visibility program. These dramatic changes to the program are likely to create new uncertainties that will require additional guidance to address, and perhaps the most likely outcome is delaying progress toward the national goal.

A legally-vulnerable rule does not ensure certainty, especially following the Supreme Court’s directive in *Loper Bright* that regulations must adhere to the “best reading” of the statute. Rather, by creating litigation risk, the agency would merely create greater uncertainty for stakeholders. Relying on novel and unsupported interpretations of the Clean Air Act (particularly where those interpretations depart sharply from a contemporaneous interpretation) makes the risk of vacatur particularly high. Amendments to the Regional Haze Rule that implement these alternative approaches would likely violate the Clean Air Act and, therefore, would likely be vacated, sending the agency back to the drawing board.

Furthermore, even if they were legally valid, EPA’s alternative approaches would likely engender significant confusion as new practices are adopted, requiring additional guidance

¹¹⁷ 2021 Clarification Memo at 15.

¹¹⁸ 2019 Guidance at 50.

¹¹⁹ 82 Fed. Reg. at 3099.

documents and leading to delay. If the agency intends to “move forward with fundamentally revising the Regional Haze program,”¹²⁰ by addressing “foundational parts of the current Regional Haze program,”¹²¹ these wholesale changes would inevitably require further clarification. Without adequate explanation, including through additional guidance, efforts to streamline requirements may create new challenges for states trying to understand the implications of these changes.

Also, EPA already relaxed the procedural requirements for progress reports, which had previously been treated like formal SIP revisions.¹²² Relaxing those requirements such that states only need to go through the SIP revision process every ten years (rather than every five) has already significantly reduced the burden on states. EPA’s alternative approaches would dilute the procedural requirements to the point that states would not even necessarily be required to go through the analytical work and procedural requirements (including gathering stakeholder feedback) for SIP revisions once every ten years.

IV. EPA’s Alternative Approaches for Developing Criteria to Determine When a SIP Revision Is Necessary Are Unlawful.

Similar to the alternative approaches EPA raises for Topic 1 of the ANPRM, the alternative approaches and questions posed under Topic 2—“development of criteria used to determine when a SIP revision is necessary”—focus on ways EPA could off-ramp states from the Regional Haze Program and evade the requirement to develop SIPs to make reasonable progress in each planning period.¹²³ As a result, the alternative approaches raised under Topic 2 violate the Clean Air Act for the same reasons the alternative approaches discussed under Topic 1 violate the Clean Air Act, as discussed above. Additionally, the alternative approaches and questions posed under Topic 2 of the ANPRM suggest that states could avoid the Act’s requirements when Class I areas get sufficiently “close to” achieving natural visibility conditions or where a state’s contribution to impairment at Class I areas is purportedly “small.” These alternative approaches would further violate the Act’s text and purpose and are contrary to EPA’s long-standing interpretations of the Clean Air Act’s regional haze requirements.

A. Alternative Approaches that Let States Avoid Developing SIPs Violate the Clean Air Act.

As with the alternative approaches and questions discussed above for Topic 1 of the ANPRM, EPA’s alternative approaches and questions related to Topic 2 on developing criteria to determine when a SIP revision is necessary are also aimed at letting states evade the Clean Air Act’s requirement to develop and implement haze SIPs. For instance, EPA discusses developing “criteria . . . to identify Class I areas where sufficient visibility progress is being made during a planning period such that states contributing to those areas would not have any SIP revision, or substantive SIP revision obligations.”¹²⁴ Similar to the alternative approaches raised under Topic

¹²⁰ 90 Fed. Reg. at 47678.

¹²¹ *Id.* at 47680.

¹²² 82 Fed. Reg. at 3119.

¹²³ 90 Fed. Reg. at 47678.

¹²⁴ *Id.* at 47683.

1, the alternative approaches raised under Topic 2 would effectively create a “safe harbor” from the entire Regional Haze Program. Thus, the alternative approaches discussed in Topic 2 violate the Clean Air Act for the same reasons discussed in Sections II and III above. Additionally, EPA’s references to a “reasonable progress metric” under Topic 2 similarly violate the Act for the same reasons discussed in Section III above.

B. Alternative Approaches Suggesting that Enough Progress Already Has Been Made Violate the Purpose of the Act.

A number of the alternative approaches and questions EPA poses in the ANRPM suggest that there may be a point at which a Class I area has gotten “close to” or “near” achieving natural conditions and has made “enough” progress such that states should not have to develop SIPs addressing their contribution to visibility impairment at that Class I area.¹²⁵ Similarly, a number of the alternative approaches and questions EPA poses raise the idea of setting “de minimis” levels of impairment or establishing “preservation” thresholds for Class I areas to determine when visibility impairment at a Class I area is “sufficiently minimal” or when continued improvement would not be perceptible.¹²⁶ These alternative approaches and suggestions are contrary to the Act’s text and purpose.

In section 7491(a)(1), Congress “declare[d] as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.” Thus, Congress clearly specified that the aim of the Act’s visibility provisions is the elimination of all manmade pollution affecting all Class I areas. Nothing in this statutory text provides that EPA should establish regulations that merely get “close to” achieving this goal.

Indeed, Congress specified that EPA and states should remedy “*any* existing” and prevent “*any* future” anthropogenic visibility impairment at Class I areas.¹²⁷ Controlling precedent mandates that words like “any” have an “expansive” meaning¹²⁸ and the repeated use of “any” in this provision makes the Act’s mandate broadly inclusive.¹²⁹ The purpose of the Act’s visibility provisions is underscored by Congress’s second double use of “any” in section 7491(b)(2), directing that states that are reasonably anticipated “to cause or contribute to *any* impairment of visibility” in “*any* [Class I] area” must develop regional haze SIPs to make reasonable progress toward achieving the natural visibility goal.¹³⁰ The repeated double use of “any” shows that

¹²⁵ *Id.* at 47682-84.

¹²⁶ *Id.*

¹²⁷ 42 U.S.C. § 7491(a)(1) (emphasis added).

¹²⁸ *Dep’t of Hous. and Urban Dev. v. Rucker*, 535 U.S. 125, 131 (2002) (explaining that “‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind’”); *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 218-19 (2008) (“Read naturally, the word ‘any’ has an expansive meaning.”).

¹²⁹ *Massachusetts v. EPA*, 549 U.S. 497, 528-29 (2007) (explaining that the Clean Air Act’s use of “any” in the definition of “air pollutant” made the definition “sweeping” and the Act’s “repeated use of the word ‘any’” showed that Congress meant to for the definition to “embrace[] all airborne compounds of whatever stripe”).

¹³⁰ 42 U.S.C. § 7491(b)(2) (emphasis added).

Congress meant what it said in the statute—EPA and states must eliminate all manmade visibility pollution affecting all Class I national parks and wilderness areas.¹³¹

EPA itself has reaffirmed that the aim of the Regional Haze Program is to eliminate all anthropogenic haze pollution in Class I areas. For the 2017 Regional Haze Rule revision, EPA explained, in response to comments urging that the national goal set forth in section 7491(a)(1) should only be considered aspirational, that “CAA section 169A(a)(1) establishes that the desired ultimate condition at every Class I area is the absence of any impairment due to anthropogenic sources.”¹³² Thus, in the 2017 Rule revision preamble, EPA acknowledged that achieving anything less than natural visibility conditions was contrary to the Act. As EPA noted, requiring states to submit SIPs to make reasonable progress based on the four statutory factors in each planning period “is consistent with and advances the ultimate goal” of section 7491 to eliminate all manmade visibility pollution and “it would be antithetical to allow states to avoid implementing reasonable measures until and unless that goal is achieved.”¹³³

Additionally, EPA’s alternative approaches under Topic 2 generally ignore the second half of the Act’s goal to “prevent[] any future . . . impairment” at Class I areas.¹³⁴ Although EPA claims that the alternative approaches discussed under Topic 2 “would also need to ensure that the statutory requirement for preventing future visibility impairment is also addressed,”¹³⁵ a number of the suggestions and arguments EPA raises here would read the requirement to prevent future impairment out of section 7491. For instance, EPA asserts in the ANPRM that Congress created section 7491 to address existing impairment and created the Prevention of Significant Deterioration (PSD) program to address future impairment.¹³⁶ Contrary to EPA’s claim, Congress expressly called out “future . . . impairment” in section 7491 and required that states develop SIPs that contain the measures needed to make reasonable progress toward the national goal, including the prevention of future impairment.¹³⁷ Had Congress intended that only the PSD program would address future impairment, it would not have included future impairment in section 7491(a)(1). Rather, Congress’s inclusion of “future . . . impairment” in this section was intentional, and EPA cannot interpret the Act in ways that fail to give meaning to each word of the statutory text.¹³⁸

EPA attempts to point to legislative history to support its claim that Congress intended that the PSD program would address future impairment. However, EPA’s interpretation is not supported by the history it cites. EPA quotes the 1977 House Conference Committee Report

¹³¹ *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 509 (2014) (explaining that practical difficulties in implementation or administrative efficiency do not justify departure from the Act’s plain text; courts “must presume that a legislature says in a statute what it means and means in a statute what it says there.”).

¹³² 2017 RHR RTC at 83.

¹³³ 82 Fed. Reg. at 3094.

¹³⁴ 42 U.S.C. § 7491(a)(1).

¹³⁵ 90 Fed. Reg. at 47682.

¹³⁶ *Id.* at 47683.

¹³⁷ 42 U.S.C. §§ 7491(a)(1), (b)(2).

¹³⁸ *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.” (internal quotation marks omitted)).

providing that “[a] major concern which prompted the House to adopt the visibility protection provision was the need to remedy existing pollution” and that “[i]ssues with respect to visibility . . . in application to new sources are to be resolved within the procedures for [PSD].”¹³⁹ As noted in the Conference Committee Report, the PSD program applies only to new major sources or major modifications of existing sources. The Act’s haze provisions apply to all sources, new or existing, that contribute to impairment at Class I areas. As a result, nothing in this quoted text provides that EPA or states can ignore section 7491(a)(1)’s goal of preventing future impairment. Indeed, other legislative history directly contradicts EPA’s claim that Congress believed the PSD program was sufficient.¹⁴⁰ The House Committee Report on the 1977 amendments to the Clean Air Act provided that “[t]he current national ambient air quality standards are not adequate to protect visibility”¹⁴¹ and that the PSD program “do[es] not protect adequately visibility in class I areas.”¹⁴² As a result, EPA has itself made clear that states cannot avoid requiring sources to install reasonable controls “merely because there have been emission reductions since the first planning period owing to other ongoing air pollution control programs or merely because visibility is otherwise projected to improve at Class I areas.”¹⁴³

C. Alternative Approaches That Would Let States Evade the Act’s SIP Development Requirements Where Their Contributions to Impairment Are “Small” Violate the Act.

EPA raises alternative approaches and questions in the ANPRM suggesting that states that contribute allegedly “small” amounts of visibility impairment to Class I areas should be “relieved of [the] obligation[.]” to identify measures necessary to make reasonable progress or develop a regional haze SIP.¹⁴⁴ EPA also suggests that states should not be required to develop SIPs if additional measures are purportedly unlikely to achieve “any perceptible improvement in visibility conditions” at affected Class I areas or do not “meaningfully contribute” to impairment at a Class I area.¹⁴⁵ As with the other alternative approaches that would let states avoid the requirements of section 7491, these alternative approaches discussed under Topic 2 are unlawful.

As EPA explained in the 2017 Regional Haze Rule revision preamble, “the pollutants that lead to regional haze can originate from sources located across broad geographic areas” and “these sources may be numerous and emit amounts of pollutants that, even though small, contribute to the collective whole.”¹⁴⁶ Thus, EPA has repeated that “[a] state should not fail to

¹³⁹ 90 Fed. Reg. at 47683 n.32 (citing Legislative History of the Clean Air Act Amendments of 1977 Public Law 95-95 91 Stat. 685 (1977)).

¹⁴⁰ *Id.* (asking if “the PSD program [is] sufficient to address the prevention of any future anthropogenic visibility impairment?”).

¹⁴¹ H.R. Rep. No. 95-294 at 204; *id.* at 205 (stating that “as a matter of equity, the [NAAQS] cannot be revised to adequately protect visibility in all areas of the country”).

¹⁴² *Id.* at 205.

¹⁴³ 2021 Clarification Memo at 13.

¹⁴⁴ 90 Fed. Reg. at 47682; *see also id.* at 47684 (suggesting that “EPA could determine that states with ‘very small’ anthropogenic contributions to any Class I areas meet the statutory and regulatory Regional Haze requirements and no new SIP revision would be required” and that EPA could “establish a *de minimis* contribution threshold”).

¹⁴⁵ *Id.* at 47682-83.

¹⁴⁶ 82 Fed. Reg. at 3082.

address its many relatively low-impact sources merely because it only has such sources and another state has even more low-impact sources and/or some high impact sources.”¹⁴⁷ Although there have been improvements in visibility since Congress first adopted the visibility provisions of the Act, “additional progress is needed to achieve the national goal set by Congress” and states must continue to “[e]valuat[e] control measures for relatively smaller sources (with commensurate smaller visibility benefits from each individual source) . . . to continue making reasonable progress towards the national goal.”¹⁴⁸

Again, any rule revision that would let states avoid their obligations under section 7491 by claiming that their contribution to impairment at Class I areas is “small” would read out of the statute the requirement to develop SIPs that contain all the measures deemed necessary to make reasonable progress based on the four statutory factors. As noted above, section 7491(b)(2) requires states to develop these SIPs if they contribute to *any* visibility impairment at *any* Class I area.¹⁴⁹ Notably, this text does not condition the requirement to develop a SIP on a state’s contribution being “significant” or “meaningful.” When Congress elected to make the applicability of a Clean Air Act provision contingent on “significant” contribution, it did so expressly. The Clean Air Act contains numerous provisions that require or authorize EPA or the states to reduce emissions only when they “contribute[] significantly” to pollution or to violations of air quality standards.¹⁵⁰ In fact, other parts of the Clean Air Act’s visibility provisions explicitly provide EPA and the states authority to establish visibility transport regions to address pollution from one or more states that “contribute significantly” to impairment.¹⁵¹ And other provisions require EPA to study and identify the types of pollutants that “may reasonably be anticipated to cause or contribute significantly to impairment of visibility.”¹⁵² In stark contrast to the numerous provisions of the Act that condition regulatory authority on a source’s or state’s “significant” contribution, 42 U.S.C. § 7491(b)(2)—the provision at issue here—conspicuously omits the modifier “significant.”¹⁵³ Rather, the courts and EPA have explained that this statutory

¹⁴⁷ 2017 RHR RTC at 87-88; *see also* 2021 Clarification at 4 (quoting the 2017 RHR RTC).

¹⁴⁸ 2021 Clarification Memo at 14.

¹⁴⁹ *See supra* Section II.

¹⁵⁰ *See, e.g.*, 42 U.S.C. § 7410(a)(2)(D) (requiring pollution reductions from states that “contribute significantly” to downwind nonattainment); *id.* § 7411(b)(1)(A) (requiring new source performance standards for categories of sources that “contribute[] significantly” to the endangerment of public health); *id.* § 7413a (requiring particulate matter reductions for sources that “contribute significantly” to violations of the standard); *id.* § 7512a(c) (pertaining to areas with “significant stationary source emissions” of carbon monoxide); *id.* § 7513(f) (waivers for sources that “do not contribute significantly”); *id.* § 7506a(a) (authority to establish pollution transport regions for areas that “contribute significantly”); *id.* § 7586(a)(2)(B) (excluding carbon monoxide nonattainment areas where vehicles “do not contribute significantly” to exceedances).

¹⁵¹ *Id.* § 7492(a).

¹⁵² *Id.* § 7491(a)(3).

¹⁵³ *Intel Corp. Inv. Pol’y Comm. v. Sulyma*, 589 U.S. 178, 186 (2020) (holding that courts “generally presum[e] that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another”); *see also Russell v. United States*, 464 U.S. 16, 21 (1983) (“[I]t is a general principle of statutory construction that when Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”).

requirement establishes a “low triggering threshold” for when states must develop SIPs to address regional haze pollution from in-state sources.¹⁵⁴

In fact, EPA has disapproved SIPs where states alleged that they do not need to select sources or consider potential emission reduction measures based on the four factors because their contributions to impairment are allegedly minimal. In its proposal to fully disapprove Kansas’s second planning period SIP, which EPA later finalized,¹⁵⁵ the agency noted that Kansas failed to select any sources for Four-Factor Analyses, claiming that the impact of Kansas pollution on Class I areas was comparatively smaller than other states and that in-state sources “have an insignificant visibility impact” on affected Class I areas.¹⁵⁶ EPA rejected Kansas’s claims. The agency explained that even “a small visibility impact on any of the Class I Areas identified by Kansas” was “sufficient to trigger the regional haze requirements to evaluate sources for control measures considering the four factors.”¹⁵⁷ EPA further stated that, even if other states contribute more to impairment at affected Class I areas, “that does not mean that Kansas’s contributions to visibility impairment are insignificant.”¹⁵⁸ Rather, EPA noted that the fact that Kansas’s own analyses showed that it contributes to impairment at Class I areas was “evidence that sources in Kansas should be evaluated, including consideration of the four factors, to determine whether cost effective controls for those sources exist and to determine measures that are necessary to make reasonable progress.”¹⁵⁹ Thus, the agency recognizes that, even where a state’s contribution to impairment is purportedly small, the Act requires the state to determine whether there are emission reduction measures that would be necessary to make reasonable progress toward the natural visibility goal based on an analysis of the four statutory factors.

EPA has also repeatedly rejected the idea that states should be permitted to evade the Act’s requirements by claiming their contributions to impairment are not “perceptible” or that potential emission reduction measures would not achieve “perceptible” improvements in visibility impairment. In its Response to Comments document on the 2017 Regional Haze Rule revision, EPA explained that:

[r]egional haze is typically caused by contributions from many sources, some of which may not be individually perceptible to the human eye but in the aggregate are perceptible. If each source could be exempted from control based on its individual impact not being perceptible, the aggregate impact of the exempted sources could be very perceptible and prevent reasonable progress towards natural visibility conditions.¹⁶⁰

Thus, EPA concluded that “[a] measure may be needed to make reasonable progress even if the source in question is not in total making a perceptible change in visibility and even if the measure

¹⁵⁴ See *supra* Section II.

¹⁵⁵ 89 Fed. Reg. 64373 (Aug. 7, 2024).

¹⁵⁶ 89 Fed. Reg. 178, 188 (Jan. 2, 2024).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 189.

¹⁵⁹ *Id.*; see also *id.* at 189 n.37 (citing the 2017 RHR RTC at 87-88).

¹⁶⁰ 2017 RHR RTC at 190.

would not make such a change, because . . . making progress will require that many relatively small contributions to visibility impairment be addressed.”¹⁶¹

EPA has similarly disapproved SIPs where states have rejected reasonable controls by alleging those controls would result in too little visibility improvement. In its proposal to partially disapprove North Dakota’s second planning period SIP, which EPA later finalized,¹⁶² the agency explained that North Dakota rejected controls for two facilities based on modeling results that purportedly showed the emission reductions from analyzed controls would not be “perceptible” to the human eye.¹⁶³ EPA concluded that North Dakota’s “rationale lack[ed] foundation in *both the text and the purpose of the CAA* and RHR.”¹⁶⁴ As the agency explained, “*nowhere in the statute or regulations is there a requirement that control measures produce perceptible visibility improvements to be considered necessary to make reasonable progress at a particular Class I area.*”¹⁶⁵

V. EPA’s Alternative Approaches for Determining the Content of SIPs Violate the Clean Air Act.

Many of the questions EPA poses under Topic 3 have already been answered by the statutory text. In fact, EPA has previously resolved a number of the issues EPA now raises again for comment even though EPA previously found the Act counseled a specific approach. Additionally, as noted in Section VII below, the Environmental Groups have previously provided detailed recommendations to EPA regarding Regional Haze Rule revisions that would strengthen the Rule while simultaneously providing regulatory certainty for states in developing regional haze SIPs. Those same recommendations address many of the questions EPA poses under Topic 3 of the ANPRM.

A. Alternative Approaches to Let States Avoid Developing SIPs Violate the Clean Air Act.

Although Topic 3 of the ANPRM is purportedly focused on potential changes to the SIP development requirements under the Regional Haze Program, EPA again raises alternative approaches that would require states to only develop SIPs on an “as needed” basis.¹⁶⁶ In other words, EPA again raises approaches to let states avoid having to develop regional haze SIPs

¹⁶¹ *Id.* at 269.

¹⁶² 89 Fed. Reg. 95126 (Dec. 2, 2024). Although EPA has recently granted Petitions for Reconsideration of its final partial disapproval, the agency did not assert that its determinations in the proposal referenced here were the basis of its decision to reconsider the final rule. *See, e.g.*, Letter from Cyrus Western, Reg’l Admin., U.S. Env’t Prot. Agency Region 8, to Margaret Olson, Sr. Staff Counsel, Basin Elec. Power Coop. at 1 (Apr. 30, 2025) (stating only that “EPA is writing to inform you that we are granting your request for reconsideration”); Letter from Cyrus Western, Regional Administrator, EPA Region 8, to L. David Glatt, Dir., N.D. Dep’t of Env’t Quality at 1 (Apr. 30, 2025) (same).

¹⁶³ 89 Fed. Reg. 56693, 56706 (July 10, 2024).

¹⁶⁴ *Id.* (emphasis added).

¹⁶⁵ *Id.* (citing 82 Fed. Reg. at 3093) (emphasis added); *see also id.* (“Nothing in the language of either the CAA or the RHR suggests that non-statutory factors, such as whether visibility improvement is ‘perceptible’ or ‘significant,’ can outweigh the results of an analysis based on those factors explicitly prescribed in the statute.”).

¹⁶⁶ 90 Fed. Reg. at 47684.

altogether. As discussed above, here too, the alternative approaches on which EPA is seeking comment would violate the Clean Air Act's requirements. EPA wrongly claims that these alternative approaches would meet the requirements of section 7491(b)(2). That is incorrect. These approaches violate the Act for the same reasons noted above in Section II and Section III.

B. EPA Should Not Extend the Planning Period from 10 Years to 15 Years.

EPA solicits comment on whether planning periods should be extended to 15 years from their current duration of 10 years.¹⁶⁷ EPA should retain the 10-year planning periods.

The history of delay in implementing the Regional Haze Program counsels *against* extending existing deadlines. Extending the planning period by an additional five years—50% of the current period—will only exacerbate the significant delays experienced thus far in achieving progress toward the statutory goal. More than 40 years after Congress passed the regional haze provisions of the Clean Air Act in 1977, the majority of states have only recently completed the initial round of regional haze plans, and three states—Nebraska, Pennsylvania and Wyoming—still lack complete regional haze plans for the *first* 10-year planning period. SIPs for the second planning period were due on July 31, 2021, after EPA extended that deadline from 2018. However, 15 states failed to meet this extended deadline.¹⁶⁸ Some states have still not submitted SIPs to EPA, let alone released them for public comment at the state level. EPA has also been delinquent and failed to take final action on SIPs by applicable statutory deadlines. These delays have tangible consequences for meeting the statutory goal in a timely fashion. Historical performance within the program suggests that extending planning periods does *not* result in more timely completion of required actions. There is no reason to believe that an additional 5-year extension would do anything other than create even more delay and slow progress—and EPA has provided no evidence to the contrary.

If EPA were to simply change planning periods to 15 years, EPA would be delaying the implementation of needed emission reductions from one planning period to the next, which would delay achievement of the Clean Air Act's goal of achieving natural visibility conditions. As discussed above, Congress did not intend to prolong making progress towards this goal. Progress would be delayed because, by increasing the amount of time between state plan submissions, EPA would delay inclusion of updated measures based on progress in development of new control technologies and techniques. EPA would also further delay the time it would take to update SIPs to incorporate new federally enforceable measures for sources to implement.

It would be especially damaging for EPA to simultaneously increase the duration of planning periods to 15 years *and*—as EPA has also suggested—require states to submit updated SIPs only on an “as needed” basis instead of at regular intervals. This would mean less frequent opportunities to reassess goals and ensure timely progress towards the national goal. As EPA previously recognized, “[a] program that did not anticipate and provide for the need for future periodic review and revisions, would not be responsive to the national goal of preventing any future manmade visibility impairment.”¹⁶⁹ Specifically, and at the very least, because “the

¹⁶⁷ *Id.* at 47684.

¹⁶⁸ See EPA, Fact Sheet, Finding of Failure to Submit Regional Haze State Implementation Plans for the Second Planning Period (Aug. 8, 2022), <https://www.epa.gov/system/files/documents/2022-08/FFS%202022%20RH%20Fact%20Sheet.pdf> (attached as Ex. 37).

¹⁶⁹ 64 Fed. Reg. at 35745.

statutory factors which States must consider in determining a reasonable progress goal include costs of control and availability of controls” and “given that technology changes can affect costs and availability of controls over time,” regular revisions are needed to ensure that, based on developments in technological advancements including cost and availability of technology, the previously determined reasonable progress goals are still “reasonable.”¹⁷⁰

EPA suggests that states would be required to update their long-term strategies on an “as needed” basis “when sufficient reasonable progress is not being made towards the national goal.”¹⁷¹ EPA states it “could issue a SIP call informed by the EPA’s current understanding of visibility conditions at the 156 Class I areas.”¹⁷² EPA states further that “[t]he RHR could also be revised to include a mechanism for the EPA to periodically report on visibility conditions at Class I areas to inform this decision, consistent with CAA section 169B(b).”¹⁷³ This approach would violate the Clean Air Act. The statute clearly provides 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.”¹⁷⁴ In order to assess whether “reasonable progress” is being made, there must be consideration of these statutory factors, which is exactly what periodic updates to SIPs achieve. EPA could not replace assessment of these factors with only its assessment, unmoored from the Act’s requirements in section 7491(b)(2) and (g)(1), in determining whether SIPs need to be updated to ensure reasonable progress.

C. Existing Measures that Are Necessary to Make Reasonable Progress Must Be Included in the SIP.

EPA solicits comment on the content of SIPs, including whether states must incorporate emissions reductions from other Clean Air Act regulatory programs into their regional haze plans and whether states must incorporate sources’ current emissions reduction measures into their regional haze SIPs in order to obtain “credit” for those reductions.¹⁷⁵ As EPA has recognized consistently, states must include in their SIPs all measures they have deemed necessary to achieve reasonable progress.

As explained above, the Clean Air Act requires states to identify the measures necessary to make reasonable progress based on an analysis of the four factors identified in section 7491(g)(1). EPA has explained that if, based on a reasonable and well-supported analysis of these factors, a state determines that no new measures are reasonable for a given source beyond the source’s existing measures, then the source’s existing measures are deemed necessary to make reasonable progress. Measures, whether existing or new, that are necessary to make

¹⁷⁰ *Id.* at 35745-46.

¹⁷¹ 90 Fed. Reg. at 47684.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ 42 U.S.C. § 7491(g)(1).

¹⁷⁵ 90 Fed. Reg. at 47684-85.

reasonable progress must be incorporated as enforceable emission limits, schedules of compliance, or other measures under section 7491(b)(2).¹⁷⁶

EPA has repeatedly reinforced this. In its 2019 Guidance, EPA reaffirmed that the Clean Air Act requires states “to include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress as determined by taking into consideration the four statutory factors.”¹⁷⁷ EPA also clarified that “if a state determines that an in-place emission control at a source is a measure that is necessary to make reasonable progress and there is not already an enforceable emission limit corresponding to that control in the SIP” then “the state is required to adopt emission limits based on those controls as part of its [long-term strategy] in the SIP.”¹⁷⁸ In the 2021 Clarification Memo, EPA said again that if a state conducts a Four-Factor Analysis and determines that no new measures are reasonable, then the source’s *existing measures* are generally deemed needed to prevent future visibility impairment and to make reasonable progress.¹⁷⁹ These necessary measures must be included in the SIP.¹⁸⁰

EPA also asks for comment on pathways to making existing measures federally enforceable in a SIP.¹⁸¹ States cannot rely on mechanisms that are not incorporated into the SIP, such as facility-specific permit conditions and consent decrees. Measures that are not included in the SIP may be changed, revoked, or expire without amendments to the SIP and thus cannot be the basis for reductions the states rely on.

EPA has stated this explicitly. For example, in EPA’s 2024 proposed action on Missouri’s SIP, EPA noted that “Title V permit requirements are not permanent and therefore may not be relied upon for SIP requirements unless those components of the permit are submitted for inclusion into the SIP.”¹⁸² While the emission limits and other measures contained in a Title V permit may be “federally enforceable” for other purposes under the Clean Air Act, the state-issued permits that make those emission limits enforceable can expire or be revised and thus do not meet the SIP requirement for permanence. EPA has required states relying on pre-existing or outside measures to incorporate them into the SIP so that those measures “cannot be modified by later changes made to the underlying agreements or permits outside of the SIP revision process.”¹⁸³ Clean Air Act sections 110(i) and (l) require that SIPs only be amended through the SIP amendment procedures.¹⁸⁴ Allowing reliance on measures that may be unilaterally amended by the state violates these provisions.¹⁸⁵ EPA’s 1992 regulations also clearly stated that SIPs must include “a legal mean[s] for ensuring that sources are in compliance with the control measure[s]” and that “the control strategy [must] be accountable,” meaning

¹⁷⁶ See also 42 U.S.C. § 7410(a)(2)(A), (C) (SIPs to include “enforceable emission limitations and other control measures, means, or techniques . . . , as well as schedules and timetables for compliance, as may be necessary,” and “a program to provide for the enforcement of the measures described in [the SIP].”)

¹⁷⁷ 2019 Guidance at 50.

¹⁷⁸ *Id.* at 43.

¹⁷⁹ 2021 Clarification Memo at 8-9.

¹⁸⁰ *Id.*

¹⁸¹ 90 Fed. Reg. at 47685.

¹⁸² 89 Fed. Reg. 55140, 55160 n.65 (July 3, 2024).

¹⁸³ *Id.* at 55161.

¹⁸⁴ 42 U.S.C. § 7410(i), (l).

¹⁸⁵ See 89 Fed. Reg. at 55161.

“source-specific limits should be permanent.”¹⁸⁶ Because consent decrees can similarly be amended or terminated without following the Act’s SIP amendment procedures, they also cannot satisfy the requirement that SIP measures be permanent. Thus, any measure from a permit or a consent decree that a state determines is necessary to make reasonable progress or that a state otherwise relies on in its SIP must be formally incorporated into the regulatory portion of the SIP.

Therefore, to the extent EPA is considering alternative approaches that would allow states to rely on emission reductions already achieved under other programs to avoid analyzing potential additional measures or developing SIPs altogether, those approaches violate the Clean Air Act for the same reasons discussed above in Section II.C.

D. States and EPA Cannot Consider Visibility as a Regulatory Factor.

EPA asks, “How should visibility be considered as a regulatory factor to ensure Regional Haze SIP revisions are evaluated based on visibility improvement at Class I areas?”¹⁸⁷ The premise of this question itself is flawed. The answer is that states cannot consider visibility as a non-statutory *fifth* factor in their analyses of the *four statutory factors* that Congress expressly identified when prescribing how states must determine the measures needed to make reasonable progress. The Clean Air Act sets forth four, and only four, factors for determining what is needed to make reasonable progress in section 7491(g)(1) and EPA cannot insert extra-statutory criteria into this determination. Rather, under the Act visibility is already taken into account in the selection of sources to evaluate for additional controls.

Because Congress intentionally omitted any reference to visibility in the definition of reasonable progress, it is clear that states may not reject reasonable control measures based on assertions about visibility conditions at Class I areas or assertions about the visibility benefit (or alleged lack thereof) of emission reduction measures.¹⁸⁸ Courts have repeatedly explained that “[i]t is axiomatic that the statutory definition of the term excludes unstated meanings of that term.”¹⁸⁹ The absence of visibility in the definition at section 7491(g)(1) is contrasted with the Act’s definition of best available retrofit technology (“BART”), which *does* explicitly include as one of five factors to consider “the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.”¹⁹⁰ For states to consider visibility benefits or related factors like visibility conditions when evaluating whether potential controls are reasonable would be to read into the Act’s definition of “reasonable progress” an additional fifth factor that does not exist.

Rather, the Act provides that states and EPA consider visibility in the development of SIPs through the identification of affected Class I areas and selection of sources for which they

¹⁸⁶ 57 Fed. Reg. 13498, 13568 (Apr. 16, 1992).

¹⁸⁷ 90 Fed. Reg. at 47685.

¹⁸⁸ See *Intel Corp. Inv. Pol’y Comm.*, 589 U.S. at 186; *EME Homer City Generation, L.P.*, 572 U.S. at 509; *Motor Vehicle Mfrs. Ass’n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (explaining that it is arbitrary and capricious for agencies to “rel[y] on factors which Congress has not intended”).

¹⁸⁹ *Meese v. Keene*, 481 U.S. 465, 484 (1987) (citing *Colautti v. Franklin*, 439 U.S. 379, 392 & n.10 (1979)); see also *United States v. Olson*, 856 F.3d 1216, 1223 (9th Cir. 2017).

¹⁹⁰ 42 U.S.C. § 7491(g)(2).

will conduct Four-Factor Analyses. Under the Act, a state must develop a “long-term strategy” to “make reasonable progress towards meeting the national goal” of preventing and remedying anthropogenic visibility impairment for any in-state Class I areas and any out-of-state Class I areas for which in-state pollution sources “may reasonably be anticipated to cause or contribute to any impairment of visibility.”¹⁹¹ In other words, states and EPA account for visibility impacts in determining which Class I areas are affected by in-state pollution sources and in selecting the sources that contribute to impairment at those Class I areas to be addressed in the long-term strategy, but not in determining what emission reduction measures are necessary to make reasonable progress for those selected sources. To insert visibility as an unnamed fifth factor is contrary to the plain language of the Act.

Additionally, section 7491 does not contain any exemptions from the Act’s reasonable progress requirements, including in cases where affected Class I areas are projected to be below the URP glidepath. This is again in stark contrast to section 7491(c), which contains explicit exemptions from BART that are based on visibility conditions. Furthermore, regional haze is “visibility impairment that is caused by the emission of air pollutants from numerous anthropogenic sources located over a wide geographic area.”¹⁹² At any given Class I area, hundreds or even thousands of individual sources may contribute to visibility-impairing haze. Thus, it is not appropriate to reject a reasonable control measure for a single emission unit, a single source, or even a group of sources on the basis of a lack of associated visibility benefits. As EPA has explained, “[t]he CAA does not provide that states may . . . reject some control measures if, in the aggregate, the controls are projected to result in too much or too little progress.”¹⁹³

E. The Clean Air Act Requires States to Engage in Meaningful FLM Consultation.

EPA asks for feedback on FLM consultation requirements, including the materials that must be offered to FLMs for consultation and when FLM consultation should occur.¹⁹⁴ The FLM’s role in the SIP process should be strengthened by adopting additional measures to ensure states consult with FLMs early and to allow FLMs meaningful participation in the process.

By providing that states must consult with FLMs when developing their SIPs, Congress recognized the critical role of FLMs in ensuring that states comply with the requirements of the Act and make reasonable progress toward the natural visibility goal.¹⁹⁵ As the entities tasked with administering Class I parks and wilderness areas across the country, FLMs are the experts in stewardship of these public lands. Additionally, by requiring that states consult with FLMs in person before holding a public hearing on the draft SIP and that states include a summary of the conclusions and recommendations of FLMs in the public notice for the draft SIP,¹⁹⁶ Congress clearly intended that FLM consultation meaningfully influence the SIP development process. By requiring FLM consultation in advance of state level comments, Congress intended for states to

¹⁹¹ *Id.* § 7941(b)(2).

¹⁹² 40 C.F.R. § 51.301

¹⁹³ 82 Fed. Reg. at 3093.

¹⁹⁴ 90 Fed. Reg. at 47685.

¹⁹⁵ 42 U.S.C. § 7491(d).

¹⁹⁶ *Id.*

meaningfully consider FLM recommendations to ensure SIPs satisfy the requirements of the Act and for states to revise their SIPs in response to these recommendations. Similarly, that Congress required states to include a summary of the FLMs' recommendations in the public notice shows that Congress intended states to be publicly accountable in responding to the FLM's recommendations, further highlighting the importance of FLM review. Doing so also puts the public on notice of the potential deficiencies in draft SIPs, ultimately supporting compliance with the Act.

To ensure that FLM consultations are meaningful, states must provide FLMs with a robust opportunity to thoroughly review their draft SIPs. At minimum, states should be required to provide FLMs their full draft SIPs, including their long-term strategy, Four-Factor Analyses, and underlying documentation and technical analyses. The timing of this consultation must strike a balance between ensuring that state SIPs are sufficiently developed for the FLMs to provide meaningful feedback, but not too late in the process such that states will not have time to review the FLMs recommendations and revise their draft SIPs in response before releasing them for public comment. FLMs need to also have sufficient time to review the SIP and supporting documentation, and to provide robust feedback. EPA should at minimum retain the current requirement that states provide materials to FLMs for their review, at least 60 days before a public hearing or comment opportunity on the draft SIP.¹⁹⁷ However, informal consultation should be taking place long before and throughout SIP development, including on ambient data analyses, screening of sources, potential emission control measures, and regional scale modeling of long-term strategies.

States should also consult with FLMs on SIP revisions and any substantive changes thereto, including SIP supplements, amendments, or wholly new SIP submissions. The FLMs' role in assessing the SIPs' compliance with the Act is as equally important at each of these junctures as it is at the outset of SIP drafting.

FLM consultation should not unduly slow down or burden the SIP development process because FLMs have historically identified substantive deficiencies where states have failed to meet the requirements of the Act. Strengthening the FLM's role would increase accountability in the SIP development process and encourage states to proactively ensure their draft SIPs comply with the Act. And where states have appropriately developed SIPs in compliance with the Act, the FLM's role should not create any additional work for the state.¹⁹⁸

EPA must provide firm direction to states that they must meaningfully consider and address the insight and recommendations of federal agency counterparts, and that states must use the FLM consultation comments to inform or amend the pre-public version of the SIP and provide a reasoned basis for any disagreement. The states' proposed plans must reflect actual consideration of FLM input. EPA should reiterate that states must plan for adequate time to

¹⁹⁷ 40 C.F.R. § 51.308(i)(2).

¹⁹⁸ Compare NPS, Regional Haze SIP Feedback for the North Dakota, Department of Environmental Quality (Nov. 19, 2021) (raising numerous errors in the North Dakota SIP that violate the requirements of the Act) (attached as Ex. 38), with Email from Melanie Peters, Air Resources Division, NPS, to Michael Madsen et al, Hawaii State Department of Health (July 28, 2023) (noting only a handful of recommendations to further "strengthen the SIP revision" and noting that Hawaii exhibited "diligence . . . in adhering to the SIP development process") (attached as Ex. 39).

review and address FLM comments. States should not be able to use lack of time as an excuse to avoid meaningful engagement with FLMs and consideration of their input.

VI. There Are Numerous Technical Issues with EPA’s Alternative Approaches.

In the ANPRM, EPA asserts that “rather than requiring every state...to submit a SIP every planning period,” as the Regional Haze Rule has required for more than thirty years, “a targeted, data-driven approach that determines when SIP revisions are appropriate could be a way to manage the program moving forward in light of the progress to date in improving visibility conditions at the 156 Class I areas addressed under the Regional Haze program.”¹⁹⁹ Many of EPA’s proposed alternatives to evaluating reasonable progress, however, are technically infeasible or legally impermissible. Moreover, the agency largely ignores the substantial institutional knowledge and technical data that states and planning organizations have already amassed over the last three decades. Consequently, many of EPA’s suggested alternative considerations and metrics are unnecessary or unlawful.

A. Maintaining a Robust IMPROVE Monitoring Network Is Critical to the Effective Implementation of the Regional Haze Program

In the ANPRM, EPA solicits comments on “[p]otential approaches to track visibility conditions at Class I areas includ[ing]” the continued use of “ambient data collected through the IMPROVE network,” given purported issues with the “accuracy” and “time delay” of collecting that data.²⁰⁰ To the extent EPA suggests cuts to the IMPROVE network, or a different approach to quantifying visibility conditions, the agency is misguided.

Maintaining a robust monitoring program for measuring, characterizing, and reporting visibility conditions is a core requirement of the Regional Haze Rule.²⁰¹ For decades, EPA and the states have complied with this requirement through cooperative participation in the IMPROVE network. As explained in the attached Declaration of Bruce Polkowsky, a former EPA and NPS staffer with decades of experience implementing the IMPROVE network, the “IMPROVE program has provided a solid and necessary foundation for tracking air quality at our national parks and wilderness areas in a very cost-effective, efficient, and cooperative manner.”²⁰² The network also provides high-quality data that EPA and the states can use to help implement and analyze strategies to address attainment of the ozone and particulate matter NAAQS.²⁰³ States can also use the IMPROVE network measurements in evaluating emissions from new and modified sources under the PSD program.²⁰⁴ Moreover, the cooperative structure of the IMPROVE program—which includes input from EPA, the FLMs, states, tribes, and the regional planning organizations—“ensures that States have direct input into the program’s direction and have full access to all data, while leveraging the Federal agency participation for access to locations and data collection.”²⁰⁵ Indeed, the “consistent high quality of the data

¹⁹⁹ 90 Fed. Reg. at 47680.

²⁰⁰ *Id.* at 47682.

²⁰¹ 40 C.F.R. § 51.308(f)(6).

²⁰² Decl. of Bruce Polkowsky ¶ 4, (Nov. 24, 2025) [hereinafter “Polkowsky Decl.”] (attached as Ex. 40).

²⁰³ *Id.* ¶ 21-23.

²⁰⁴ *Id.*

²⁰⁵ *Id.* ¶ 9.

collected and the efficiency of the cooperative structure of the program is the reason why States have designated IMPROVE as the regulatory monitoring network for tracking progress to comply with the CAA Regional Haze Program’s monitoring requirements.”²⁰⁶ Similarly, the NPS has repeatedly endorsed continued and expanded funding of the program.²⁰⁷ Thus, the Environmental Groups encourage EPA to continue relying on the IMPROVE network for implementing future planning periods.

In fact, EPA should increase financial support for the IMPROVE program for several reasons. Even if EPA’s novel alternative approaches providing a safe harbor from the Clean Air Act’s haze requirements were lawful (they are not), the agency cannot rationally implement any of those alternative approaches without high-quality, objective monitoring data demonstrating actual visibility conditions. Indeed, it is impossible to verify whether a Class I area is on the URP or whether the area is making progress toward natural visibility conditions without reliable, centralized monitoring data that all states, EPA, and the FLMs can rely upon.

In addition, funding support for the IMPROVE network has “increased only three percent in the past 20 years and is no longer sufficient to address increasing costs.”²⁰⁸ As a result, “numerous monitors representing Class I areas may need to close or sampling frequency be reduced by half in the next few years.”²⁰⁹ Such an outcome would further undermine EPA’s various alternative approaches that create a safe harbor from the Act’s requirements because, to the extent that monitoring sites are decommissioned, there is no way to objectively verify that the associated Class I area is on the glidepath. Moreover, despite the importance of the IMPROVE network to the implementation of the Regional Haze Program (and other Clean Air Act programs), there have been recent threats to the network’s continued operation. The Interior Department, for example, recently issued a stop-work order on multiple contracts to maintain the IMPROVE network earlier this year.²¹⁰ Although those contracts appear to have been reinstated, without a firm source of funding, the air quality monitoring remains at risk, threatening the continued operation of the IMPROVE network.

In short, contrary to EPA’s suggestion, it is essential not only to maintain, but to upgrade the IMPROVE monitoring system. All states rely on IMPROVE monitoring data to track visibility conditions at Class I areas across the country, develop the URP glidepaths for their in-state Class I areas, and determine whether Class I areas are above or below their glidepaths. Without the IMPROVE network, states could not track visibility conditions at Class I areas or develop SIPs as required by the Clean Air Act.

²⁰⁶ *Id.* ¶ 10.

²⁰⁷ *See, e.g.*, Letter from Kristin King, Division Lead, Air Resources Division, National Parks Service, to Emily Millar, Office of Air Quality Planning and Standards, U.S. EPA (Dec. 4, 2024), EPA Docket No. EPA-HQ-OAR-2023-0262-0035[hereinafter “NPS RHR Comments”] (attached as Ex. 41).

²⁰⁸ NPS RHR Comments at 3.

²⁰⁹ *Id.*

²¹⁰ Maxine Joselow, Park Service Suspends Air-Quality Monitoring at All National Parks, WASHPOST (May 5, 2025), <https://www.washingtonpost.com/climate-environment/2025/05/05/national-parks-air-quality-monitoring/> (attached as Ex. 42).

B. The Deciview Metric Is a Well-Supported, Objective Measurement of Visibility Impairment.

EPA invites comment on whether it should continue to use the deciview metric for measuring visibility impairment.²¹¹ Although the deciview metric does not fully represent the range of physical variables that influence how one appreciates a scenic vista, the “deciview is derived from an objective measure of chemical light extinction” that better correlates to “just-noticeable changes in haze near the maximum visual range than other visibility indicators.”²¹² As explained in the attached Polkowsky Declaration, the deciview metric was established to relate measured changes in the transmission of light through the atmosphere to how people perceive changes in visually complex scenic vistas, including nearby and distant features.²¹³ This index is calculated from measured or estimated light extinction values, as measured by the IMPROVE monitoring network, and is “used to express visibility conditions in a way that reflects human visual sensitivity across different environmental settings.”²¹⁴ In contrast to the light-extinction metric, the deciview metric more accurately represents how people experience non-linear changes in visibility. Specifically, the deciview provides an objective scale where equal changes in deciview units correspond to similar perceptible changes in visibility; equivalent changes in extinction alone are not consistently perceptible across different starting conditions. We note that EPA’s alternative approach raising the establishment of a “preservation” category of Class I areas²¹⁵ would be difficult to implement at best without an objective metric like the deciview. A one deciview change is noticeable to most people, whereas equivalent changes in extinction alone would not be as consistently perceptible across different starting conditions. Thus, the Environmental Groups support the continued use of the deciview as the primary tool for measuring visibility improvements or declines.

C. EPA Should Continue to Use the 20% Most Impaired Days and 20% Least Impaired Days to Track Overall Progress Toward Natural Visibility.

EPA seeks comment on recommended alternative metrics to the 20% clearest days and 20% most impaired days to track visibility impairment.²¹⁶ As explained in the attached Polkowsky Declaration, however, and as the NPS has recognized, EPA’s current practice of evaluating the clearest and most impaired days, rather than a median value, is most consistent with the language of the Clean Air Act’s goal of remedying existing impairment and preventing future impairment.²¹⁷ Tracking the 20 percent least and most impaired days ensures improvements in poor visibility conditions while maintaining good conditions already achieved. Moreover, focusing on average conditions “risks missing impacts from increases in new pollutant emissions that could impact currently very clear days.”²¹⁸ Conversely, “if the most

²¹¹ 90 Fed. Reg. at 47682.

²¹² John G. Watson, Visibility: Science and Regulation, *Journal of the Air & Waste Management Association*, 52:6, 628-713, 638 (2002), <https://doi.org/10.1080/10473289.2002.10470813> (attached as Ex. 43).

²¹³ Polkowsky Decl. ¶ 24-26.

²¹⁴ *Id.* at ¶ 24 (citing 40 C.F.R. § 51.308(d)(1)).

²¹⁵ 90 Fed. Reg. at 47683.

²¹⁶ *Id.* at 47682.

²¹⁷ 42. U.S.C. § 7491(a)(1).

²¹⁸ Polkowsky Decl. ¶ 28.

impaired days are dominated by a different mix of pollutants than the overall average, States would not be able to develop the most efficient pollution control strategies to ‘remedy’ existing impairment.”²¹⁹ If, for example, a new industrial plant affects visibility in a Class I area on 20% of the clearest days, a focus on annual *average* visibility may not detect potentially significant impacts during the most impaired or clearest days. Similarly, if the most impaired days are dominated by one pollutant, but the annual average days are impacted by a mixture of pollutants, states might improperly avoid reducing emissions of the pollutant that would have the biggest impact on impaired days. Retaining the focus on the 20% most impaired and 20% least impaired metrics provide the most statistically-robust, objective methods for tracking visibility trends, and should be retained for tracking overall progress towards the Clean Air Act’s goal of eliminating existing impairment and preventing future visibility impairment.

D. EPA Must Make Clear that the URP is Not a Safe Harbor, and Should Adjust the URP for Future Planning Periods.

In the ANPRM, EPA invites comment on potential adjustments to the URP metric, including various methods to recalculate the URP or the end date.²²⁰ EPA established the URP as an illustrative metric for tracking and evaluating visibility improvement. Although the Clean Air Act does not mention the URP or specify a date by which unimpaired visibility in Class I areas should be achieved, the Regional Haze Rule directs states to identify the URP for each Class I area by the slope of a line, in dv/year, from the baseline time period (2000-2004) to the natural visibility goal in 2064.²²¹ States must then compare their reasonable progress goals to the URP; if the state’s goals provide for a slower rate of improvement than the URP, additional analysis, documentation, and justification is required. As discussed, many states (and now EPA with its new URP policy) effectively use the URP as a “safe harbor” insulating the state from additional controls where the affected Class I area is on or below the so-called glidepath. As explained, that approach is unlawful and arbitrary and capricious.²²²

Because EPA’s and the states’ use of the URP as a safe harbor violates the Clean Air Act, the Regional Haze Rule, and decades of EPA guidance, EPA must clarify several aspects of the URP. First, for the reasons discussed above, EPA must include language in the Rule making clear that the URP is not a safe harbor, and that being below the URP does not permit states to dismiss emission reductions identified as reasonable through application of the four factors. This language is necessary to comply with the text of the Clean Air Act itself, and to maintain consistency with EPA guidance, the 2021 Clarification Memo, and the agency’s 2017 Regional Haze Rule revision. Specifically, EPA must clarify that the URP is a planning tool, and may not be used as a safe harbor from emission reductions that are cost-effective and reasonable based on consideration of the four statutory reasonable progress factors.

Second, consistent with the NPS recommendations,²²³ EPA should amend the current URP framework to account for recent visibility progress and illustrate the remaining

²¹⁹ *Id.*

²²⁰ 90 Fed. Reg. at 47682.

²²¹ 40 C.F.R. § 51.308(d)(1)(i)(B), (f)(1)(i)-(vi).

²²² *See, e.g.*, Ex. XX, Tennessee Comments at 13-17.

²²³ NPS RHR Comments at 4-5.

improvement needed to attain natural conditions by 2064. Specifically, the Environmental Groups recommend restarting the URP line at the beginning of each planning period, using the five-year average of the 20% most impaired days from the first five years of the previous planning period. This change is warranted, in part, because visibility conditions for most Class I areas have improved since the baseline period of 2000-2004. As a result, for these Class I areas, the current URP line does not accurately illustrate the progress still needed in the respective planning period or the pace of progress needed to attain unimpaired conditions by the 2064 target date. To address this, EPA should restart the URP baseline at the beginning of each planning period, using the five-year average of the 20% most impaired days from the first five years of the previous planning period. So, for the third planning period SIPs (due in 2028), the URP line would begin with the 2018-2022 average of the 20% most impaired days and end with estimated natural conditions in 2064. As with the current URP framework, this proposed new URP framework would still be a planning tool and not be used as a safe harbor.

Finally, EPA should remove language from the Rule allowing states to adjust the URP end points. The 2017 Regional Haze Rule revision allows adjustments to the URP to incorporate estimated impacts of international emissions and wildfire.²²⁴ Almost every state conducted some kind of end-point adjustment—typically based on modeling extrapolated out to 2064. These adjustments, however, were almost uniformly based on uncertain and largely unverifiable modeling assumptions. Consistent with the NPS’s recommendations, EPA should make clear that “contributions to visibility impairment that are beyond state control (*e.g.* international or mobile emissions) be addressed in the SIP analyses and reasonable progress narratives rather than as adjustments to the URP end point.”²²⁵ The Clean Air Act’s natural visibility goal, represented by the URP end point, should be the same regardless of source attribution. Removing Regional Haze Rule language that allows states to adjust URP end points will improve consistency among states and across planning periods, and ensure that the goal remains the same—natural visibility.²²⁶

E. EPA Should Clarify the Timing and Responsibility for Consideration of the Four Reasonable Progress Factors.

In the ANPRM, EPA seeks feedback on “how and when” the four statutory factors are considered and who (*e.g.*, the EPA or states) should complete the analytical work needed to determine reasonable progress.²²⁷ As an initial matter, EPA should clarify that a state’s reasonable progress goals (“RPGs”) are the product of the visibility improvements that result from the emission controls and reductions that are deemed cost-effective and reasonable, and must be established *only* after taking into consideration the four statutory reasonable progress factors. Under the Regional Haze Rule, RPGs are the projected visibility conditions at the end of the implementation period as expressed in deciviews.²²⁸ The Rule intends for RPGs to represent the collective benefit of each state’s reasonable progress determinations along with other Clean Air Act measures. In the second implementation period, however, many states developed RPGs

²²⁴ 40 C.F.R. § 51.308(f)(1)(vi)(B).

²²⁵ NPS RHR Comments at 5.

²²⁶ *Id.*

²²⁷ 90 Fed. Reg. at 47681.

²²⁸ 40 C.F.R. § 51.308(f)(3).

based on modeling conducted before source selection, Four-Factor Analyses, or any long-term strategy development. As a result, the RPGs do not reflect measures identified as “reasonable progress” through application of the four statutory factors, but instead are a projection of visibility conditions at the end of the planning period based on existing emission inventories and the anticipated effect of on-the-books reductions at the time modeling was conducted. EPA should make clear that RPGs are the product of all emission controls, including those reductions deemed reasonable after the consideration of the four reasonable progress factors.

Second, the Environmental Groups concur with the NPS recommendation that EPA “conduct nationwide visibility modeling to estimate visibility in Class I areas at the end of each planning period following the submission of state regional haze plans.”²²⁹ Doing so would provide states and EPA with a centralized, objective measure of the cumulative and state-specific effectiveness of the states’ various long-term strategies. Moreover, centralized modeling would reduce regulatory burdens on state and regional planning entities.

Finally, EPA’s suggestion that it could administer and implement all or most of the Regional Haze Program raises significant practical issues. Although we support updated nationwide modeling, EPA does not have the resources to survey and select sources for further analysis and to conduct Four-Factor reasonable progress analyses for thousands of sources across the country. Such an approach would effectively paralyze the implementation of the Regional Haze Program. As discussed above, Congress did not intend for EPA or states to delay implementation of the Program or delay achieving natural visibility conditions at affected Class I areas.²³⁰ Moreover, such an approach would likely result in years of delay and the protracted planning process would inevitably lead to significant regulatory uncertainty. Moreover, such an approach would not meaningfully reduce any burden for the states because each state is still required to collect emission data from sources under other Clean Air Act programs. The Clean Air Act’s structure and text makes clear that states have the initial responsibility for developing SIP revisions, and EPA must engage in robust and substantive review of those SIPs to ensure they meet the requirements of the Act.²³¹ For these reasons, EPA should not undertake nationwide responsibility for implementing the Regional Haze Program.

F. EPA Must Require States to Reevaluate Best Available Retrofit Technology Determinations for Uncontrolled or Under-Controlled BART-Eligible Sources.

EPA suggests that states may consider “control measures already in place” that “may have been developed through requirements” under other Clean Air Act provisions, including RACT, BACT, LAER, and presumably BART when evaluating reasonable progress.²³² EPA also invites comment on any aspect of the Regional Haze program. With that in mind, EPA must make clear that states *must* reevaluate BART for uncontrolled or under-controlled BART-eligible sources as part of the reasonable progress analysis in each regional haze SIP revision. First,

²²⁹ NPS RHR Comments at 11.

²³⁰ See *supra* Section III.A.3.

²³¹ See, e.g., 42 U.S.C. § 7410(c)(1), (k).

²³² 90 Fed. Reg. at 47681.

although EPA has previously suggested that BART is both a “one-time requirement”²³³ and a requirement that could be addressed through certain emission trading programs, those positions are contrary to the Clean Air Act and controlling precedent. Second, even if states could continue to rely on pollution trading programs to satisfy BART in future haze planning periods, EPA has failed to consider the failure of such trading programs to incentivize emissions reductions equivalent to those that would be achieved with source-specific BART.

1. EPA Must Require States to Reevaluate Best Available Retrofit Technology in Each SIP.

EPA’s previous position that BART is a “one-time requirement”²³⁴ that can be addressed through the implementation of certain emission trading programs is contrary to the Clean Air Act and controlling precedent for several reasons. First, the plain language of the Clean Air Act establishes BART as a mandatory part of “*each* applicable implementation plan,” and expressly requires states to adopt SIPs that “contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal . . . *including*” installation and operation of BART at “each” BART-eligible source that emits “any” air pollutant which may reasonably be anticipated to cause or contribute to “any” impairment of visibility in “any” Class I area.²³⁵ Controlling precedent mandates that terms like “each” and “any” must be given their literal, “capacious” meanings.²³⁶ Accordingly, the plain language of the Clean Air Act mandates that EPA and the states include BART at “*each*” BART-eligible source in “*each* applicable implementation plan.”²³⁷

Moreover, Congress made clear that the mandate to evaluate necessary reasonable progress measures is *in addition to*—not in lieu of—the BART mandate. Section 7491(a)(4) of the Clean Air Act requires the rules under section 7491(b) to ensure both “(A) reasonable progress . . . *and* (B) compliance with the requirements of this section”—*i.e.*, the requirements that include the BART mandate.²³⁸ Further, the text of the statute plainly requires “each applicable implementation plan” to “*includ[e]*” BART “*and*” a “long-term (ten to fifteen years) strategy for making reasonable progress.”²³⁹ EPA cannot reasonably interpret the Act’s statutory directive to *include* BART in each SIP as a license to exclude BART. Indeed, courts have

²³³ 82 Fed. Reg. at 3083; *see also* 64 Fed. Reg. at 35746.

²³⁴ 82 Fed. Reg. at 3083; *see also* 64 Fed. Reg. at 35746.

²³⁵ 42 U.S.C. § 7491(b)(2)(A) (emphasis added).

²³⁶ *Michigan v. EPA*, 576 U.S. 743, 752 (2015); *Ali*, 552 U.S. at 218-19 (“We have previously noted that ‘[r]ead naturally, the word ‘any’ has an expansive meaning’”); *Nat. Res. Def. Council v. EPA*, 755 F.3d 1010, 1019 (D.C. Cir. 2014) (“[R]epeated use of ‘any’ makes the mandate broadly inclusive”); *Sierra Club v. EPA*, 536 F.3d 673, 678 (D.C. Cir. 2008) (“‘Each’ means ‘[e]very one of a group considered individually’”).

²³⁷ 42 U.S.C. § 7491(b)(2)(A) (emphasis added). Congress set out requirements for BART in meticulous detail, providing further textual evidence for concluding that it expected EPA and the states to include source-specific BART in each SIP. Indeed, the Act specifies the precise types and sizes of sources covered by the BART requirement, the specific criteria that must be considered in determining BART for *each* source, and a specific outside schedule of five years to “procure, install, and operate” BART. *Id.* §§ 7491(b)(2)(A), (g)(4), (g)(7).

²³⁸ *Id.* § 7491(a)(4) (emphasis added).

²³⁹ *Id.* § 7491(b)(2)(A)-(B) (emphasis added).

uniformly interpreted the term “including” to sweep in—rather than allow exclusion of—the enumerated items that follow.²⁴⁰

Second, the Clean Air Act’s reference to emission limitations “as may be necessary” to assure reasonable progress—even if ambiguous—does not give EPA a “roving license to ignore the statutory text” mandating BART in explicit terms.²⁴¹ Nor does EPA have authority to ignore a clear statutory command to require BART in each applicable implementation plan merely by claiming that *other* control measures established under other Clean Air Act programs might be sufficient to ensure reasonable progress going forward. Moreover, although EPA has claimed that BART is a one-time requirement, the agency has never codified that into the Regional Haze Rule or provided any rationale or explanation to support its position that BART is a one-time requirement. Courts will not uphold an EPA action on a rationale that the agency has never explained.²⁴²

Third, EPA’s proposal does not mention, let alone attempt to satisfy, Clean Air Act section 7491(c)’s explicit requirements for exempting sources from BART in the development of any SIP. The Act sets out three, carefully-tailored conditions that must be satisfied before an eligible EGU may be exempted from BART: (1) EPA must determine, after notice and opportunity for public hearing, that the EGU does not “by itself or in combination with other sources” cause or contribute to significant visibility impairment at a Class I area; (2) if the EGU has a design capacity of 750 megawatts or greater, the owner or operator must demonstrate to EPA that the plant is located at such a distance from all Class I areas that it does not “by itself or in combination with other sources” emit pollution that may reasonably be anticipated to cause or contribute to significant visibility impairment at a Class I area; and (3) the affected FLMs must concur with the BART exemption.²⁴³

Although EPA concluded that compliance with pollution trading programs like the Cross State Air Pollution Rule (“CSAPR”) might qualify as BART alternatives during the first planning period under narrowly-defined circumstances, EPA never invoked section 7491(c) as the basis for exempting those sources from BART in perpetuity. And no other provision of the

²⁴⁰ See, e.g., *Petit v. United States Dep’t of Educ.*, 675 F.3d 769, 791 (D.C. Cir. 2012) (“[W]hen a term is defined by what it ‘includes’ as opposed to what it ‘means,’ the term should be interpreted to encompass not just its ordinary meanings but also the specific enumerated examples.”); *Ass’n of Private Sector Colls. & Univers. v. Duncan*, 681 F.3d 427, 451-53 (D.C. Cir. 2012) (explaining that a rule prohibiting misrepresentations “including” specifically listed subjects “encompasses both the enumerated subjects listed” therein and other misrepresentations within the ordinary meaning of the term); cf. *Boyle v. United States*, 556 U.S. 938, 944 (2009) (holding that a definition stating that a term “includes” several specific items allows for inclusion of other items “in addition to” those specifically enumerated).

²⁴¹ *Massachusetts*, 549 U.S. at 528-29, 533; see also *Sierra Club v. EPA*, 755 F.3d 968, 980 (D.C. Cir. 2014) (explaining that a directive to adopt standards that EPA reasonably determines “may be necessary to protect human health and the environment” from hazardous wastes does not authorize “wholesale exemption” of hazardous waste used as fuel).

²⁴² *Loper Bright*, 603 U.S. at 395 (explaining that a reviewing court confronted with an exercise of an agency’s discretionary authority fulfills its judicial role by “fix[ing] the boundaries of [the] delegated authority, ... and ensuring the agency has engaged in ‘reasoned decisionmaking’ within those boundaries”) (citation omitted).

²⁴³ 42 U.S.C. § 7491(c).

Clean Air Act authorizes EPA to exempt sources—especially uncontrolled or under-controlled eligible sources—from the Clean Air Act’s mandate to include BART as part of “each” SIP.²⁴⁴ “Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.”²⁴⁵ EPA simply has no authority to create an exemption to the Clean Air Act’s requirement that “each” haze implementation plan include BART for “each” eligible source that causes or contributes to “any” impairment of visibility in “any” Class I area.²⁴⁶

Finally, to the extent that EPA believes that BART was only a one-time requirement, or that the CSAPR trading program continues to serve as a valid BART alternative for future planning periods, the agency has failed to articulate any such rationale.²⁴⁷ More importantly, the agency has not, and cannot, demonstrate that such a conclusion is consistent with the plain text of the Clean Air Act, as explained above. Although courts previously deferred to EPA’s approval of “better-than-BART” exceptions to the Clean Air Act’s BART mandate in the *first* planning period,²⁴⁸ EPA now must apply *all* relevant interpretive tools to determine the best meaning of the Act’s BART provisions.²⁴⁹ As explained above, the Clean Air Act makes clear that BART is a mandatory part of “*each* applicable implementation plan,” and expressly requires that states “includ[e]” BART for “each” eligible source.²⁵⁰ Moreover, there is only one permissible exemption from the BART requirement, which is expressly set forth in section 7491(c), and EPA has not, and cannot, demonstrate that exemption insulates states from reevaluating BART in future planning periods. Consequently, any revision to the Regional Haze Rule must not only prohibit states from evading the requirement to develop SIPs based on “control measures already in place through requirements such as” BART, but EPA must make clear that states are required to reevaluate BART sources and control options in each SIP revision, as mandated by the Clean Air Act.

²⁴⁴ *Id.* § 7491(b)(2)(A) (emphasis added).

²⁴⁵ *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980); *see also Law v. Siegel*, 571 U.S. 415, 424 (2014) (“The Code’s meticulous—not to say mind-numbingly detailed—enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions.”); *Hillman v. Maretta*, 569 U.S. 483, 496 (2013) (“We have explained that ‘[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.’”) (citation omitted)).

²⁴⁶ 42 U.S.C. § 7491(b)(2)(A).

²⁴⁷ *State Farm*, 463 U.S. at 43 (providing that an agency “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made’”).

²⁴⁸ *Ctr. for Energy & Econ. Dev. v. EPA*, 398 F.3d 653, 659 (D.C. Cir. 2005) (noting that if a statutory term is “ambiguous, we defer to the agency’s interpretation as long as it is reasonable,” and upholding EPA’s approval of better-than-BART SIPs); *Util. Air Regul. Grp. v. EPA*, 471 F.3d 1333, 1340 (D.C. Cir. 2006) (noting that “reasonable progress” is nowhere defined in the Act, and deferring to EPA’s determination that the Clean Air Interstate Rule was a valid alternative to BART under *Chevron U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837 (1984)).

²⁴⁹ *Loper Bright*, 603 U.S. at 397.

²⁵⁰ 42 U.S.C. § 7491(b)(2).

2. EPA Must Reevaluate Whether the BART Alternative Trading Programs Approved in the First Planning Period Remain Lawful BART Alternatives, and Whether Those Programs Continue to Ensure Reasonable Progress.

Even if states could continue to rely upon EPA's trading programs to exempt sources from BART, EPA and the states must still evaluate in each planning period whether those trading programs actually achieve pollution reductions necessary to ensure reasonable progress. As EPA has recognized, and as several of the undersigned commenters have explained in multiple rounds of comments, the trading programs that EPA adopted or approved as BART alternatives during the first planning period suffer from multiple legal flaws, each of which is an independent reason for finding that those programs do not continue to ensure "greater reasonable progress than would be achieved through the installation and operation of BART."²⁵¹

As an initial matter, during EPA's original "better-than-BART" rulemaking, EPA never attempted to prove that CSAPR achieves greater reasonable progress than BART at every Class I area or in every state. Instead, EPA purported to show only that, under CSAPR: "Visibility does not decline in any Class I area" and there "is an overall improvement in visibility, determined by *comparing the average differences* between BART and the alternative over all affected Class I areas."²⁵² Under this test, given that EPA averaged the visibility improvement from CSAPR over all the affected Class I areas in the eastern half of the country, many states were able to take advantage of reductions from other states without having to reduce their emissions as much as they would have had to under source-by-source BART.²⁵³

In addition, even assuming EPA's projected CSAPR reductions actually materialized within each respective state, there are likely additional emission reductions available for uncontrolled or under-controlled units. A 20% reduction in statewide emissions, for example, does not imply that each unit will reduce its emissions by 20%. Indeed, because CSAPR is enforced through a trading program, some units could have increased emissions while statewide emissions went down. Thus, even with CSAPR as an alternative to BART in the first planning period, there are likely additional source-specific reductions available in later planning periods.

EPA's CSAPR-better-than-BART rule also relied on emission assumptions that are now obsolete. Specifically, EPA's 2011 CSAPR analysis "presumed" an SO₂ BART emission limit of 0.15 lbs/MMBtu.²⁵⁴ As some of the Environmental Groups have repeatedly argued, it is now feasible and common for coal-fired EGUs to cost-effectively meet SO₂ emission limits between 0.04 and 0.06 lbs/MMBtu—significantly lower than the "presumptive" 0.15 lbs/MMBtu limit

²⁵¹ 40 C.F.R. § 51.308(e)(2).

²⁵² *Id.* § 51.308(e)(3); *see also* 77 Fed. Reg. 33642, 33644 (June 7, 2012).

²⁵³ EPA, Technical Support Document for Demonstration of the Transport Rule as a BART Alternative, (December 2011), Docket ID No. EPA-HQ-OAR-2011-0729-0014, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2011-0729-0014> [hereinafter "CSAPR Better-than-BART TSD"] (attached as Ex. 44).

²⁵⁴ 40 C.F.R. Pt. 51, App'x Y § IV.E.4.

that EPA had relied on in concluding that CSAPR was “better than BART.”²⁵⁵ EPA has come to the same conclusion in subsequent rulemakings.²⁵⁶ EPA has similarly concluded that coal-burning EGUs are capable of achieving NO_x emission rates of 0.08 lbs/MMBtu,²⁵⁷ much lower than the presumptive NO_x BART rates assumed in the CSAPR-better-than-BART rule. In short, more recent technical data indicates that BART-eligible units are capable of achieving much lower emission rates than EPA assumed in the first planning period. EPA and the states should therefore reevaluate those control measures in future planning periods.

Finally, as many of the Environmental Groups have explained in other EPA rulemakings,²⁵⁸ due to numerous technical flaws in the structure of EPA’s first-round, BART-alternative trading programs, those trading rules, in many cases, failed to meaningfully incentivize emission reductions. And in some cases, the structure of those programs allowed BART-eligible sources to increase emissions. Indeed, there have been many examinations of EPA’s various trading programs²⁵⁹ that indicate that EPA should not allow states to continue to rely on those programs to ensure reasonable progress. For example:

- EPA’s CSAPR and other trading pollution budgets were, in many cases, so high that the program actually allowed for participating units to increase their emissions, thereby causing emission allowance markets to crash and defeating the purpose of the program;²⁶⁰
- In some cases, EPA failed to provide a regular declining emissions cap, resulting in a surplus of emission credits in the market, further depressing prices and disincentivizing sources to invest in pollution control technologies;²⁶¹

²⁵⁵ See, e.g., Conservation Organizations’ Comments on Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan: Proposal of Best Available Retrofit Technology (BART) and Interstate Transport Provisions, 83 Fed. Reg. 43,586 (Aug. 27, 2018); EPA-R06-OAR-2016-0611-0160, at 38-50 (Oct. 26, 2018), <https://www.regulations.gov/comment/EPA-R06-OAR-2016-0611-0160> [hereinafter “Oct. 26, 2018 Comments”] (attached as Ex. 45); see also 82 Fed. Reg. 912, 939-46 (Jan. 4, 2017).

²⁵⁶ See, e.g., 82 Fed. Reg. 912 (Jan. 4, 2017).

²⁵⁷ 88 Fed. Reg. 36654, 36721 (June 5, 2023).

²⁵⁸ See, e.g., Oct. 26, 2018 Comments at 38-50.

²⁵⁹ See, e.g., EPA Office of Air and Radiation, Tools of the Trade, A Guide to Designing and Operating a Cap and Trade Program for Pollution Control, EPA430-B-03-002 (June 2003), <https://www.epa.gov/sites/production/files/2016-03/documents/tools.pdf> (attached as Ex. 46); Richard Schmalensee & Robert N. Stavins, The SO₂ Allowance Trading System: The Irony of a Grand Policy Experiment, 27:1 Journal of Economic Perspectives (2012) (attached as Ex. 47); Richard Schmalensee, Lessons Learned from Three Decades of Experience with Cap-and-Trade, Review of Environmental Economics and Policy, 15-51 (Nov. 2015) (discussion paper) (attached as Ex. 48); Dallas Burtaw & Sara Jo Szambelan, U.S. Emissions Trading Markets for SO₂ and NO_x, Review of Environmental Economics and Policy, 9-40 (Oct. 2009) (discussion paper) (attached as Ex. 49); Christina Hood, Reviewing Existing and Proposed Emissions Trading Systems, International Energy Agency Information Paper (Nov. 2010) (attached as Ex. 50).

²⁶⁰ Oct. 26, 2018 Comments at 42.

²⁶¹ *Id.*

- Similarly, the lack of an emission allowance “price floor” fails to maintain program relevance in the face of competing regulations, low gas prices, unforeseen energy market trends, etc;²⁶²
- The failure to require the regular recalculation of allowances every year serves to preserve the status quo and does not encourage emission reductions;²⁶³
- EPA’s Texas-specific trading program failed to include a requirement that allowances be immediately forfeited on unit retirement, again resulting in a glut of credits and defeating the purpose of the program;²⁶⁴ and,
- The Texas program similarly provided for unlimited banking of allowances that never expire, discouraging SO₂ reductions and devaluing the allowance market.²⁶⁵

As a result of these and similar technical flaws, the CSAPR and Texas trading programs have resulted in allowance prices that are so low that units have no incentive to reduce emissions below the level of emissions for which allowances are allocated. Indeed, as of November 2025, CSAPR annual NO_x emission allowance prices are \$7.38 per ton, and SO₂ allowance prices are \$1.94 to \$2.81 per ton for Groups 1 and 2, respectively.²⁶⁶ As a result, the CSAPR trading program provides little to no regulatory pressure to control emissions. Indeed, it is cheaper to buy allowances than to reduce SO₂ emissions. Given the failure of CSAPR and other BART-alternative trading programs to actually eliminate haze-causing pollution—and instead allowing sources to simply purchase allowances at prices that fail to incentivize emission reductions—EPA should require states to revisit source-specific BART in future planning periods to comply with the Clean Air Act’s BART mandate, and to ensure reasonable progress.

VII. The Environmental Groups’ Recommended Improvements to the Regional Haze Program Will Streamline the Program and Provide Regulatory Certainty.

EPA notes throughout the ANPRM that “[a] key goal of the forthcoming RHR revisions is to ensure clarity regarding what is needed to develop a fully approvable Regional Haze SIP revision.”²⁶⁷ To that end, EPA explains that it is “seeking input regarding how the EPA can meaningfully revise the RHR to streamline regulatory requirements impacting states’ visibility improvement obligations under the Clean Air Act.”²⁶⁸ EPA makes numerous references in the

²⁶² *Id.*

²⁶³ *Id.* at 43.

²⁶⁴ *Id.* at 43-44.

²⁶⁵ *Id.*

²⁶⁶ S&P Capital IQ, Environmental Summary, (as of Nov. 24, 2025), <https://www.capitaliq.spglobal.com/web/client?auth=inherit#markets/environmentalSummary>.

²⁶⁷ 90 Fed. Reg. at 47680; *see also* 90 Fed. Reg. at 47684 (explaining that the agency recognizes “[the] need to revise the Regional Haze program to ensure states have a clear understanding and pathway for achieving a fully approvable Haze SIP revision”).

²⁶⁸ *Id.* at 47677; *id.* at 47678 (discussing the need to “streamline and clarify the program’s requirements for the third planning period”); *id.* at 47684 (requesting feedback on how to “streamline” the SIP development process).

ANPRM to comments submitted by regional planning organizations, states, and industry noting the need for regulatory certainty.²⁶⁹ However, EPA makes no mention of the Environmental Groups' prior comments and recommendations detailing the ways the agency can achieve its stated goal of streamlining the Regional Haze Program and providing clarity in the SIP development process.

The Environmental Groups submitted to EPA's 2024 non-regulatory docket extensive recommendations for revising the Regional Haze Rule. These recommended changes would improve the Rule to ensure needed reductions in visibility impairing pollutants are achieved while providing regulatory certainty for states in the development of their regional haze SIPs. In response to EPA's requests for feedback in the ANPRM, the Environmental Groups attach and resubmit our prior recommendations on revising the Regional Haze Rule, including redlines to regulatory text.²⁷⁰ Those recommendations suggest improvements to the Rule regarding many of the subjects EPA raises in the ANPRM here, including conducting visibility modeling, selecting sources for further analysis, conducting Four-Factor Analyses, incorporating necessary existing measures into the SIP, considering the URP and visibility, establishing reasonable progress goals, and engaging in FLM and state-to-state consultations, among other subjects.

As discussed in detail above, the same pollutants that mar scenic vistas at national parks and wilderness areas also negatively affect public health, particularly for the communities that live close to polluting sources. Additionally, national parks and wilderness areas are major contributors to local and regional economies. Thus, improving air quality and visibility at parks and wilderness areas across the country provides a boon to local economies, as park visitation decreases when air quality is poor. By adopting revisions to the Regional Haze Rule recommended by the Environmental Groups, EPA can maximize the benefits of a strong Regional Haze Program and achieve economic, public health, and environmental benefits.²⁷¹

VIII. Conclusion

Rather than revise the Regional Haze Rule in an effort to effectively off-ramp states from the Regional Haze Program in violation of the plain text and purpose of the Clean Air Act's visibility provisions, EPA should look to strengthen the Rule to achieve needed emission reductions to improve visibility conditions while providing regulatory certainty to states in developing their SIPs. The Regional Haze Program has achieved significant improvements in visibility at Class I national parks and wilderness areas across the country, but the job is not done yet. No Class I area has achieved the Act's goal of attaining natural visibility conditions. As EPA has repeatedly recognized, "until and unless" that goal is achieved, EPA must require states to

²⁶⁹ *Id.* at 47678 (stating that EPA received stakeholder comments on the agency's 2024 early engagement docket requesting that EPA "provide regulatory clarity regarding states' SIP revision obligations"); *id.* at 47684 (referencing comments received on the agency's 2024 non-regulatory docket).

²⁷⁰ NPCA et al., Comments on EPA's Consideration of Revisions to the Regional Haze Rule, EPA-HQ-OAR-2023-0262, Protection of Visibility: Amendments to Requirements for State Plans Rule (June 28, 2024) and Exhibits 1-3 (attached as Exs. 51-54); *see also* NPS RHR Comments; Letter from Kirsten King, Division Lead, Air Resources Division, National Parks Service., to Emily Millar, Office of Air Quality Planning and Standards, Air Quality Policy Division (AQPD), EPA (June 28, 2024) (attached as Ex. 55).

²⁷¹ *See supra* Section I.

periodically develop robust haze SIPs that continue to make reasonable progress toward the natural visibility goal in each successive planning period.²⁷²

We look forward to further action from EPA to gain needed emission reductions to benefit our treasured national parks and wilderness areas in the third haze planning period and beyond.

Sincerely,

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²⁷² 82 Fed. Reg. at 3094.

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IX. List of Exhibits

Ex. 1	NPCA, Average Visibility in Miles (2024)
Ex. 2	WRAP, Adjustment Options for End of URP Glidepath: Arizona (last visited Nov. 16, 2025)
Ex. 3	WRAP, Adjustment Options for End of URP Glidepath: New Mexico (last visited Nov. 16, 2025)
Ex. 4	NPCA, Polluted Parks: How Air Pollution and Climate Change Continue to Harm America’s National Parks at 6 (2024)
Ex. 5	NPS, Air Quality Conditions & Trends: Sequoia & Kings Canyon National Parks (last visited Nov. 16, 2025)
Ex. 6	NPS, Air Quality Conditions & Trends: Everglades National Park (last visited Nov. 16, 2025)
Ex. 7	Press Release, EPA, EPA Launches Biggest Deregulatory Action in U.S. History (Mar. 12, 2025)
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Ex. 32	Asthma and Allergy Found. Am., Asthma Disparities in America (2020)
Ex. 33	Memorandum from Peter Tsirigotis, Director, EPA, to Regional Air Directors, Regions 1-10 (July 8, 2021)
Ex. 34	NPCA et al., Comments on Proposed Air Plan Approval; Tennessee; Second Planning Period Regional Haze Plan, 90 Fed. Reg. 40272 (proposed August 19, 2025) [Docket ID No. EPA-R04-OAR-2019—0308] (Oct. 20, 2025)
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Ex. 38	NPS, Regional Haze SIP Feedback for the North Dakota, Department of Environmental Quality (Nov. 19, 2021)
Ex. 39	Email from Melanie Peters, Air Resources Division, NPS, to Michael Madsen et al, Hawaii State Department of Health (July 28, 2023)
Ex. 40	Declaration of Bruce Polkowsky (Nov. 24, 2025)
Ex. 41	Letter from Kristin King, Division Lead, Air Resources Division, National Parks Service, to Emily Millar, Office of Air Quality Planning and Standards, U.S. EPA (Dec. 4, 2024), EPA Docket No. EPA-HQ-OAR-2023-0262-0035
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