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COMMENTS ON ADVANCED NOTICE OF PROPOSED RULEMAKING TO RESTRUCTURE THE REGIONAL HAZE PROGRAM

America's Power submits the following comments to the Environmental Protection Agency (EPA or agency) on an advanced notice of proposed rulemaking (ANPRM) to restructure the current regulatory framework to improve visibility in national parks and wilderness areas under the regional haze program.[1]

The focus of the America's Power comments is on several important structural changes that EPA should make to improve the design and implementation of the regional haze program. These changes are necessary to give states the wide latitude they need to establish and implement regional haze plans in a manner that avoids the premature shutdown of coal-fired electric generating units (EGUs). Taking concrete steps to avoid such power plant shutdowns is not only essential to ensure electric grid reliability but also mandated by the Clean Air Act (CAA).

By way of background, America's Power is the only national trade organization whose sole mission is to advocate at the federal and state levels on behalf of coal-fired electricity and the supply chain that supports the nation's coal fleet. Our membership is composed of electricity generators, coal producers, transportation companies, and equipment manufacturers.

OVERVIEW OF AMERICA'S POWER COMMENTS

The ANPRM requests policy and technical input on a wide array of regulatory matters relating to the design and implementation of the regional haze program. These regulatory matters pertain to how the agency should define the overall objectives of the regional haze program, what are the requirements of states in achieving those regional haze objectives, when states must adopt emissions control measures for remedying visibility impairment, and how those control measures may be implemented by states.

In response to the ANPRM, America's Power is providing recommendations on several major structural changes that EPA should make to the regulatory framework of the regional haze program. The overall purpose of the recommended changes is to ensure the achievement of the visibility goals for the regional haze program, while also avoiding the premature shutdown of coal-fired EGUs that are critically important for ensuring electric grid reliability. These recommendations include the following:

- The uniform rate of progress (URP) glidepath should be used as the primary (and default) metric for measuring each state's "reasonable progress" under the regional haze program.

- A "safe harbor" should be provided to states if they are meeting the URP visibility metric for affected Class I Areas.

- Regulations should be clarified to ensure state primacy to regulate under the regional haze program.

- The national visibility goal to achieve "natural visibility conditions" should be revised because it is unrealistic and not expressly authorized by the CAA.

- The current deadline of 2064 should be eliminated because the CAA neither sets an end point for the regional haze program nor any deadline to attain the national goal of preventing future and remedying existing visibility impairment.

- Full-blown regional haze plans should be required only when substantial additional emissions controls are necessary to achieve reasonable progress goals for improving visibility.

- The deadline for the submission of regional haze plans by states should be extended from at least ten to fifteen years.

RESTRUCTURING THE REGIONAL HAZE PROGRAM

The CAA establishes a regional haze program to improve visibility in 156 national parks and wilderness areas (referred to as Class I Areas) across the United States. The overall objective of the program is not to protect public health and welfare, but instead to improve visibility in Class I Areas by reducing regional haze caused by air pollution disbursed over wide geographic regions. In addition to direct particulate matter, sulfur dioxide (SO_2) and nitrogen oxides (NO_x) that result from the combustion of fossil fuels form fine particles in the atmosphere that can impair visibility.

The long-term goal of the regional haze program is to restore all Class I Areas to their natural visibility conditions by 2064. The program also established a regulatory metric to measure and track progress for improving visibility in each Class I Area. Referred to as the "Uniform Rate of Progress" (URP), this regulatory metric sets a straight-line glidepath trajectory for each Class I Area from baseline visibility conditions during the 2000-2004 period to the natural visibility conditions in 2064. States and EPA can use the URP as a benchmark for determining the amount of visibility improvement needed, on average each year, to reach natural conditions by 2064.

States have the primary responsibility for developing regional haze plans that establish emission control requirements for reducing emissions from those sources causing or contributing to visibility impairment in Class I Areas. In the case of states that fail to adopt adequate regional haze plans, EPA has the authority to implement federal implementation plans.

States have submitted regional haze plans to EPA over the last 25 years, first in 2007 for the first planning period and then again in 202 for the second planning period. In both cases, EPA frequently sought to disapprove those state plans based on the conclusion that additional

emission controls for coal-fired EGUs were needed to meet "reasonable further progress" goals set under the regional haze program. Compliance with those additional control requirements typically required the installation of flue gas desulfurization (FGD) systems for reducing SO_2 emissions and/or selective catalytic reduction (SCR) systems for reducing NO_x emissions. Moreover, the agency sought to overrule states' reasonable progress determinations in many cases even though the emissions reductions from those FGD and SCR controls would achieve imperceptible visibility improvement and were not necessary because states were already meeting their URP trajectories for remedying visibility impairment in affected Class I Areas.

Imposing these stringent control requirements on coal-fired EGUs can often have the effect of forcing the premature shutdown of those existing coal units due to the prohibitively high costs to install and operate FGD and/or SCR control systems. The forced shutdown of dispatchable generating capacity has undermined grid reliability in many parts of the country. The continuation of this regulatory trend not only poses a threat to electric grid reliability, but it is also contrary to provisions of the CAA. EPA has a legal obligation to consider energy impacts in reviewing states' regional haze plans and the setting of control requirements imposed on affected EGUs adopted under those plans. EPA's legal obligation is expressly provided in both the statute and implementing regulations. Specifically, both require the consideration (and addressing) of the energy impacts that may result from the forced the closure of dispatchable coal-fired EGUs that could impair electric grid reliability in any geographic region.[2]

To correct these structural problems with the regional haze program, EPA should reverse its current policy of dictating to states how best to meet their reasonable progress goals under the regional haze program. In its place, the agency should reaffirm state primacy in developing regional haze plans and adopt several major structural reforms designed to improve the efficiency and effectiveness of the regional haze program. As discussed below, these new policies should make it explicit that the CAA gives states wide latitude in setting emissions limitations and other control measures in their regional haze plans based on a variety of state-specific considerations. Among other things, these considerations include the high costs of the FGD and SCR systems for controlling SO_2 and NO_x, respectively, from coal-fired EGUs and the potential electric grid reliability risks posed by the premature shutdown of existing coal-fired generation.

The URP glidepath should be used as the primary (and default) metric for measuring each state's "reasonable progress" under the regional haze program.

One major structural problem is EPA's current regulatory framework for setting emissions control requirements in the state plans under the regional haze program. This problem stems from the illogical process that states must follow for determining the emissions controls that are necessary to achieve their "reasonable progress" goals for remedying visibility impairment in Class I Areas under the regional haze program.

The current approach requires states to *first* identify the emission control levels necessary for achieving reasonable progress *before* the states perform any detailed air quality analyses to assess visibility conditions in the Class I Areas. In effect, states are setting their "reasonable progress" goals for remedying impairment based the cost-effectiveness of reducing emissions from major stationary source (which are typically coal-fired EGUs) within the state, instead of *first* performing visibility impairment assessments for Class I Areas based on actual air quality data or modeling analysis for the affected Class I Area. This regulatory process is backwards.

Another related problem is that states upfront must complete a lengthy and resource-intensive regulatory process for determining appropriate emissions control levels for coal-fired power

plants based on an extensive analysis of the following four factors set forth in CAA section 169A(g)(1):

- 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 existing source subject to such requirements.

Front-loading four-factor analysis for determining the necessary control levels before completing a visibility impact assessment is putting the cart before the horse. It makes no logical sense for states (and EPA) to make regulatory decisions on the emission control levels under regional haze plans that are not informed by actual visibility conditions in the affected Class I Area. A better alternative is to set control levels based on the emissions reductions necessary to achieve the reasonable progress goals for remedying visibility impairment in each affected Class I Area.

In the ANPR, EPA proposes to address this flaw in the regulatory framework by setting reasonable progress goals based on the best available air quality and modeling data. Specifically, this data would be used to establish an objective and quantitative metric that states would apply to determine with a high degree of precision whether any additional visibility improvements may be necessary to make reasonable progress for each affected Class I Area. Notably, EPA and states already have developed such an analytical tool to measure and track the progress that Class I Areas are making towards achieving natural conditions by 2064. Referred to as the URP glidepath, this analytic tool sets a straight-line glidepath trajectory for each Class I Area from baseline visibility conditions during the 2000-2004 period to "natural" (unimpaired by man-made emissions and activities) visibility conditions at the targeted end point in 2064.

States and EPA can effectively and efficiently use the URP glidepath as an objective, numeric benchmark for determining the progress that each Class I Area is making towards meeting the national goal for remedying visibility impairment. In effect, the URP glidepath serves several key regulatory functions.

First, the metric informs both the state and EPA how much progress each Class I Area is making towards achieving the national goal at any specific point in time. If the metric is met (visibility impairment is at or below the URP glidepath trajectory at a certain point in time), the Class I Area would be deemed to have made "reasonable progress" towards the national goal.

Second, it provides an objective and quantifiable way for states to determine when additional emissions controls may be necessary to ensure that "reasonable progress" is being made during the planning period. In those cases where a Class I Area is not meeting the metric, a state would have an objective and quantifiable analytical tool to assess the extent to which the area is not meeting the reasonable progress goals under the regional haze program. Furthermore, it would inform the state on specific actions it may need to take to achieve additional emissions reductions from selected sources to meet the URP glidepath (and reasonable progress goal) during the planning period.

A "safe harbor" should be provided to states if they are meeting the URP visibility metric for affected Class I Areas.

For each ten-year implementation period, a state has an obligation to develop a regional haze plan that contains sufficient emissions controls necessary to meet its reasonable progress goals for each affected Class I Areas. The URP glidepath provides a precise and quantifiable tracking metric for determining whether that state plan has met the state's reasonable progress requirements for each affected Class I Area during that implementation period. If a state's regional haze plan demonstrates that a Class I Area is projected to do better than (*i.e.*, at or below) the URP trajectory for the planning period, this demonstration should create an irrebuttable presumption that the state has in fact met its reasonable progress requirements for that Class I Area under the regional haze program.

In effect, the irrebuttable presumption would provide states with a regulatory "safe harbor" confirming that the state has satisfied its federal CAA obligations to adopt emissions controls for further improving visibility in affected Class I Areas during the implementation period. In such cases, the safe harbor would provide regulatory certainty that the state has no obligation to undertake a detailed four-factor analysis to further document that the state is on track in meeting its reasonable progress goals for the affected Class I Areas that are on track to meeting the URP glidepath.

EPA has strong grounds to provide a safe harbor for those states that are achieving (*i.e.*, doing better than) their applicable URP metrics. First, both the CAA and EPA's regional haze regulations (codified at 40 C.F.R. §51.308) require consideration of visibility conditions in affected Class I Areas when states develop their long-term strategies for achieving reasonable progress. Consistent with the statute and implementing regulations, the URP metric requires the consideration of current and projected visibility conditions and comparison of such conditions to the projected visibility trajectories over time in the future. By focusing the regional haze program on visibility conditions being achieved in Class I Areas, the EPA policy on use of the URP metric effectively carries out and fulfills the core purpose of the regional haze program.

In addition, EPA has independent authority to adopt a URP progress metric for making reasonable progress determinations. This authority is expressly provided in CAA section 169B(e)(1), which authorizes the agency to establish by regulation any appropriate "criteria for measuring reasonable progress towards the national goal." The URP metric does more than just provide another way to measure reasonable progress. It is arguably the best way to measure such progress by establishing an objective and quantitative metric based on the best available air quality and modeling data.

Finally, EPA's policy implements the plain meaning of the relevant CAA provisions and the regulations for achieving the core objectives of the regional haze program. It does so first by measuring progress in terms of movement towards a visibility goal: considering the visibility conditions in comparison to the URP over the relevant planning period. And by recognizing that the rate of visibility improvement need only be reasonable, not the maximum achievable, EPA's policy applies the best reading of the CAA and the regulations. So long as the long-term strategy is meeting or doing better than the URP, a state has satisfied its obligations under the regional haze program.[3]

Notably, EPA has already begun to informally implement a national EPA policy to provide the regulatory safe harbor for those states meeting or doing better that the URP metric in several EPA rulemaking actions on regional haze plans adopted by various states.[4] As a general matter, the policy articulated in those EPA actions is that a state has presumptively demonstrated the achievement of its reasonable progress goals for any affected Class I Area if visibility conditions

for that Class I Area are below (*i.e.*, doing better than) the URP set for the area.[5] EPA should codify this national policy in the EPA regulations to ensure the durability and clarity of this important policy.

Regulations should be clarified to ensure state primacy to regulate under the regional haze program.

The CAA gives the states the primary responsibility of developing regional haze plans that establish the emissions control requirements and other measures necessary for achieving the reasonable progress goals under the regional haze program.

Under the cooperative-federalism framework established by the CAA for the regional haze program, states are afforded broad discretion in making the critical regulatory determinations on which stationary sources to control as well as the stringency, timing, and implementation of the emissions controls set for those selected sources. EPA's deference to states on these regulatory and implementation matters is appropriate so long as the state's determinations are reasonable and based on well-documented analyses.

The following are two notable examples where rule revisions are especially needed to ensure states are accorded substantial deference in setting emissions limitations for controlling emissions sources under the regional haze program. In both examples, this deference is in alignment with cooperative federalism and recognizes state expertise in contextualizing costs for their own Class I Areas' needs and characteristics.

One example pertains to the deference provided to states on cost-effectiveness of emissions controls based on visibility improvement. As noted above, CAA section 169(g)(1) requires states to consider "the cost of compliance" as one of the four factors in determining reasonable progress under regional haze plans. Given past uncertainties on this matter (including situations where EPA has overridden state cost determinations), EPA should adopt a new rule confirming that states retain discretion to analyze costs and make cost-effectiveness determinations in the manner most relevant to the program's unique visibility improvement goals. Since regional haze is a visibility improvement program—not a traditional pollutant mass reduction program—metrics directly tied to actual visibility improvement (expressed in terms of dollars per deciview or dollars per inverse megameter) provide a more accurate measure of true progress than the typical metric expressed in dollars per ton of emissions removed.

A second example relates to the placement of a regulatory limitation on the agency's ability to second guess or override states' cost-effectiveness analyses. There are strong statutory and legal bases for EPA establishing such a limitation in the regulations. First, the agency has a clear statutory obligation to approve state plans unless the plan is "inadequate" or fails to meet statutory and regulatory criteria.[6] When a state regional haze plan provides rational, adequate documentation for its cost-effectiveness approach, EPA must defer to the state determination, so long as the analysis is reasonably explained and generally consistent with national guidelines. Furthermore, the courts have repeatedly affirmed that where states have done a reasonable, record-based, and statutorily compliant four-factor analysis—including cost—EPA cannot "second guess" the states' judgments absent clear error or arbitrary decisions.[7]

The national visibility goal to achieve "natural visibility conditions" should be revised because it is unrealistic and not authorized by the CAA.

Federal regulations direct states to adopt and implement a "long-term strategy" that contains the emissions control requirements necessary to attain "natural visibility conditions" at each affected Class I Area.[8] Agency guidance provides that those natural visibility conditions shall

be calculated "by estimating the degree of visibility impairment" that represents the level of visibility that would exist in the absence of anthropogenic (human-caused) visibility impairment.[9] Notably, the requirement to achieve "natural visibility conditions" is a theoretical regulatory construct that the Agency itself has acknowledged "has never occurred in modern times and, therefore, has never been directly measured nor could it be directly measured."[10] As a result, natural visibility conditions must be theoretically calculated in accordance with detailed EPA guidance that estimates visibility impairment only due to natural sources of aerosols (such as dust, sea salt, biogenic organic compounds, volcanic emissions, and particulate from natural wildfire events) in each Class I Area under natural conditions—with all anthropogenic contributions excluded.[11]

The agency's current regulatory mandate to eliminate all man-made visibility impairment in Class I Areas is not authorized under the statute. CAA section 169A does not impose an enforceable requirement for states to achieve natural visibility conditions (however defined) by a specific date. In fact, the statute makes no reference to the term "natural visibility conditions" and does not set any goal or requirement for Class I Areas to achieve natural visibility conditions that are free from man-made visibility impairment.

Instead, the focus of the statute is on implementing *reasonable remedial and preventative measures* for reducing visibility impairment over an indeterminate timeframe. Specifically, CAA section 169A(a)(1) sets "as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility" in Class I Areas when that "impairment results from man-made activities." The operative command to EPA and states is not to impose a mandatory obligation to attain or achieve natural visibility conditions like in the case of CAA section 110, which requires the attainment of numeric ambient air quality standards by specific dates. Instead, the statutory focus is on requiring EPA and states to adopt and implement those emission control levels that may be "necessary to achieve *reasonable progress toward* meeting the national goal" for remedying visibility impairment.[12] The term "toward" denotes movement in a direction rather than the attainment or achievement of natural visibility conditions. Similarly, the phrase "reasonable progress" is not a specific standard or condition denoted by a numeric visibility criterion (such as those set for national ambient air quality standards) that must be attained and maintained under CAA section 110. Instead, it calls for states to establish those control measures that are necessary for making reasonable progress after considering various factors, such as the cost of compliance, the time necessary for compliance, energy impacts, and remaining useful life of any existing source.[13]

In effect, CAA section 169A does not require the full restoration of Class I Areas to natural visibility conditions without man-made impairment by any particular date. Rather, the best interpretation of the statutory language is that it establishes an aspirational goal to make reasonable progress towards the "prevention of future and the remedying of any existing [visibility] impairment" over time without setting any specific deadline or end point for achieving this goal.[14]

Revisions to the federal regulations therefore are necessary and appropriate to clarify that the regional haze program does not require full restoration of Class I Areas to natural visibility conditions (without any man-made impairment). The imposition of this requirement is an overly stringent regulatory mandate that is inconsistent with the CAA.

The 2064 deadline should be eliminated because the CAA does not set any deadline to attain the national visibility goal of preventing future and remedying existing visibility impairment.

Another regulatory creation of EPA is the deadline by which states must attain the national visibility goal for the regional haze program. The current federal regulations have set an attainment deadline of 2064 for achieving natural visibility conditions,[15] which was not required or authorized by statute. As noted above, CAA section 169A did not establish a deadline or final endpoint for achieving the national visibility goal of preventing future and remedying existing impairment in Class I Areas. The Agency itself recognizes in the ANPRM that it has the authority "to change the end date to a year other than 2064"[16] and can therefore extend or even eliminate the current 2064 end date for achieving the national visibility goal. According to the ANPRM, the 2064 end date was selected for the administrative reason that "it serves as an end point for calculating a 'glidepath' toward natural conditions over a 60-year period."[17] The 60-year period selected by EPA does not appear anywhere in the statute. EPA could just as easily have picked 100 years or more, since the timeframe is completely arbitrary.

EPA should eliminate the 2064 for several reasons. First, the 2064 date serves as an aspirational goalpost and planning tool; it is not a mandatory or enforceable deadline under the statute. As explained in the prior section, this interpretation is confirmed by a plain meaning of the statute and affirmed by federal court decisions. The states therefore should not be penalized if they fail to achieve the final aspirational goal for remedying visibility impairment in Class 1 Areas so long as states are making reasonable progress towards remedying existing visibility impairment over the life of the regional haze program. Similarly, it should provide states with greater flexibility on how they set their reasonable progress goals to reflect the long-term and aspirational nature of the ultimate visibility improvement goal under the regional haze program.

Second, there is no need to convert an aspirational goal into a binding regulatory mandate on states. States across all regions of the country already are making great strides in remedying visibility impairment at affected Class I Areas. For example, the total annual SO_2 emissions nationwide have been reduced by 14.5 million tons and the total annual NO_x emissions nationwide have been reduced by 14.3 million tons.[18] Much of these reductions have been achieved by the electric power sector. Annual SO_2 emissions from power plants have fallen by 96 percent between 1995 and 2023, from 11.85 million tons to 0.65 million tons. Similarly, annual NO_x emissions from power plants have decreased by 89 percent, from 5.84 million tons to 0.64 million tons.[19] All emissions reductions provide significant visibility co-benefits for remedying visibility in Class I Areas.

These accomplishments therefore demonstrate that not just reasonable progress, but significant progress, is being made toward remedying visibility impairment. Many of the designated Class I Areas are already well below their URP glidepath trajectories, indicating that they are moving toward natural conditions more quickly than EPA's regulatory benchmark.[20]

Full-blown regional haze plans should be required only when substantial additional emissions controls are necessary to achieve reasonable progress goals.

Full-blown regional haze plans require states to perform a comprehensive four-factor analysis (considering cost of compliance, time for compliance, energy/environmental impacts, and remaining useful life of sources) and evaluate long-term control strategies for many major sources that could be impairing visibility in affected Class I Areas. These highly technical analyses are resource intensive, requiring major expenditures of time and extensive efforts by the state. Requiring these analyses, only when additional controls are needed to achieve

reasonable progress, conserves limited state resources for other environmental regulatory and permitting matters of greater importance.

By contrast, full-blown regional haze plans are not necessary when the visibility benefit would be minimal, such as when coal-fired EGUs and other major stationary sources within their jurisdictions are already well-controlled or are having de minimis or limited adverse impacts on visibility. Requiring states to prepare a four-factor analysis and undertake complex planning in this case may yield no new emission reductions and thereby serve no meaningful environmental purpose. Furthermore, it avoids imposing unnecessary administrative burdens where no further cost-effective control measures exist or where other EPA programs have already delivered major reductions.

EPA should adopt changes to the current regulatory framework that would exempt states from preparing a full-blown regional haze plan because the states already are fulfilling the core objectives of the regional haze program. Examples of these situations for when an exemption would be appropriate include the following:

States are already meeting their URP glidepath trajectories. In this case, additional emissions controls are not necessary given that the state is already achieving the reasonable progress goals for the specific planning period. Requiring the state to prepare a full-blown regional haze plan would consequently not serve any regulatory purpose given all affected Class I Areas are already projected to achieve reasonable progress for the planning period at issue.

Major sources are not meaningfully contributing to visibility impairment in Class I Areas. Another related reason for EPA to grant an exemption is that the major stationary sources within the state do not cause or contribute to *perceptible visibility impairment* in Class I Areas (below 1 deciview impact). In such cases, it would be appropriate to relieve the state of its obligations to conduct additional technical analyses of emissions control measures and visibility modeling impacts so long as the state's current EPA-approved emissions control plan is sufficient to achieve reasonable progress goals.

Visibility impacts on Class I Areas are de minimis. As visibility conditions at Class I Areas continue to improve from reductions in anthropogenic impairment, visibility in Class I Areas will approach natural visibility conditions. In such situations, EPA has observed that "visibility impairment could reach a level below which it is not practical or feasible to further control."[21] In the case of those states having such a *de minimis* level of visibility impairment, it would be appropriate for EPA to classify those Class I Areas as having fully satisfied visibility improvement obligations under CAA section 169A. In effect, the state would be designated as being in "attainment" for purposes of the regional haze program.

States having achieved this "attainment" status should not have any further obligations to adopt additional emission controls to improve visibility at those particular areas. However, states would still be required to perform periodic evaluations of visibility in those Class I Areas to ensure visibility has not significantly degraded. In those cases where visibility degradation may be occurring, states would be required to evaluate emissions reduction measures for remedying the impairment through consideration of the four statutory factors.

EPA should extend the deadline for the submission of regional haze plans by states from ten to 15 years and consider allowing longer planning periods as appropriate.

An extension of the current ten-year planning period to at least 15 years is consistent with the statute, which directs states to submit regional haze plans with "a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national [visibility] goal."[22]

More importantly, extending the planning cycle to 15 years would improve program effectiveness, enhance technical assessments, reduce administrative burdens on states, and facilitate integration with other CAA regulatory programs. Examples of these benefits include those discussed below:

Administrative Efficiency. A 15-year cycle reduces the resource burden on state agencies, which currently spend substantial time and effort on planning, consultation, and public review every decade. Longer intervals streamline administrative workload, freeing up staff for implementation and technical work on other environmental matters rather than repetitive plan revisions.

Improved Modeling and Monitoring. Visibility and air quality measurements, model validation, and emissions inventories are more accurate over longer periods, reducing the influence of natural variability, episodic events (*e.g.*, wildfires), and short-term meteorology fluctuations on state planning determinations.

Planning for Large Infrastructure Transitions. Major source retirements, fuel switching, and introduction of advanced controls involve long lead times. Allowing 15 years accounts for the actual pace of industry change, avoids unrealistic compliance timetables, and provides room for uncertainty in modeling and forecasting.

Improved Integration with Other CAA Regulatory Programs. Many major federal air regulations (*e.g.*, interstate transport rules and state implementation of new ambient air quality standards) require multi-year implementation cycles. Extending the regional haze planning period aligns with the pace of power sector transitions and other multi-year air quality planning processes, improving coordination and minimizing duplicative regulatory effort.

In addition to extending state planning cycle from ten to 15 years, EPA should keep a flexible timeframe for submitting updated regional haze plans on an "as needed" basis. As previously discussed, the overall regulatory framework calls upon states to include in their regional haze plans those "emission limits, schedules of compliance, and other measures as may be necessary to make reasonable progress toward meeting the national [visibility] goal."[23] If, for example, the measures incorporated into the states' long-term strategies continue to make reasonable progress towards the national goal, states should not be required to submit an entirely new regional haze plan for each successive planning period. Instead, states should only be required to update their long-term strategies when sufficient reasonable progress is not being made towards the national goal, thereby fulfilling Congress' mandate for long-term strategies to contain "the measures as may be necessary" to achieve the national visibility goal.

Conclusion. Compelling reasons exist for EPA to restructure the current regulatory framework to improve visibility in Class I Areas under the regional haze program. Our comments highlight several important structural changes that EPA should make to the current framework and provide recommendations on how best to implement those changes. The objective of our recommended changes is to ensure the achievement of the visibility goals for the regional haze program, while also avoiding the premature shutdown of coal-fired EGUs that are critically important for ensuring electric grid reliability.

We appreciate the opportunity to submit these comments and look forward to working with the agency to improve the design and implementation of the regional haze program. If the agency

has any questions, please contact me at MBloodworth@AmericasPower.org or Paul Bailey at PBailey@AmericasPower.org.

Sincerely,

Michelle Bloodworth
President and CEO

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[1] *Visibility Protection: Regional Haze State Plan Requirements Rule Revision*, 90 Fed. Reg. 47,677 (Oct. 2, 2025).
[2] Section 169A(g)(1) of the CAA; 40 C.F.R. at §51.308(f)(2)(i).
[3] *North Dakota v. EPA*, 730 F.3d 750, 768 (8th Cir. 2013) (providing that "the CAA requires only that a state establish reasonable progress, not the most reasonable progress").
[4] *See e.g.*, Air Plan Approval, West Virginia: Regional Haze Plan for the Second Implementation Period, 90 Fed. Reg. 16,478 (April 18, 2025); South Dakota: Regional Haze Plan for the Second Implementation Period, 90 Fed. Reg. 20,425 (May 14, 2025); Colorado: Regional Haze Plan for the Second Implementation Period, 90 Fed. Reg. 31,926 (July 16, 2025); Iowa: Regional Haze Plan for the Second Implementation Period, 90 Fed. Reg. 37,389 (August 5, 2025).
[5] *See, e.g.*, 90 Fed. Reg. at 16,483 (stating that "where visibility conditions 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").
[6] *See* Section 110(k) of the CAA; Section 169A(b)(2) of the CAA.
[7] See e.g., *American Corn Growers Association v. EPA*, 291 F.3d 1 (D.C. Cir. 2002).
[8] 40 C.F.R. §51.308(d)(1), (3).
[9] *Id.* at §51.308(d)(2(iii); EPA Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Program (EPA-454/B-03-005) (recognizing "Natural visibility represents the estimated level of visibility that would exist in the absence of human-caused impairment"). In effect, the degree of visibility impairment under natural conditions would be the visibility that would exist with only natural sources of visibility-impairing aerosols. *See* EPA, *Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program* (December 2018) (*EPA Technical Visibility Guidance)*, available here.
[10] *Id.* at 15.
[11] *Id; EPA Guidance for Estimating Natural Visibility Conditions under the Regional Haze Program* (September 2003) available here.
[12] Section 169A(b)(2) of the CAA (emphasis added).
[13] Section 169A(b)(1), (g)(1) of the CAA
[14] With the repeal of the *Chevron* doctrine pursuant the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), a reviewing court is not bound to defer to EPA's view that natural conditions must be achieved given that this view rests on Chevron-type reasoning rather than clear statutory text. Rather, the best interpretation of the statute is that the agency should not impose a mandatory obligation for states to achieve visibility conditions that "have never occurred in modern times" and consequently have "never been directly measured." *EPA Technical Visibility Guidance* at 15.
[15] 40 C.F.R §51.308 (d), (f).
[16] 90 Fed. Reg. at 47,682.
[17] *Id.* at 47,681 footnote 23.
[18] U.S. EPA, Regional Haze Early Engagement Webinar (April 2024), available at here.

[19] *See* EPA Release of 2023 Power Plant Emission Data available here. *See also* EPA Report on Power Sector Evolution available here; EPA Power Sector Programs Report available here.
[20] U.S. EPA, *Our Nation's Air: Trends Through 2022*, available at here. EPA estimates that visibility has improved significantly with the average visual range increased from 50 miles to 70 miles in Class I Areas in the East and from 90 miles to 120 miles in the West. U.S. EPA, *Protecting Our Nation's Treasured Vistas*, available here.
[21] 90 Fed. Reg. at 47,682-83,
[22] Section 169A(b)(2)(B) of the CAA.
[23] Section 169A(b)(2) of the CAA.