

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

RECEIVED

**JANUARY 30, 2025
U.S. Court of Appeals
Eighth Circuit – St. Paul, MN**

STATE OF NORTH DAKOTA,
Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and LEE
MICHAEL ZELDIN, Administrator,
United States Environmental Protection
Agency,
Respondents.

Case No. _____

**FILED
JANUARY 30, 2025
U.S. Court of Appeals
Eighth Circuit – St. Paul, MN**

PETITION FOR REVIEW

Pursuant to Section 307(b)(1) of the Clean Air Act (42 U.S.C. § 7607(b)(1)) and Federal Rule of Appellate Procedure 15(a), the State of North Dakota petitions this Court for review of the final rule issued by the United States Environmental Protection Agency entitled *Air Plan Partial Approval and Disapproval; North Dakota; Regional Haze State Implementation Plan for the Second Implementation Period*, published in the Federal Register at 89 Fed.Reg. 95,126 (Dec. 2, 2024). A copy of the Final Rule is attached as Exhibit A. This Court has jurisdiction and is the proper venue for this action pursuant to 42 U.S.C. § 7607(b)(1).

Dated: January 30, 2025

Respectfully submitted,

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Attorney General of North Dakota

/s/ Philip Axt

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CERTIFICATE OF SERVICE

I hereby certify that on this day, January 30, 2025, I have served a true copy of the Petition for Review via U.S. Mail upon the following:

Hon. Lee Michael Zeldin
Administrator of the United States Environmental Protection Agency
Office of the Administrator (1101A)
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Dated: January 30, 2025

Respectfully submitted,

/s/ Paul M. Seby

Paul M. Seby

Counsel for State of North Dakota

EXHIBIT

A

of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

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

List of Subjects in 40 CFR Part 52

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

Dated: November 22, 2024.

KC Becker,
Regional Administrator, Region 8.

For the reasons stated in the preamble, the Environmental Protection

Agency is amending 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart ZZ—Wyoming

■ 2. In § 52.2620, the table in paragraph (e) is amended by adding and entry for “(36) XXXVI” at the end of the table to read as follows:

§ 52.2620 Identification of plan.

* * * * *
(e) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
(36) XXXVI	Wyoming State Implementation Plan, Second Planning Period.	2022	1/2/2025	[insert Federal Register citation], 12/2/2024.	Excluding the following: Chapters 3.4, 7, 8, 10, 11, 12, 13, 14, 15, and appendix C–E, G–M. EPA disapproved the portions of Wyoming’s 2022 SIP submission relating to CAA section 169A and 40 CFR 51.308(f)(2): long-term strategy; 40 CFR 51.308(f)(3): reasonable progress goals; and 40 CFR 51.308(i): FLM consultation.

[FR Doc. 2024–27942 Filed 11–29–24; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2023–0495; FRL–12052–02–R8]

Air Plan Partial Approval and Partial Disapproval; North Dakota; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving a regional haze state implementation plan (SIP) revision submitted by the State of North Dakota on August 11, 2022 (North Dakota’s 2022 SIP submission) to address applicable requirements under the Clean Air Act (CAA) and the EPA’s Regional Haze Rule (RHR) for the regional haze program’s second

implementation period. The EPA is taking this action pursuant to the CAA.

DATES: This rule is effective January 2, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2023–0495. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Joe Stein, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–7078, email address: stein.joseph@epa.gov.

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

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I. What is being addressed in this document?

The EPA is partially approving and partially disapproving North Dakota’s regional haze plan for the second planning period.¹ As required by section 169A of the CAA, the RHR calls for State and Federal agencies to work together to improve visibility in 156 national parks and wilderness areas, known as mandatory Class I Federal areas.² The rule requires the States, in coordination with the EPA, the National Park Service, the Fish and Wildlife Service, the Forest Service, and other interested parties, to develop and

¹ The EPA uses the terms “implementation period” and “planning period” interchangeably.
² See 40 CFR part 81, subpart D.

implement air quality protection plans to reduce the pollution that causes visibility impairment in mandatory Class I Federal areas. Visibility impairing pollutants include fine and coarse particulate matter (PM) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., sulfur dioxide (SO₂), oxides of nitrogen (NO_x), and, in some cases, volatile organic compounds (VOC) and ammonia (NH₃)). As discussed in further detail in our proposed rule, in this document, and in the accompanying Response to Comments (RTC) document, the EPA finds that North Dakota submitted a regional haze SIP that does not meet all the statutory and regulatory requirements for the regional haze second planning period. The State's submission, the proposed rule, and the RTC document can be found in the docket for this action.

II. Summary of the Proposed Action, Public Comments, and the EPA's Reasons for Final Action

On August 11, 2022, North Dakota submitted a revision to its SIP to address regional haze for the second implementation period, in accordance with the requirements of the CAA's regional haze program established by CAA sections 169A and 169B and 40 CFR 51.308.

On July 10, 2024, the EPA proposed to disapprove certain provisions of North Dakota's 2022 SIP submission.³ Specifically, we proposed to disapprove the portions of North Dakota's 2022 SIP submission relating to 40 CFR 51.308(f)(2): long-term strategy; 40 CFR 51.308(f)(3): reasonable progress goals; and 40 CFR 51.308(i): Federal Land Manager (FLM) consultation. We also proposed to approve the portions of North Dakota's 2022 SIP submission relating to 40 CFR 51.308(f)(1): calculations of baseline, current, and natural visibility conditions, progress to date, and the uniform rate of progress (URP); 40 CFR 51.308(f)(4): reasonably attributable visibility impairment; 40 CFR 51.308(f)(5) and 40 CFR 51.308(g): progress report requirements; and 40 CFR 51.308(f)(6): monitoring strategy and other implementation plan requirements. Consistent with section 110(k)(3) of the CAA, the EPA may partially approve portions of a submittal if those elements meet all applicable requirements and may disapprove the remainder so long as the elements are fully separable. Our public comment period closed on August 9, 2024. Our July 10, 2024, proposed rule provided

background on the requirements of the CAA and RHR, a summary of North Dakota's regional haze SIP submittals and related EPA actions, and the EPA's rationale for its proposed action. That background and rationale will not be restated in full here, although we briefly summarize the reasons for our partial disapproval of North Dakota's 2022 SIP submission in the paragraphs that follow.

In CAA section 169A(a)(1), Congress established the national goal of preventing any future and remedying any existing impairment of visibility in mandatory Class I Federal areas that results from manmade (anthropogenic) air pollution. The core component of a regional haze SIP submission for the second implementation period is a long-term strategy for making reasonable progress toward meeting that national goal. CAA section 169A(b)(2)(B), 40 CFR 51.308(f)(2). A state's long-term strategy must address regional haze in each Class I area within the state's borders and each Class I area outside the state that may be affected by emissions originating from within the state. It "must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv)." 40 CFR 51.308(f)(2). The amount of progress that is "reasonable progress" is based on applying the four statutory factors 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 potentially affected sources⁴—in an evaluation of potential control measures for sources of visibility impairing pollutants, which is referred to as a "four-factor" analysis. In developing its long-term strategy, the state must document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which it is relying to determine the measures that are necessary to make reasonable progress. 40 CFR 51.308(f)(2)(iii).

As detailed in section 3.A. of the RTC document, the CAA authorizes the EPA to substantively review states' SIP submissions for compliance with the statute and EPA's regulations to ensure progress towards the national visibility goal for Class I areas. Congress charged the EPA with exercising "federal oversight" over SIP submissions and "review[ing] all SIPs to ensure that the plans comply with the statute." *Oklahoma v. EPA*, 723 F.3d 1201, 1204

(10th Cir. 2013); *see also id.* at 1207–08 (citing CAA Sections 110(l), 110(a)(2)(j), and 169A(b)(2)). The "EPA is left with more than the ministerial task of routinely approving SIP submissions." *North Dakota v. EPA*, 730 F.3d 750, 761 (8th Cir. 2013). Instead, the Agency's "review of a SIP extends not only to whether the state considered the necessary factors in its determination, but also to whether the determination is one that is reasonably moored to the CAA's provisions" and is "based on 'reasoned analysis.'" *Id.* at 761, 766 (citing *Alaska Dep't of Env't. Conservation v. EPA*, 540 U.S. 461 (2004)); *see also Wyoming v. EPA*, 78 F.4th 1171, 1180–81 (10th Cir. 2023) (noting that "the Act provides for substantive and careful EPA review" of SIP submissions and that "the EPA does not have to accept unreasonable analyses"). For the reasons stated in the proposed rule, this document, and in the RTC document, the EPA concludes that North Dakota's 2022 SIP submission does not meet all the requirements of the CAA and RHR.

As detailed at length in our proposed rule and in the RTC document, we conclude that North Dakota's long-term strategy does not meet the requirements of CAA section 169A(b)(2) and 40 CFR 51.308(f)(2) on two independent grounds. First, North Dakota relied on the URP status of in-state Class I areas and a visibility improvement threshold that is inconsistent with the purpose of the CAA's visibility program to unreasonably reject feasible and reasonably inexpensive controls it evaluated under the four statutory factors at Coyote Station and Antelope Valley. Second, North Dakota failed to consider the four statutory factors for NO_x at Coal Creek and unreasonably rejected feasible and reasonably inexpensive controls it evaluated under the four statutory factors at Coal Creek and Leland Olds. Likewise, North Dakota did not meet the requirements of 40 CFR 51.308(f)(3) because the deficiencies in its long-term strategy prevented the State from developing adequate reasonable progress goals (RPGs). Additionally, we are disapproving North Dakota's FLM consultation under 40 CFR 51.308(i) because compliance with that requirement is dependent on fulfilling the substantive requirements of 40 CFR 51.308(f)(2) (long-term strategy).

During the public notice and comment period, we received 31 comments on our proposal. The full text of comments received is included in the publicly posted docket associated with this action at <https://www.regulations.gov>. Our RTC

³ 89 FR 56693 (July 10, 2024).

⁴ CAA section 169A(g)(1); 40 CFR 51.308(f)(2)(i).

document, which is also included in the docket associated with this action, provides detailed responses to all significant comments received.⁵ Our RTC document is organized by topic. Therefore, if additional information is desired concerning how we addressed a particular comment, the reader should refer to the appropriate section in the RTC document.

We received several comments on our proposed disapproval of North Dakota's long-term strategy on the basis that North Dakota unreasonably considered visibility benefits to reject technically feasible and reasonably inexpensive controls based on an unreasonable interpretation of CAA 169A to select its visibility improvement threshold that essentially nullified the CAA 169A(g)(1) statutory factors. Below, we provide a summary and response to this issue including North Dakota's interpretation that a change of RPG of 1.0 deciview (dv) visibility improvement (a change in visibility impairment visible to the naked eye) is needed to necessitate additional controls to make "reasonable progress." This is inconsistent with the plain language and Congress' explicitly stated national purpose of the CAA's visibility provisions.

In North Dakota's SIP, North Dakota determined that because its visibility improvement analysis showed no "significant" change in visibility after installation of potential controls, it would not be reasonable to require any additional controls to make reasonable progress for Coyote Station and Antelope Valley. We proposed disapproval due to North Dakota's reliance on visibility considerations to reject cost-effect controls at Coyote Station and Antelope Valley. Commenters concluded that this meant the EPA was either prohibiting the State from considering visibility in the four-factor analysis or that we ignored North Dakota's visibility analysis. This is incorrect. The CAA's cooperative federalism framework imposes on EPA a substantive role in determining if a SIP is approvable. See our RTC section 3.A Cooperative Federalism and State Discretion for a detailed explanation. In particular, any approvable regional haze SIP must be consistent with Congress' explicit statutory declaration of the "national goal" for "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." Additionally, in determining reasonable progress, states must

"consider 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."⁶

The EPA has acknowledged that a state may reasonably consider factors beyond the explicit four CAA section 169A(g)(1) factors, such as visibility, when assessing sources or source categories. In a response to comment on the 2017 RHR, EPA noted that a state that elects to consider an additional factor, such as visibility, must do so in a reasonable way that does not undermine or nullify the role of the four statutory factors.⁷

As this response to comment indicates, the consideration of any non-statutory factor, including visibility, must be reasonable. See, e.g., *North Dakota*, 730 F.3d at 766 ("EPA's review of a SIP extends not only to whether the state considered the necessary factors in its determination, but also to whether the determination is one that is reasonably moored to the CAA's provisions."). The reasonableness of a state's visibility consideration in the four-factor analysis turns on whether the determination is reasonably moored to the CAA visibility provisions and how the state explained and supported its determination in the record.

Here, we find that North Dakota's consideration of visibility in its four-factor analysis is unreasonable and inconsistent with the CAA and the RHR. Specifically, North Dakota rejected technically feasible and reasonably inexpensive controls at Coyote Station and Antelope Valley based on its unreasonable visibility improvement threshold in considering visibility as part of the four-factor analysis.⁸ In its SIP, North Dakota determined that no additional controls are required for Coyote Station and Antelope Valley due to "insignificant" visibility improvement when looking at the change in the RPG for a Class I area (Lostwood and Theodore Roosevelt) from the addition of potential controls. This determination was based on an interpretation that CAA section 169A requires a change in RPG of 1.0 dv improvement from the addition of controls at a single Class I area before that control is required to make "reasonable progress." However, this

interpretation is unreasonable and inconsistent with the CAA.

Congress mandated the national goal of remedying of existing and preventing future visibility impairment air pollution from anthropogenic sources.⁹ In *American Corn Growers Ass'n v. EPA*, 291 F.3d 1 (D.C. Cir. 2002), the D.C. Circuit stated that "[t]he statutory goal enunciated in § 169A(a)(1) is quite clear: 'the prevention of any future, and the remedying of any existing, impairment of visibility.' . . . [Therefore, agency] regulations that aim to remedy any existing impairment of visibility and prevent any future impairment—as the statute commands—will of necessity aim to achieve a state of natural visibility. There is no material inconsistency between the statutory and regulatory goals, for the latter merely elucidates the former." *Id.* at 10. Therefore, as outlined throughout our proposal and this final document, the EPA is within its authority to disapprove North Dakota's long-term strategy for not including the necessary measures. Specifically, North Dakota's consideration of visibility requiring a change in RPG of 1.0 dv improvement at a single Class I area to necessitate the imposition of additional controls under reasonable progress effectively undermines and nullifies the Congressionally mandated national goal and the reasonable progress four-factor analysis requirements enumerated in CAA sections 169A(a)(1) and (g)(1). There are 56,025 anthropogenic industrial sources (electric generating units (EGU), oil and gas, and other industrial point (non-EGU) sources) in the United States that contribute to Lostwood, which is the closest Class I area to the sources evaluated by North Dakota.¹⁰ North Dakota rejected feasible and reasonably inexpensive (\$400/ton–\$1,800/ton) controls at Coyote Station and Antelope Valley under two control scenarios due to asserted non-visible and therefore ostensibly "insignificant" visibility improvement (less than 1.0 dv change in RPG visibility improvement) at a Class I area for the second planning period. However, North Dakota's analysis showed that both potential control scenarios were feasible and reasonably inexpensive and resulted in either a 10% or 25% greater visibility improvement than existing on-the-books controls for this planning period at Lostwood.

In particular, North Dakota's visibility improvement analysis projected visibility improvement from existing

⁶ CAA section 169A(a)(1), (g)(1).

⁷ EPA, Response to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule, December 2016, at 186 (available in the docket for this action).

⁸ 40 CFR 51.308(f)(2)(i).

⁹ CAA section 169A(a)(1).

¹⁰ Censara AOI spreadsheet titled "Appendix C-1_AOI2016EI-tool.xlsx."

⁵ Some commenter tables and figures are excluded from this document.

controls in North Dakota to be 0.4 dv at Lostwood for this 10-year planning period. North Dakota considered two modeling runs to assess visibility impact of controls: Potential Additional Control Scenario 1 (“PAC1:” Replacement of the SO₂ absorber at \$1,800/ton and installation of SNCR for NO_x at \$1,700/ton at Coyote Station as well as increasing the stoichiometric ratio on existing FGD for SO₂ emission reductions at \$700/ton at Antelope Valley) and Potential Additional Control Scenario 2 (“PAC2:” FGD modification for SO₂ emission reductions (\$400/ton) at Coyote Station). Based on North Dakota’s analysis, PAC1 showed an additional 0.1 dv visibility improvement at Lostwood, with control costs ranging from \$700/ton–\$1,700/ton, resulting in a projected 25% visibility improvement at Lostwood for this planning period. Under PAC2, North Dakota’s SIP showed an additional 0.04 dv projected visibility improvement at \$400/ton, which would result in a projected 10% visibility improvement at Lostwood for this planning period. North Dakota rejected both control scenarios due to their lack of “significant” visibility improvement or change in RPG.

In response to comments on our 2017 RHR, we reemphasized that achieving reasonable progress will depend upon obtaining aggregate reductions from possibly thousands of sources, and thus, rejecting a control measure because its effect on the RPG is subjectively assessed as “not meaningful” when that control is identified as feasible and relatively inexpensive under the four statutory factors would be inappropriate. We stated:

The commenter’s second suggestion, that states should be able to reject “costly” control measures if the RPG for the most impaired days is not “meaningfully” different than current visibility conditions, is counterintuitive and at odds with the purpose of the visibility program. In this situation, the state should take a second look to see whether more effective controls or additional measures are available and reasonable. Whether the state takes this second look or not, it may not abandon the controls it has already determined are reasonable based on the four factors. Regional haze is visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area. At any given Class I area, hundreds or even thousands of individual sources may contribute to regional haze. Thus, it would not be appropriate for a state to reject a control measure (or measures) because its effect on the RPG is subjectively assessed as not

“meaningful.” Also, for Class I areas where visibility conditions are considerably worse than natural conditions because of continuing anthropogenic impairment from numerous sources, the logarithmic nature of the deciview index makes the effect of a control measure on the value of the RPG less than its effect would be if visibility conditions at the Class I area were better. Thus, if a state could reject a control measure based on its individual effect on the RPG, the state would be more likely to reject those measures that are necessary to make reasonable progress at the dirtiest Class I areas, which would thwart Congress’ national goal (82 FR 3078, 3093; Jan. 10, 2017).

North Dakota’s approach in considering visibility under the four-factor analysis effectively undermines and nullifies Congressional intent, since there is no scenario for this or subsequent planning periods under which controls to improve visibility would ever be required under the CAA visibility program, no matter how low the cost since no one source impairs visibility at a single Class I area (e.g. Lostwood and Theodore Roosevelt National Park) above 1.0 dv. This conflicts with the CAA’s stated national visibility goal of elimination of impairment from manmade sources and thus, North Dakota’s consideration of visibility is improper. Specifically, North Dakota’s determination to reject feasible and reasonably inexpensive controls at Coyote Station and Antelope Valley was improper. North Dakota’s own analysis shows significant visibility improvement from additional controls at Coyote Station and Antelope Valley compared against the visibility improvement from all sources that contribute to visibility impairment at Lostwood and/or Theodore Roosevelt National Park during this planning period.

To explore this point further, the EPA included in the docket to this action a Technical Appendix, which examines, using Western Regional Air Partnership (WRAP) data, the total anthropogenic nitrate and sulfate visibility-impairment impacts on North Dakota Class I areas from the EGU sector in North Dakota. As shown in the Technical Appendix, North Dakota’s EGU sources contribute ~22% (a significant portion) of the total anthropogenic impairment (nitrate and sulfate combined) on most-impaired days from all sources in the United States at Lostwood Wilderness Area. When compared to natural conditions,

this translates to 0.92 dv.¹¹ North Dakota’s EGU sources contribute ~14% (a significant portion) of the total anthropogenic impairment (nitrate and sulfate combined) from all sources in the United States at Theodore Roosevelt National Park. When compared to natural conditions, this translates to 0.26 dv.¹² These numbers demonstrate the unreasonableness of North Dakota’s position that controls must produce a perceptible impact to a Class I area RPG, or larger than 1.0 dv, to be necessary for reasonable progress. The EPA acknowledges the significant impact of the North Dakota EGU sector on visibility impairment at Lostwood Wilderness Area¹³ and Theodore Roosevelt National Park,¹⁴ despite these impacts amounting to less than a 1.0 dv impact on the RPG at each Class I area. Thus, North Dakota’s threshold for determining whether visibility improvement on a Class I area RPG necessitates new controls plainly serves to nullify the result of a four-factor analysis, especially given the low cost of controls rejected at Antelope Valley and Coyote Station.

Furthermore, as we have noted previously, regional haze is caused by hundreds or thousands of individual sources and very few remaining sources (or even none of them) will individually have impacts as large as a threshold that might be considered a “perceptible” or “meaningful” impact. However, these sources still contribute to visibility impairment and have a meaningful impact in the aggregate.¹⁵ Under the CAA and the RHR, each state that impacts a Class I area must consider the four statutory factors to determine whether additional measures are necessary for reasonable progress. Based on the WRAP data evaluated in the proposed rule, in the Technical Appendix, and in the RTC document, North Dakota has significant impacts on both in-state and out-of-state Class I areas,¹⁶ which is one of the bases to consider additional measures. In its analysis of additional measures, North Dakota showed that, compared to

¹¹ See the EPA’s Technical Appendix in the docket associated with this action.

¹² *Id.*

¹³ North Dakota’s EGU sources contribute ~22% (a significant portion) of the total anthropogenic impairment (nitrate and sulfate combined) on most-impaired days from all sources in the United States at Lostwood Wilderness Area. See Technical Appendix.

¹⁴ North Dakota’s EGU sources contribute ~14% (a significant portion) of the total anthropogenic impairment (nitrate and sulfate combined) from all sources in the United States at Theodore Roosevelt National Park. See Technical Appendix.

¹⁵ 82 FR at 3093 (January 10, 2017).

¹⁶ 89 FR 56693, 56707–09 (July 10, 2024).

natural conditions, the controls rejected at Antelope Valley and Coyote Station would result in a 0.29 dv reduction at Lostwood Wilderness Area,¹⁷ the highest-impacted Class I area from ND sources. Comparing this to the total impairment resulting from North Dakota EGUs at Lostwood Wilderness Area, the controls North Dakota rejected at Antelope Valley and Coyote Station would result in a ~32% reduction in visibility impairment from North Dakota's EGU sector.¹⁸ Given that North Dakota is by far the largest contributor to impairment at Lostwood Wilderness Area,¹⁹ the EPA finds the reduction in visibility impairment associated with these controls to be significant. In its analysis of additional measures, North Dakota also showed that, compared to natural conditions, the feasible and reasonably inexpensive controls rejected at Antelope Valley and Coyote Station would result in a 0.17 dv reduction in impairment at Theodore Roosevelt National Park.²⁰ Comparing this to the total impairment resulting from North Dakota EGUs at Theodore Roosevelt National Park, the controls North Dakota rejected at Antelope Valley and Coyote Station would result in a ~65% reduction in visibility impairment from North Dakota's EGU sector.²¹ Given that North Dakota is by far the largest contributor to impairment at Theodore Roosevelt National Park,²² the EPA finds that the reduction in visibility impairment associated with installation of these controls would be significant.

In addition, North Dakota's consideration of visibility included various technical flaws that individually, as well as collectively, underrepresented the actual visibility improvement that might be achieved from the addition of controls at Coyote Station and Antelope Valley. As more fully explained in the RTC document, these technical flaws²³ result in an

overall underestimate of the potential visibility improvement that could be achieved by the imposition of controls selected through the consideration of the four reasonable progress factors set forth in CAA section 169A(g)(1) on which North Dakota based its determination. If those errors are corrected, the imposition of controls under either scenario at Coyote Station and/or Antelope Valley would be greater than the anticipated 10–25% visibility improvement from existing controls.

As described in this preamble and in the RTC document, North Dakota's consideration of visibility, namely, its selection and application of a 1.0 dv visibility improvement threshold to reject feasible and reasonably inexpensive controls for reasonable progress at Antelope Valley and Coyote Station, undermines and nullifies the results of the four-factor analyses performed by North Dakota. This is unreasonable and inconsistent with the CAA and the RHR. Thus, EPA is required to disapprove North Dakota's long-term strategy, as well as the associated reasonable progress goals and FLM consultation.

III. Final Action

For the reasons stated in the proposed rule, in the RTC document, and in this document, we are partially approving and partially disapproving North Dakota's 2022 SIP submission.

We are disapproving the following components of North Dakota's 2022 SIP submission relating to CAA section 169A:

- Long-term strategy (40 CFR 51.308(f)(2));
- Reasonable progress goals (40 CFR 51.308(f)(3)); and
- FLM consultation (40 CFR 51.308(i)).

We are approving the following components of North Dakota's 2022 SIP submission relating to CAA section 169A:

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

Class I areas when controls at Antelope Valley and Coyote Station also benefit those Class I areas identified by North Dakota under CAA 169A(b)(2).

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629,

¹⁷ North Dakota's 2022 SIP Submission, appendix D.5–23.

¹⁸ 0.29/0.92 = ~0.32 or a 32% reduction in impairment.

¹⁹ See the EPA's Technical Appendix in the docket associated with this action.

²⁰ North Dakota's 2022 SIP Submission, appendix D.5–23.

²¹ 0.17/0.26 = ~0.65 or a 65% reduction in impairment.

²² See the EPA's Technical Appendix in the docket associated with this action.

²³ As detailed in the RTC document, the technical flaws in North Dakota's visibility improvement analysis included the comparison to a dirty background rather than natural conditions (North Dakota then provided updated numbers comparing to natural conditions in response to comment on the draft plan) and using the 20% most-impaired days rather than all days to assess impacts from individual sources. In addition, North Dakota did not consider the visibility benefits to out-of-state

Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an EJ analysis, as is described in the proposed action 89 FR 56693 (July 10, 2024) in the section titled, “Environmental Justice.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In

addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by

reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 22, 2024.
KC Becker,
Regional Administrator, Region 8.

For the reasons stated in the preamble, the Environmental Protection Agency is amending 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:
Authority: 42 U.S.C. 7401 *et seq.*

Subpart JJ—North Dakota

■ 2. In § 52.1820, the table in paragraph (e) is amended by adding an entry for “North Dakota State Implementation Plan for Regional Haze (Second Implementation Period)” at the end of the table to read as follows:

§ 52.1820 Identification of plan.
* * * * *
(e) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
*	*	*	*	*	*
North Dakota State Implementation Plan For Regional Haze					
*	*	*	*	*	*
North Dakota State Implementation Plan for Regional Haze (Second Implementation Period).	North Dakota State Implementation Plan for Regional Haze	8/10/2022	1/2/2025	[insert Federal Register citation], 12/2/2024	Excluding the sections disapproved in this action. EPA disapproved the portions of North Dakota’s 2022 SIP submission relating to CAA section 169A and 40 CFR 51.308(f)(2): long-term strategy; 40 CFR 51.308(f)(3): reasonable progress goals; and 40 CFR 51.308(i): FLM consultation.

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ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 180
[EPA–HQ–OPP–2023–0368; FRL–12393–01–OCSP]
Fatty acids, C_{16–18} and C₁₈-unsatd., esters With polyethylene glycol mono-Me ether in Pesticide Formulations; Tolerance Exemption
AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.
SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of fatty acids, C_{16–18} and C₁₈-unsatd., esters with polyethylene glycol mono-Me ether (CAS Reg. No. 518299–31–5) when used as an inert ingredient (surfactant and related adjuvant of surfactant) on growing crops and raw agricultural commodities pre- and post-harvest limited to 25% by weight in pesticide formulations. Spring Regulatory