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U.S Environmental Protection Agency
Attention: Docket ID No. EPA-R08-OAR-2024-0608
Submitted via https://www.regulations.gov

To Whom It May Concern:

The Mid-Atlantic/Northeast Visibility Union (MANEVU) is submitting comments to the U.S. Environmental Protection Agency (EPA) on its proposed *Air Plan Approval; Montana; Regional Haze Plan for the Second Implementation Period; Prong 4 (Visibility) for the 2015 8-Hour Ozone National Ambient Air Quality Standard* [90 Fed. Reg. 43958 (September 11, 2025)]. These comments focus solely on the EPA's use of a Uniform Rate of Progress (URP) metric as applied to Montana's regional haze SIP. They reflect the consensus views of the MANEVU non-federal members and are not intended to represent the views of the Tribal members or federal agency partners in MANEVU.

The EPA is proposing to fully approve Montana's SIP, submitted to the EPA on August 10, 2022. In doing so, the EPA states its "recently implemented URP policy is that so long as the Class I areas impacted by a state are below the URP and the State considers the four factors, the State will have presumptively demonstrated it has already made reasonable progress for the second planning period for that area" (citation omitted). [90 Fed. Reg., at 43966] It is MANEVU's position that this policy is not permissible under the statutory language of the Clean Air Act.

Section 169A(g)(1) of the Clean Air Act (CAA) explicitly 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[.]" These are commonly referred to as the "four factors" a state must apply in evaluating potential emission reductions from sources within its borders.[1]

The EPA now invokes an extra-statutory fifth factor, the Uniform Rate of Progress (URP). As framed by the EPA, this fifth factor can override a statutory four factor analysis finding that while additional requirements placed

MANEVU Class I Areas

Acadia National Park
Maine

Brigantine Wilderness
New Jersey

Great Gulf Wilderness
New Hampshire

Lye Brook Wilderness
Vermont

Moosehorn Wilderness
Maine

Presidential Range
Dry River Wilderness
New Hampshire

Roosevelt Campobello
International Park
Maine/New Brunswick,
Canada

[1] "A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility impairing pollutants that the state has selected to assess for controls for the second implementation period." [90 Fed. Reg., at 43960]

on visibility-impairing sources constitute "reasonable progress," these can be dismissed because the impacted Class I area is below the URP.

The CAA statutory text makes no mention of the URP as the deciding factor, or even a factor at all, in determining reasonable progress. This is because the URP is a regulatory, not statutory, construct of EPA's Regional Haze Rule (RHR) promulgated after CAA section 169A(g)(1) was enacted into law.

Because the URP is a regulatory creation outside the CAA section 169A(g)(1) definition of determining reasonable progress, it is MANEVU's view that use of the URP as a factor to supersede a statutory four factor analysis is not permissible. CAA section 169A(g)(1) explicitly defines how to determine reasonable progress, and the EPA has received no authority from Congress to impose an additional overriding regulatory criterion that goes beyond the statutory factors [*see, e.g., Loper Bright Enterprises, et al. v. Raimondo, et al.* 603 U.S. 369 (2024)].

While not clearly stated in this proposal, the EPA has previously asserted in other proposed approvals of regional haze SIPs for the second implementation period that progress below the URP would be "maximal progress" not required by the CAA.[2] To the extent the EPA would assert such a rationale in this proposal, MANEVU disagrees. The EPA's extra-statutory view of "maximal progress" undermines Congress' goal to achieve "reasonable progress." Based on MANEVU's understanding of the EPA's new policy, the EPA could dismiss requirements to achieve progress below the URP because it would be considered "maximal progress" even if "reasonable progress" as determined using the four Clean Air Act statutory factors would result in greater progress than the URP. Use of the non-statutory URP metric in this manner conflicts with the intent of Congress. Congress defined "determining reasonable progress" to be based on the four explicitly listed statutory factors. Any consideration of "maximal progress" must be relative to Congress' definition for determining reasonable progress using the four statutory factors. The URP metric is an extra-textual reference line that may lie above what otherwise would be determined as "reasonable progress" under the plain language of the Clean Air Act, and is therefore an impermissible reframing of "reasonable progress" from what Congress intended.

MANEVU has submitted to the EPA multiple comments on regional haze SIPs that the URP is not a "safe harbor" from having to further reduce visibility impairing emissions where reasonable. The URP is simply a straight-line tracking metric from the 2000-2004 baseline to the 2064 natural visibility goal set by the EPA in regulation.

Pursuant to the CAA, the RHR at 40 CFR 51.308(d)(1) requires states with mandatory Class I federal areas to establish goals in their implementation plans that provide for improvement in visibility on the most impaired days and ensure no degradation in visibility on the clearest days. These goals are referred to as "reasonable progress goals" or "RPGs." States with Class I areas establish the RPGs to achieve incremental improvement in visibility to meet the 2064 goal. While a state must consider the URP when establishing the reasonable progress goal, it is merely an "upper bound" measuring stick to indicate whether the rate of improvement remains on track,

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[2] *See, e.g.,* Proposed "Approval of Air Quality Implementation Plans; California; Regional Haze State Implementation Plan for the Second Implementation Period," 90 Fed. Reg. 25929-25944 (June 18, 2025), at 25933.

i.e., is not slower than what the URP represents so as not to delay the attainment of natural conditions by 2064.

The MANEVU members have put extensive time and effort into developing RPGs during each planning period that fall well below the URP line at Class I areas within the MANEVU region. The RPGs are incorporated into the MANEVU states' regional haze SIPs, which received extensive input from the public, other states, and the federal land managers, and were ultimately approved by the EPA in its final regional haze SIP decisions. The EPA now invokes the URP as the determinative metric rather than the state-determined RPGs for their Class I areas. While neither the URP nor RPG are themselves enforceable metrics by statute, it seems incongruous that the EPA would opt for a URP untethered from the CAA and ignore the extensive work of the states in determining reasonable progress goals that by the very name seeks to align the statutory requirement of "reasonable progress" into the states' goals.

For these reasons, MANEVU disagrees with the EPA's use of the URP as a factor in finding a state has "presumptively demonstrated" reasonable progress in its haze SIP.

Thank you for your consideration of MANEVU's comments.

Sincerely,

Sharon Davis, New Jersey Department of Environmental Protection

David Healy, New Hampshire Department of Environmental Services
Co-Chairs, MANEVU Technical Support Committee (TSC)

cc: MANEVU Directors
MANEVU TSC