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**Docket ID No. EPA-HQ-OAR-2025-1477: Visibility Protection: Regional Haze State Plan Requirements Rule Revision: Advance Notice of Proposed Rulemaking  
90 Fed. Reg. 47,677 (Oct. 2, 2025)**

**Comments of the Competitive Enterprise Institute**

I. Introduction

The Competitive Enterprise Institute (CEI) is a policy and research organization dedicated to advancing the principles of free markets and limited government. We have a longstanding interest in bringing to light the deleterious consequences of federal regulations, which are often downplayed or ignored by agencies when adopting a regulatory agenda. CEI recently published “Modernizing The EPA: A Blueprint For Congress,” (*Modernizing the EPA*) which provides an overview of EPA programs under the Clean Air Act (CAA) and other statutes, and it includes a section on the Regional Haze Program at issue here.<sup>1</sup> In it, we conclude that the Regional Haze Program, like most other decades-old programs administered by EPA, is now in need of significant course corrections if not outright repeal. While *Modernizing the EPA* was written primarily to provide legislative direction to Congress, its overview of the Regional Haze Program and recommendations for reform are relevant to this Advance Notice of Proposed Rulemaking and are relied upon in this comment.

II. A Brief History of the Regional Haze Program

A. The Original Intent in 1977

The Regional Haze Program was added to the Clean Air Act in 1977.<sup>2</sup> Unlike the primarily health-based measures elsewhere in the CAA, regional haze is purely an aesthetic concern. It largely focuses on emissions from coal-fired power plants that could potentially impair visibility in national parks and other scenic vistas, especially in the Western United States. The statute provides states with wide discretion in determining both the objectives and the compliance strategies to address regional haze, with only minimal EPA oversight.

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<sup>1</sup> Competitive Enterprise Institute, “Modernizing the EPA: A Blueprint for Congress,” Competitive Enterprise Institute, 2025, pp. 125-126, [https://cei.org/wp-content/uploads/2025/03/ModernizingtheEPA\\_v5.pdf](https://cei.org/wp-content/uploads/2025/03/ModernizingtheEPA_v5.pdf). (Modernizing the EPA).

<sup>2</sup> 42 U.S.C. §7491.

## B. The Federal Takeover of the Regional Haze Program

During the Obama administration, however, the EPA devised a strategy to, in CEI's view, wrest control of the program from states and impose far more stringent and costlier provisions. Specifically, the agency, in conjunction with environmental organization litigants, used "sue and settle" to create a series of consent decrees, and did so with minimal state input.<sup>3</sup> Although the consent decrees on their face merely imposed timing requirements for the EPA to either approve state implementation plans or issue its own, the agency was then able to bootstrap the deadlines established in these consent decrees to declare state compliance efforts inadequate and impose its own set of federal implementation plans on several states.

## C. Turning Regional Haze into a War on Coal

The agency has used this newfound control to take the Regional Haze Program well beyond its original intent. No longer is the focus on improving visibility but rather to mandate the installation of costly control technologies on industrial facilities – and especially on coal-fired power plants whose emissions are not, in EPA's view, adequately limited under all the health-based programs in the CAA. This has been part of the agency's sweeping climate change agenda to make coal uneconomic by imposing a costly redundancy of requirements, thereby inducing more shutdowns. Here, the Obama administration's federal requirements were as much as an order of magnitude costlier on impacted coal-fired facilities than the requirements the states considered sufficient to address visibility concerns.<sup>4</sup>

The litigation strategy, though wisely halted under first Trump administration, was quickly revived under the Biden administration. Most significantly, a 2024 consent decree between several environmental groups and the EPA affects 33 states, requiring these states to either produce a regional haze plan acceptable to the agency or submit to a federal implementation plan.<sup>5</sup> The focus is on the dwindling fleet of coal-fired electric generating units still operating in these states, and will result in additional measures on top of the many other CAA provisions already applicable to such facilities.

## III. The Questionable Need for Further Measures in Light of Declining Emissions

With or without the Regional Haze Program, the emissions affecting visibility have been going down and will continue to do so. The use of coal for electricity generation has declined dramatically since peaking in the late 2000s and is now below the usage when the Regional Haze

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<sup>3</sup> William Yeatman, "EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs," U.S. Chamber of Commerce, [https://www.uschamber.com/assets/archived/images/legacy/reports/1207\\_ETRA\\_HazeReport\\_lr.pdf](https://www.uschamber.com/assets/archived/images/legacy/reports/1207_ETRA_HazeReport_lr.pdf).

<sup>4</sup> Id.

<sup>5</sup> Greenwire, "Deal forces EPA to act on 33 state haze cleanup plans," April 1, 2025, <https://subscriber.politicopro.com/article/eenews/2024/04/01/deal-forces-epa-to-act-on-33-state-haze-cleanup-plans-00149933>.

Program was authorized by Congress in 1977.<sup>6</sup> Further, coal plant retirements are expected to continue in the years ahead.<sup>7</sup> At the same time, emissions from the remaining coal-fired facilities (as well as other sources that may impact visibility) are far lower today than likely was anticipated back then.<sup>8</sup> It is important to remember that the Regional Haze Program was designed to address the residual emissions after all the health-based standards in the CAA are implemented, but there is considerable doubt whether there remain any such emissions sufficient to appreciably impact visibility.<sup>9</sup>

One recurring theme throughout *Modernizing the EPA* is that the agency often ignores the emissions reductions that have already occurred over the decades, no matter how substantial and ongoing, and continues to make the requirements more stringent despite questions about the statutory need for doing more. That is certainly the case with regional haze, where there is, at best, limited evidence of any lingering problem justifying additional emissions controls.

#### IV. Recommendations

We applaud the agency's reconsideration of the previous administration's policy on the Regional Haze Program and welcome this Advance Notice of Proposed Rulemaking as a first step in what we hope are substantial program reforms. At a minimum, we urge the EPA to jettison the "sue and settle" model and its preference for federal mandates imposed upon the states. Instead, the agency should restore state primacy over the program as envisioned in the statute - up to and including respecting state determinations that no additional control measures are needed to address visibility. We also urge the agency to fully acknowledge the changed circumstances since 1977, and especially the declining emissions trends that undercut the case for further costly constraints under the program.

Respectfully submitted,

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<sup>6</sup> U.S. Energy Information Administration, "Today in Energy," <https://www.eia.gov/totalenergy/data/browser/index.php?tbl=T07.03B#/?f=A>

<sup>7</sup> U.S. Energy Information Administration, "Today in Energy," July 14, 2025, <https://www.eia.gov/todayinenergy/detail.php?id=65744>.

<sup>8</sup> U.S. Environmental Protection Agency, "National Air Quality: Status and Trends of Key Air Pollutants," <https://www.epa.gov/air-trends>.

<sup>9</sup> Testimony of William Yeatman Senior Fellow, Competitive Enterprise Institute on "EPA's Regional Haze Program" before the Subcommittee on Environment Committee on Science, Space, & Technology March 23, 2016, <https://cei.org/sites/default/files/William%20Yeatman%20-%20Testimony%20-%20203232016.pdf>.