Regional Haze/Advance Notice of Proposed Rulemaking: Arkansas and 17 other State Attorney Generals' Comments on EPA's Solicitation of Potential Regulatory Changes to Implementation/Structure

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

12/11/2025

The State of Arkansas and 17 other Attorney Generals filed December 1st Comments addressing an October 2nd Advanced Notice of Proposed Rulemaking ("ANPR") issued by EPA styled:

Visibility Protection: Regional Haze State Plan Requirements Rule Revision, Advanced Notice of Proposed Rulemaking, 90 Fed. Reg. 47677.

The other Attorney Generals beside Arkansas joining the Comments include:

- West Virginia
- Alabama
- Georgia
- Indiana
- Iowa
- Kentucky
- Louisiana
- Mississippi
- Montana
- Nebraska
- Ohio
- Oklahoma
- South Carolina
- South Dakota
- Texas
- Tennessee
- Wyoming

(Collectively, "State AGs").

The federal Regional Haze Program is driven by 169A of the Clean Air Act.

Section 169A requires that certain sources contributing to visibility impairment install BART. The states are responsible for determining the appropriate BART controls for certain stationary sources. EPA reviews the State's Implementation Plan ("SIP") submissions for consistency with the relevant regulation.

The Regional Haze Rule requires that states submit SIPs to manage visibility impairing air pollutants affecting mandatory Class I Federal areas to demonstrate progress toward the national visibility goal under the Clean Air Act.

EPA stated in the ANPR that it was seeking input regarding how it can "meaningfully revise the RHR to streamline regulatory requirements impacting states' visibility improvement obligations under the CAA."

Specifically, EPA solicits comments and information on the following topics:

- Topic 1: Development and implementation of a reasonable progress metric and consideration of the four statutory factors.
- Topic 2: Development of criteria used to determine when a SIP revision is necessary.
- Topic 3: Determining SIP content requirements.

By way of introduction, the State AGs' Comments state:

… Revisions would be especially welcome given that previous administrations ignored the great economic and administrative costs state implementation plans carry. The Notice presents an opportunity to achieve significant national visibility progress and account for surging economic costs, while also realigning federal regulations with the Act's requirements.

Additional introductory arguments put forth by the State AGs include:

- EPA should expressly recognize that the States alone have discretion to determine what is "necessary" to make "reasonable progress" toward achieving the "national goal" of improving air visibility impairment.
- EPA should restructure the Regional Haze Rule to remove all provisions that do not align with the Clean Air Act's text.
- If EPA feels it should impose additional guidelines, the State AGs propose several considerations that they argue properly balance economic growth and environmental concerns.

Components of the Comments include:

- The Clean Air Act Affords States Wide Discretion.
- Searching Judicial Review Will Reveal The Haze Rule's Unauthorized Requirements.
- EPA No Longer Gets Statutory Deference On Rules Like The Haze Rule.
- The Haze Rule's Requirements Exceed Congressional Authorization.
- The Haze Rule's Enormous Unconsidered Costs And Diminishing Benefits Render It Arbitrary And Capricious.
- The Haze Rule's Costs Surge As Benefits Dwindle.
- The Haze Rule Arbitrarily And Capriciously Fails To Consider Economic Costs.
- The Regional Haze Rule is Illegal.
- Major Questions Doctrine.
- The Nondelegation Doctrine.
- In Its Revision, EPA Should Cleave To The Statutory Text.

Each of the three topics for which EPA is soliciting comments is addressed in the State AGs' Comments with the following introductory note:

… if EPA decides it must include reasonable progress factors in developing a FIP, it should do so only after consulting with and adopting a State's analysis of the reasonable progress factors. This approach is most consistent with the Act generally, which gives States the "primary burden" of creating and executing SIPs.

A copy of the Comments can be found here.