

Regional Haze/Arkansas: U.S. Environmental Protection Agency Issues Partial Stay of Federal Implementation Plan



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The United States Environmental Protection Agency (“EPA”) issued an April 25th Federal Register Notice addressing a final rule promulgating a Federal Implementation Plan (“FIP”) for the State of Arkansas addressing regional haze and interstate visibility transport under the Clean Air Act. See 82 Fed. Reg. 18994.

EPA is issuing a 90-day stay from April 25th of the effectiveness of 40 CFR 52.173(c)(7) and (25) with regards to the compliance dates for the NO_x emission limits for Flint Creek Unit 1, White Bluff Units 1 and 2 and Independence Units 1 and 2.

EPA had previously published a rule titled “*Promulgation of Air Quality Implementation Plans: State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan*” (“FIP”) on September 27, 2016. See 81 Fed. Reg. 66332. The FIP addressed certain requirements of the Regional Haze Rule at 40 CFR 51.308 and the Clean Air Act regarding interference with other states’ programs for visibility protection triggered by the issuance of the 1997 ozone National Ambient Air Quality Standards and the 1997 fine particulate matter National Ambient Air Quality Standard.

The Arkansas Department of Environmental Quality had submitted a petition to the federal agency dated November 22, 2016 seeking reconsideration and an administrative stay of specific portions of the final Arkansas Regional Haze FIP. Additional petitions by other entities are also referenced.

EPA states that it shall commence a reconsideration proceeding:

... if, in the Administrator’s judgment, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review.

The agency states that it may stay the effectiveness of the rule for up to 90 days during such reconsideration.

EPA announced in a letter dated April 14, 2017, the convening of a proceeding for reconsideration of the compliance dates for certain emission sources referenced in the Federal Register Notice. The agency stated it granted reconsideration of the provisions of the Federal Implementation Plan because the grounds for Petitions’ objections arose after the close of the comment period and are of central relevance to the outcome of the final rule pursuant to Clean Air Act section 307(d)(7)(B). The agency states that it did not specifically request comment on the 18-month compliance dates for NO_x controls in the Federal

Implementation Plan and that reconsideration will allow for additional public comment on these issues. Further, the agency references new information which it states clarified the intent of Entergy's comments regarding future operations at White Bluff and indicated that reconsideration of the SO₂ best available retrofit technology emission limits based on shorter remaining useful life is warranted. It also notes:

. . . Finally, as we are reconsidering the compliance dates for the NO_x emission limits at Independence, we are also reconsidering the compliance dates for the SO₂ emission limits for Independence Units 1 and 2 to ensure that the schedule for compliance for these emission limits is coordinated.

EPA did not take action on the remaining issues in the petitions for reconsideration of the Arkansas Federal Implementation Plan.

[A copy of the Federal Register Notice can be downloaded here.](#)