

EPA's "Good Neighbor Plan" Response to Comply with Stay Orders Pending Judicial Review

Overview Fact Sheet

Summary of Actions

As signed in March 2023, EPA's Good Neighbor Plan requires 23 states to reduce pollution that significantly contributes to problems attaining and maintaining the 2015 Ozone National Ambient Air Quality Standards (NAAQS), in downwind states.¹ In response to judicial orders partially staying a separate EPA action (the SIP Disapproval action²), EPA has amended the Good Neighbor Plan on an interim basis to stay implementation of the rule's requirements for states covered by the judicial orders.³

- On June 29, 2023, EPA issued an interim final rule to stay the Good Neighbor Plan requirements for facilities in Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Texas.⁴
- On September 21, 2023, EPA issued a second interim final rule to stay the Good Neighbor Plan requirements for facilities in Alabama, Minnesota, Nevada, Oklahoma, Utah, and West Virginia.⁵

Sources in these states are not required to comply with the Good Neighbor Plan at this time.

The stay of the Good Neighbor Plan for states covered by these actions will remain in effect until EPA takes subsequent action after litigation over the SIP Disapproval action is resolved for the states. These actions also ensure that facilities in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Texas, and West Virginia will continue to be subject to previously established requirements to mitigate interstate air pollution with respect to other ozone NAAQS.

First Interim Final Rule

EPA issued the Good Neighbor Plan to address the obligations of 23 states to mitigate interstate air pollution with respect to the 2015 ozone NAAQS. After signature of the Good Neighbor Plan, courts granted motions for partial stays of the separate SIP Disapproval action with respect to Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Texas. To comply with those orders, on June 29, 2023, the EPA Administrator signed a final action: the first Interim Final Rule. In compliance with the courts' decisions, the first Interim Final Rule stays the effectiveness of the Good Neighbor Plan's requirements on an interim basis for emissions sources in Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Texas. The rule also ensures continued implementation of previously established requirements for sources in those states to mitigate interstate air pollution with respect to other ozone NAAQS while the Good Neighbor Plan's requirements are stayed.

Second Interim Final Rule

After signature of the first Interim Final Rule, courts granted additional motions for partial stays of the SIP Disapproval action as to Alabama, Minnesota, Nevada, Oklahoma, Utah, and West Virginia. To

¹ Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards, 88 FR 36654 (June 5, 2023).

² Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards, 88 FR 9336 (February 13, 2023).

³ The stay orders are available at www.regulations.gov in docket no. EPA-HQ-OAR-2021-0668.

⁴ Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards; Response to Judicial Stays of SIP Disapproval Action for Certain States, 88 FR 49295 (July 31, 2023).

⁵ A pre-publication version of the action is available at <https://www.epa.gov/csapr/epa-response-judicial-stay-orders>.

comply with these additional orders, the second Interim Final Rule stays the effectiveness of the Good Neighbor Plan's requirements for sources in these additional states while the stay orders with respect to these states remain in place. Where applicable, the second Interim Final Rule also ensures continued implementation of previously established requirements for sources in these states to mitigate interstate air pollution with respect to other ozone NAAQS while the Good Neighbor Plan's requirements are stayed.

EPA's SIP Disapproval Action

Each time EPA promulgates or revises NAAQS, the Clean Air Act requires each state to address "good neighbor" obligations by ensuring its SIP contains adequate provisions to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in other states. EPA is then obligated to review and approve or disapprove that SIP submission. On February 13, 2023, EPA published a final action fully or partially disapproving good neighbor SIPs submitted by 21 states with respect to the 2015 ozone NAAQS (the SIP Disapproval action). When EPA disapproves a SIP submission (or finds that a state failed to submit a complete SIP submission), EPA is then obligated by the Clean Air Act to promulgate a federal implementation plan (FIP).

Good Neighbor Plan to Reduce Interstate Ozone Pollution

Consistent with Clean Air Act requirements and relying on proven, cost-effective control technologies and strategies, on March 15, 2023 EPA finalized the Good Neighbor Plan, establishing FIP requirements for both power plants and certain industrial sources in 23 states to reduce emissions of nitrogen oxides that contribute to harmful levels of ground-level ozone (or "smog") pollution, improving air quality, saving lives, and improving public health in smog-affected downwind states and communities.

Litigation to Stay the SIP Disapproval Action

Petitioners challenging the SIP Disapproval action have filed motions in several courts for partial stays of that action with respect to the SIPs submitted by particular states. After the Good Neighbor Plan's signature date, courts have granted motions staying the SIP Disapproval action as to Alabama, Arkansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nevada, Oklahoma, Texas, and Utah pending review on the merits. Additionally, a court has administratively stayed the SIP Disapproval action as to West Virginia pending oral argument on West Virginia's stay motion and EPA's motion to transfer venue or dismiss.

Impact of Stays on the Good Neighbor Plan

EPA's authority and obligation under the Clean Air Act to establish the Good Neighbor Plan's FIP requirements for the sources in a given state is triggered by EPA's disapproval of the state's good neighbor SIP that does not meet the requirements of the Act and/or from EPA's finding of the state's failure to submit such a SIP by the statutory deadline for doing so. Accordingly, EPA must act to ensure that the Good Neighbor Plan's requirements are not implemented for power plants or industrial sources in a state while a stay of the SIP Disapproval action as to that state remains in place. These actions suspend the Good Neighbor Plan requirements in twelve states.

Maintaining the Status Quo Pending Further Action

The interim final rules will ensure that sources in these states will continue to be subject to any previously established requirements to mitigate interstate air pollution with respect to other ozone NAAQS while EPA's action disapproving these SIPs is stayed. For power plants, EPA and states use allowance trading programs to implement any required emission reductions.

For power plants in Alabama, Arkansas, Mississippi, Missouri, Oklahoma, and Texas, which before the Good Neighbor Plan were covered by the CSAPR NO_x Ozone Season “Group 2” Trading Program promulgated in the 2016 CSAPR Update,⁶ the revisions will maintain the state emissions budgets, unit-level allowance allocation provisions, and banked allowance holdings reflecting the status quo for the power plants in these states under the Group 2 trading program.

For power plants in Kentucky, Louisiana, and West Virginia, which before the Good Neighbor Plan were already covered by the CSAPR NO_x Ozone Season “Group 3” Trading Program as promulgated in the 2021 Revised CSAPR Update,⁷ the revisions transfer the power plants to the Group 2 trading program but modify the trading program regulations as to these states to maintain state emissions budgets, unit-level allowance allocation provisions, and banked allowance holdings reflecting the status quo for the power plants in these states under the Group 3 trading program. To preserve status quo boundaries between trading groups, the allowances that Kentucky, Louisiana, and West Virginia power plants will use for compliance in the Group 2 trading program are interchangeable with the allowances that other power plants in these three states will use for compliance but are not interchangeable with the allowances that power plants in other states will use for compliance in the Group 2 trading program.

For power plants in Minnesota, Nevada, and Utah, which before the Good Neighbor Plan were not covered by previously established requirements to mitigate interstate air pollution with respect to other ozone NAAQS, suspension of compliance with the Good Neighbor Plan requirements maintains the status quo.

The first interim final rule took effect on August 4, 2023. The second will take effect immediately upon publication in the *Federal Register*.

⁶ Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

⁷ Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021).