



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 2, 2023

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Notice of Forthcoming EPA Action to Address Additional Judicial Stay Orders

FROM: Joseph Goffman
Principal Deputy Assistant Administrator
Office of Air and Radiation

On February 13, 2023, EPA published a final action fully or partially disapproving state implementation plans (SIPs) submitted by 21 states to address the states' obligations under Clean Air Act section 110(a)(2)(D)(i)(I), commonly referred to as the "good neighbor" provision, with respect to the 2015 national ambient air quality standards (NAAQS) for ozone (the SIP Disapproval Action).¹ Consistent with EPA's obligation under Clean Air Act section 110(c)(1), following the SIP Disapproval action the EPA Administrator signed a separate final action, the "Good Neighbor Plan," establishing federal implementation plan requirements to address the states' good neighbor obligations.² The Good Neighbor Plan's requirements are scheduled to take effect on August 4, 2023, 60 days after the date of that rule's publication in the *Federal Register*.

After signature of the Good Neighbor Plan, courts granted motions for partial stays of the SIP Disapproval Action with respect to several states. To comply with those orders, on June 29, 2023, the EPA Administrator signed another final action: the Interim Final Rule.³ In compliance with the courts' decisions, this 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. This 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.

¹ 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).

² Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards, 88 FR 36654 (June 5, 2023).

³ 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).

Since signature of the Interim Final Rule, courts have granted additional motions for partial stays of the SIP Disapproval Action as to Minnesota,⁴ Nevada,⁵ Oklahoma, and Utah.⁶ To comply with these additional orders, EPA will take action in the near future to extend the Interim Final Rule to stay the effectiveness of the Good Neighbor Plan's requirements for sources in Minnesota, Nevada, Oklahoma, and Utah while the orders partially staying the SIP Disapproval Action with respect to these states remain in place, and sources in these states are not required to comply with the Good Neighbor Plan at this time.

Motions for partial stays of the SIP Disapproval Action regarding additional states remain pending in other courts. If those courts grant such motions, EPA will extend the Interim Final Rule to ensure that the Good Neighbor Plan's requirements are not effective for sources in any additional state where EPA lacks federal implementation authority because of a stay order, and sources in such states would likewise not be required to comply with the Good Neighbor Plan.

EPA plans to take action extending the Interim Final Rule once all pending motions for partial stays are resolved. This action will make clear that the status quo is maintained as to all such states. To the extent that sources in a given state are covered by previously established requirements to mitigate interstate air pollution with respect to other ozone NAAQS, EPA also intends to apply the provisions of the Interim Final Rule to the sources as needed to ensure that implementation of the previously established requirements continues while the effectiveness of the Good Neighbor Plan's requirements is stayed.

⁴ Unpublished Order, *Allete, Inc. v. EPA*, No. 23-1776 (8th Cir. July 5, 2023) (staying SIP Disapproval Action as to Minnesota).

⁵ Unpublished Order, *Nevada Cement Co. v. EPA*, No. 23-682 (9th Cir. July 3, 2023) (staying SIP Disapproval Action as to Nevada).

⁶ Unpublished Order, *Utah v. EPA*, No. 23-9509, *PacifiCorp v. EPA*, No. 23-9512, *Utah Associated Municipal Power Systems v. EPA*, No. 23-9520, *Oklahoma v. EPA*, No. 23-9514, and *Oklahoma Gas & Electric Co. v. EPA*, No. 23-9521 (10th Cir. July 31, 2023) (staying SIP Disapproval Action as to Oklahoma and Utah).