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EPA's Final Good Neighbor Plan for the 2015 Ozone National Ambient Air Quality Standards: Notable Features, Implications and Next Steps

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Overview

On March 15, 2023, the EPA released the final Good Neighbor Plan Rule (the Plan), a rule requiring 23 states¹ to reduce emissions of nitrogen oxide (NO_x) from electric generating units (EGUs) at power plants and certain industrial sources to help states downwind of those 23 states to obtain and maintain compliance with 2015 ground-level ozone National Ambient Air Quality Standards (NAAQS).² For the first time, the Plan regulates beyond the power sector to include new industries and western states. It envisions significant reductions in NO_x emissions across the regulated industries – not only for power plants but also for the gas transportation; cement, chemical, steel, mining, petroleum and coal products manufacturing; pulp, paper and paperboard mills; and solid waste combustor or incinerator industries as well. This *Alert* provides background on the Plan, summarizes the Plan's notable features, describes possible implications and identifies potential next steps.

Background

Under the Clean Air Act (CAA), the EPA is required to update ozone NAAQS every five years, and states must develop and execute State Implementation Plans (SIPs) to ensure they attain the applicable ozone NAAQS.³ The "Good Neighbor" provision of the CAA requires that states implement their SIPs to ensure their emission sources do not

“contribute significantly” to nonattainment or interfere with maintenance of any NAAQS in other states.⁴ Where the EPA either determines a state has not submitted a SIP or disapproves of a state’s SIP, the agency must issue a Federal Implementation Plan (FIP) within two years to help downwind states comply with the applicable NAAQS.⁵

The Plan stems from the EPA conclusions that certain states’ SIPs insufficiently support attainment of ozone NAAQS in downwind states,⁶ and it builds on past “Good Neighbor” programs in which the EPA issued FIPs to support the 2008 ozone NAAQS. Whereas the EPA set the 2008 ozone NAAQS to 75 parts per billion (ppb), the 2015 ozone NAAQS is more stringent at 70 ppb. On February 13, 2023, the EPA also published a final rule denying “Good Neighbor” SIPs of 19 states outright and two additional states in part.⁷ Several states and industry groups have brought lawsuits against the EPA to challenge the agency’s treatment of the “Good Neighbor” SIPs.⁸

Features of the Plan

Scope. As discussed in more detail below, as a result of the Plan, 22 of the 23 states (California excluded)⁹ will participate in a NO_x allowance trading program for fossil fuel-fired EGUs that was developed in prior “Good Neighbor” programs – namely, the Cross-State Air Pollution Rule (CSAPR), the CSAPR Update and the Revised CSAPR Update:¹⁰ Twelve of these states are already required to participate in the Group 3 trading program under the Revised CSAPR Update,¹¹ seven of these states are transitioning from the less stringent Group 2 program into the most stringent Group 3 program,¹² and three of these states are not currently included in any CSAPR trading program.¹³ The Plan also establishes – for the first time – NO_x emission limits for certain industries¹⁴ in 20 of the 23 states,¹⁵ all of which are also covered by the Plan’s trading program except for California.

Implementation. Deadlines and phase-ins under the Plan vary according to the severity of nonattainment in downwind areas for the 2015 ozone NAAQS based on EPA designation of nonattainment as Marginal, Moderate, Serious, Severe or Extreme. The initial phase of NO_x emissions reductions scheduled to take effect as soon as possible prior to the August 3, 2024, attainment date for areas classified as “Moderate nonattainment,” with further emissions reductions phasing in at the beginning of the 2026 ozone season to coincide with the August 3, 2027 attainment date for “Serious nonattainment” areas, and an August 3, 2033, attainment date for “Severe nonattainment” areas.¹⁶ According to the EPA’s Nonattainment Areas for Criteria Pollutants (Green Book), current as of March 31, 2023, “Moderate nonattainment”

areas are located in Arizona, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, Nevada, New Jersey, New York, Ohio, Pennsylvania, Texas, Utah, Virginia and Wisconsin, and “Serious nonattainment” and “Severe nonattainment” areas are located in California.¹⁷

The Plan’s Two-Pronged Approach. As previewed above, the Plan deploys two approaches to regulate NO_x emissions in upwind states: (i) a NO_x allowance trading program for fossil fuel-fired EGUs located in 22 states; and (ii) emission limits for existing and new sources in certain industries located in 20 states. Each approach is discussed in more detail below.

- *Trading Program.* Beginning on May 1 – the start of the 2023 ozone season – EGUs in 22 states will participate in a revised version of the Group 3 NO_x allowance trading program, a cap-and-trade program finalized in 2021 as part of the Revised CSAPR Update, which is the most stringent NO_x trading program. As noted above, seven of the 22 states are transitioning from the less stringent Group 2 program,¹⁸ and three states are not currently part of any CSAPR trading program.¹⁹ The Plan requires initial emissions reductions from EGUs for the 2023 ozone season through the use of existing post-combustion controls and combustion control upgrades.²⁰ Thereafter, the Plan revises the program’s annual emissions budgets to decline over time based on the degree of emission reductions possible through phased installation of emissions controls – namely, “state-of-the-art combustion controls” starting in 2024 and certain post-combustion controls (including selective catalytic reduction (SCR)) starting in 2026.²¹ The EPA also intends to recalibrate the bank of EGUs’ unused allowances on an annual basis to promote emissions reductions over time.²² The trading program also contains backstop emission limits to encourage EGUs to continue to reduce emissions when attainment levels may otherwise be exceeded.²³
- *Emission Limits.* Beginning in the 2026 ozone season, existing and new emission sources in certain industries across 20 states must – for the first time – comply with enforceable NO_x emission limits. The EPA may grant individual facilities a one-year extension, with the possibility of up to two additional years, based on a showing that individual facilities cannot meet the emission limits “due to circumstances entirely beyond [their] control.”²⁴

Implications

The Plan is likely to have significant repercussions across the regulated industries. Concerns over prohibitive compliance costs and technological feasibility will remain at the forefront and may result in legal challenges against the Plan, especially considering the recent lawsuits challenging the EPA's denial on February 13, 2023, of certain states' "Good Neighbor" SIPs. Power plant owners in states joining the Group 3 NOx trading program – whether the state is transitioning from the Group 2 program or has never before participated in a CSAPR trading program – will face the costs associated with the more stringent Group 3 market, including more expensive allowances. Numerous industry groups commented on the proposed Plan, remarking that entire sectors should not be regulated because the rule significantly underestimates the cost to implement emissions controls and requires companies to install technologies that are impracticable in certain scenarios. In another example, commentators have flagged that SCR is still a relatively new emission control that remains particularly expensive and may not work in certain newly regulated sectors.²⁵ Additionally, grid operators and independent system operators have expressed concerns that the Plan could trigger plant retirements and ultimately weaken electric system reliability,²⁶ and that recalibrating the NOx allowance bank each year may introduce too much uncertainty and frustrate utilities' efforts to plan properly.²⁷

In response, the EPA highlights that several features of the Plan are designed to address concerns over cost, technological feasibility and system reliability.²⁸ For instance, the Plan finalizes a provision that allows a source to request EPA approval of a case-by-case emissions limit if the source demonstrates it cannot meet the applicable standard due to "technical impossibility or extreme economic hardship."²⁹ The agency also notes the Plan does not apply certain backstop emission limits until 2030 (or until a unit installs an SCR, if earlier), to ensure necessary generation can be provided and to respond to criticisms that application of the backstop limits to EGUs without existing SCR before 2030 "would provide insufficient time for planning and investments needed to facilitate unit retirement as a compliance pathway."³⁰ The Plan will also use preset emission budgets as a floor for certain years of the trading program, establishing what the agency anticipates are predictable, minimum amounts of allowances to alleviate concerns that annual modifications to the allowance bank will spur uncertainty.³¹

Additionally, the Plan may contribute to momentum in the energy transition space. The EPA forecasts that by 2030, the Plan could result in an additional 14 GW of coal retirements nationwide relative to the baseline; in contrast, the agency expects the Plan to spur an incremental three GW of renewable capacity additions in 2025 alone.³² The EPA also argues that the incentives for lower-emitting generation

provided in the 2022 Inflation Reduction Act will encourage ongoing EGU compliance with the emission reduction requirements of the Plan and reduce costs for EGUs and their customers.³³

Next Steps

The Plan will become effective 60 days after publication in the Federal Register.³⁴ Importantly, the EPA may initiate additional rulemaking involving four states – Arizona, Iowa, Kansas and New Mexico – if the agency determines from its continued analysis of air quality modeling data for 2023 that further regulatory action is necessary to address “Good Neighbor” obligations in these states.³⁵ We will continue to monitor the implementation of and legal challenges to the Plan, as well as any related regulatory activity, to provide updates as needed.

1. The 23 states include Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia and Wisconsin. See [Good Neighbor Plan](#), page 19.↔

2. [Good Neighbor Plan](#). ↔

3. 42 U.S.C. § 7409(d)(1).↔

4. 42 U.S.C. § 7410(a)(2)(D)(i)(I). ↔

5. 42 U.S.C. § 7410(c).↔

6. See “[Findings of Failure to Submit a Clean Air Act Section 110 State Implementation Plan for Interstate Transport for the 2015 Ozone National Ambient Air Quality Standards](#),” Federal Register, dated December 9, 2019; see also “[Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards](#),” Federal Register, dated February 13, 2023. ↔

7. “[Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards](#),” Federal Register, dated February 13, 2023. ↔

8. See, e.g., Wyoming v. EPA, Case No. 23-9529 (10th Cir. Apr. 5, 2023); Mississippi, et al. v. EPA, Case No. 23-60069 (5th Cir. March 16, 2023); Oklahoma Gas & Electric Co. v. EPA, Case No. 23-9521 (10th Cir. March 16, 2023); Utah v. EPA, Case No. 23-9509 (10th Cir. February 13, 2023); Kentucky v. EPA, Case No. 23-3216 (6th Cir. March 13, 2023); Arkansas, et al. v. EPA, Case No. 23-01320 (8th Cir. February 16, 2023); Texas v. EPA, Case No. 23-60069 (5th Cir.

February 14, 2023); Utah v. EPA, Case No. 23-9509 (10th Cir. Feb 13, 2023); *see also* ["EPA Fights Regional Suits on State Air Plan Denials in Bid to Protect CSAPR,"](#) InsideEPA, dated March 17, 2023. ↵

9. The 22 states are: Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia and Wisconsin. *See* [Good Neighbor Plan](#), page 13. ↵

10. *See* ["Cross-State Air Pollution Rule \(CSAPR\) – Regulatory Actions and Litigation,"](#) EPA, last updated February 16, 2023; ["Final Cross-State Air Pollution Rule Update,"](#) EPA, last updated February 16, 2023; and ["Revised Cross-State Air Pollution Rule Update,"](#) EPA, last updated February 16, 2023. ↵

11. Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia. ↵

12. Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas and Wisconsin.↵

13. Minnesota, Nevada and Utah. *See* [Good Neighbor Plan](#), p. 14. ↵

14. The EPA includes the following industrial sources as part of the NO_x emissions standards because it estimates these industries have "significant impacts" on downwind air quality and the capacity to implement cost-effective pollution controls: (i) reciprocating internal combustion engines in pipeline transportation of natural gas; (ii) kilns in cement and cement product manufacturing; (iii) reheat furnaces in iron and steel mills and ferroalloy manufacturing; (iv) furnaces in glass and glass product manufacturing; (v) boilers in iron and steel mills and ferroalloy manufacturing, metal ore mining, basic chemical manufacturing, petroleum and coal products manufacturing, and pulp, paper and paperboard mills; and (vi) combustors and incinerators in solid waste combustors and incinerators. *See* ["Final Good Neighbor Rule Fact Sheet,"](#) p. 2, EPA, undated.↵

15. The 20 states are: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia and West Virginia. *See* [Good Neighbor Plan](#), p. 16. ↵

16. [Good Neighbor Plan](#), page 14. ↵

17. ["8-Hour Ozone \(2015\) Federal Register Notice Classification Changes,"](#) EPA, current as of March 31, 2023, available at <https://www3.epa.gov/airquality/greenbook/jfr2rpt2.html>. ↵

18. Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas and Wisconsin. ↵

19. Minnesota, Nevada and Utah. *See* [Good Neighbor Plan](#), p. 14.↵

20. [Good Neighbor Plan](#), page 14; *see also* ["Final Good Neighbor Rule Fact Sheet,"](#) EPA, undated. ↩
21. [Good Neighbor Plan](#), page 45, 46. ↩
22. [Good Neighbor Plan](#), page 334. ↩
23. [Good Neighbor Plan](#), page. 372.↩
24. [Good Neighbor Plan](#), pages 15, 743, 744. ↩
25. *See, e.g.,* ["EPA Unveils Expanded Cross-State Air Rule Targeting New Industries, States,"](#) InsideEPA, dated March 15, 2023; ["EPA's CSAPR Faces Tough Road as Steel Sector, MISO Pile on Concerns,"](#) InsideEPA, dated January 13, 2023.↩
26. *See, e.g.,* ["EPA Good Neighbor Plan Reflects PJM and Industry Input,"](#) PJM Inside Lines, dated March 16, 2023; ["EPA Offers CSAPR Flexibility to Ease Reliability Concerns But Doubts Fears,"](#) InsideEPA, dated March 15, 2023; ["EPA's CSAPR Faces Tough Road as Steel Sector, MISO Pile on Concerns,"](#) InsideEPA, dated January 13, 2023. ↩
27. ["EPA Offers CSAPR Flexibility to Ease Reliability Concerns But Doubts Fears,"](#) InsideEPA, dated March 15, 2023. ↩
28. *See, e.g.,* [Good Neighbor Plan](#), Section VI.B.1.d, Responses to General Comments on the Revisions to the Group 3 Trading Program, page 401. ↩
29. [Good Neighbor Plan](#), page 567.↩
30. [Good Neighbor Plan](#), page 409. ↩
31. [Good Neighbor Plan](#), page 412. ↩
32. ["Regulatory Impact Analysis for the Final Federal Good Neighbor Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard,"](#) page 27, EPA, dated March 2023. ↩
33. [Good Neighbor Plan](#), page 169. ↩
34. ["Important Dates: Good Neighbor Plan NOx Ozone Season Group 3 Trading Program, 2023 and 2024 Important Dates,"](#) EPA, last updated March 16, 2023. ↩
35. [Good Neighbor Plan](#), page 12. ↩

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