

**MEMORANDUM**

DATE: 8/29/16

TO: Cross-State Air Pollution Rule Update for the 2008  
Ozone NAAQS; Docket ID: EPA-HQ-OAR-2015-0500

FROM: Gobeail McKinley, Environmental Protection  
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SUBJECT: Status of 110(a)(2)(D)(i)(I) SIPs for the 2008 Ozone  
NAAQS

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**Summary**

This document describes the status of each Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) state implementation plan (SIP) for the 2008 ozone NAAQS for the eastern states and the District of Columbia that are the focus of the final rule. This document describes any findings of failure to submit section 110(a)(2)(D)(i)(I) SIPs for the 2008 ozone NAAQS made by the EPA for these states and any actions, if any, taken by the EPA to address section 110(a)(2)(D)(i)(I) SIPs submitted by these states for the 2008 ozone NAAQS. This document therefore addresses the District of Columbia and the following states: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin. The facts presented in this memorandum support the EPA's conclusion that it currently has or may have, upon final action on a SIP submission, a legal obligation and the legal authority to promulgate each of the FIPs finalized in this rule.

**Status of the 2008 Ozone NAAQS Transport SIPs**

Alabama

On August 20, 2012, the state of Alabama submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On April 16, 2013, the state withdrew its good neighbor SIP submission. On June 30, 2015, the EPA issued a

finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Alabama, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Arkansas

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Arkansas, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Connecticut

On June 15, 2015, the state of Connecticut submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. The EPA has not taken any action on that SIP submission at this time.

#### Delaware

On March 29, 2013, the state of Delaware submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. The EPA has not taken any action on that SIP submission at this time.

#### District of Columbia

On June 18, 2014, the District of Columbia submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. The EPA has not taken any action on that SIP submission at this time.

#### Florida

On October 31, 2011, the state of Florida submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On April 30, 2013, the state withdrew its good neighbor SIP submission. On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I)

with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Florida, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

### Georgia

On March 6, 2012, the state of Georgia submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On October 3, 2013, the state withdrew its good neighbor SIP submission. On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Georgia, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

### Illinois

On December 31, 2012, the state of Illinois submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2) with respect to the 2008 ozone NAAQS, the 2010 NO<sub>2</sub> NAAQS and the 2010 SO<sub>2</sub> NAAQS. On June 11, 2014, the state clarified that its SIP revision was not intended to address good neighbor SIP requirements for the 2008 ozone NAAQS. On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Illinois, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

### Indiana

On December 12, 2012, the state of Indiana submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On June 3, 2016, the EPA disapproved the state's good neighbor SIP (81 FR 38957), and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

### Iowa

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the

requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Iowa, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Kansas

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Kansas, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Kentucky

On July 17, 2012, the state of Kentucky submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On March 7, 2013, the EPA finalized disapproval of Kentucky's SIP submission addressing the good neighbor provision requirements for the 2008 ozone NAAQS (78 FR 14681). The EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

In the disapproval notice, the EPA explained that the disapproval of the good neighbor portion of the state's infrastructure SIP submission did not trigger a mandatory duty for the EPA to promulgate a FIP to address these requirements. Citing the D.C. Circuit's decision *EME Homer City Generation v. EPA*, 696 F.3d 7 (2012), the EPA explained that the court concluded states have no obligation to make a SIP submission to address the good neighbor provision for a new or revised NAAQS until the EPA first defines a state's obligations pursuant to that section. Therefore, because a good neighbor SIP addressing the 2008 ozone standard was not at that time required, the EPA indicated that its disapproval action would not trigger an obligation for the EPA to promulgate a FIP to address the interstate transport requirements.

On April 30, 2013, the Sierra Club filed a petition for review of the EPA's action based on the Agency's conclusion that the FIP clock was not triggered by the disapproval of Kentucky's good neighbor SIP. On April 29, 2014, the Supreme Court issued a decision reversing and vacating the D.C.

Circuit's decision in *EME Homer City. EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). Following the Supreme Court decision, the EPA requested and the court granted vacatur and remand of the portion of the EPA's final action that determined that the FIP obligation was not triggered by the disapproval.

As described in the preamble, the EPA is correcting the portion of the disapproval notice indicating that the FIP clock would not be triggered by the SIP disapproval. The EPA establishes that the EPA's obligation to develop a FIP was triggered on the date of the judgment issued by the Supreme Court in *EPA v. EME Homer City Generation*, June 2, 2014, and the EPA is obligated to issue a FIP at any time within two years of that date.

#### Louisiana

On June 7, 2013, the state of Louisiana submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On July 29, 2016, the EPA disapproved the state's good neighbor SIP (81 FR 53308), and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Maine

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Maine. Subsequent to that date, on October 26, 2015, the EPA received a good neighbor SIP from the state of Maine. On August 1, 2016, the EPA approved the SIP submission. (81 FR 57522)

#### Maryland

On December 31, 2012 the state of Maryland submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On April 20, 2016, the state withdrew its good neighbor SIP submission. On July 20, 2016, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (81 FR 47040) for the state of Maryland, and the EPA has not, subsequent to that

date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Massachusetts

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Massachusetts, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Michigan

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Michigan, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Minnesota

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Minnesota, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Mississippi

On November 10, 2011, the state of Mississippi submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On October 11, 2012, the state withdrew its good neighbor SIP submission. On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Mississippi, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Missouri

On June 30, 2015, the EPA issued a finding of failure to

submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Missouri, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Nebraska

On February 11, 2013 the state of Nebraska submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On December 22, 2015, the EPA approved the state's good neighbor SIP. (81 FR 1122)

#### New Hampshire

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of New Hampshire. Subsequent to that date, on November 17, 2015, the EPA received a good neighbor SIP from the state of New Hampshire. On August 1, 2016, the EPA approved the SIP submission. (81 FR 57522)

#### New Jersey

On October 17, 2014, the state of New Jersey submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On March 30, 2016, the state withdrew its good neighbor SIP submission. On June 15, 2016, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (81 FR 38963) for the state of New Jersey. The EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### New York

On April 4, 2013, the state of New York submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On August 12, 2015, the EPA disapproved the state's good neighbor SIP. (81 FR 58849)

#### North Carolina

On November 2, 2012, the state of North Carolina submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On September 3, 2014, the state withdrew its good neighbor SIP submission. On June 26, 2015, North Carolina submitted a letter indicating that it wished to "rescind" its September 3, 2014 withdrawal of its good neighbor SIP to address the 2008 ozone NAAQS. On June 30, 2015, the EPA responded to North Carolina's June 26<sup>th</sup> letter explaining that North Carolina's letter constituted a new SIP submission that was determined to be incomplete. On that same date, the EPA also issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of North Carolina. Subsequent to issuing the finding of failure to submit, the EPA received on December 9, 2015, a good neighbor SIP from the state of North Carolina. The EPA has not taken any action on that SIP submission.

#### North Dakota

On March 7, 2013, the state of North Dakota submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On January 25, 2016, the EPA approved the state's good neighbor SIP. (81 FR 7706)

#### Ohio

On December 27, 2012, the state of Ohio submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On June 3, 2016, the EPA disapproved the state's good neighbor SIP. (81 FR 38957)

#### Oklahoma

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Oklahoma, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Pennsylvania

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the

requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Pennsylvania, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### Rhode Island

On June 23, 2015, the state of Rhode Island submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On August 1, 2016, the EPA approved the SIP submission. (81 FR 57522)

#### South Carolina

On October 24, 2011, the state of South Carolina submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On April 16, 2013, the state withdrew its good neighbor SIP submission. On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of South Carolina, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

#### South Dakota

On May 21, 2013 the state of South Dakota submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On January 25, 2016, the EPA approved the state's good neighbor SIP. (81 FR 7706)

#### Tennessee

On October 19, 2009, the state of Tennessee submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On July 3, 2012, the state withdrew its good neighbor SIP submission. On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Tennessee, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

## Texas

On December 13, 2012 the state of Texas submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On August 1, 2016, the EPA disapproved the state's good neighbor SIP (81 FR 53284), and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

## Vermont

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of Vermont. Subsequent to that date, on November 2, 2015, the EPA received a good neighbor SIP from the state of Maine. On August 1, 2016, the EPA approved the SIP submission. (81 FR 57522)

## Virginia

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the Commonwealth of Virginia, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

## West Virginia

On June 30, 2015, the EPA issued a finding of failure to submit a complete good neighbor SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (80 FR 39961) for the state of West Virginia, and the EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency.

## Wisconsin

On June 20, 2013, the state of Wisconsin submitted a state implementation plan revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. On August 1, 2016, the EPA finalized partial approval and disapproval of the state's good neighbor SIP

(81 FR 53309). In the final action, the EPA approved the CAA requirement that the state prohibit emissions from within the state that significantly contribute to nonattainment in any other state, and the EPA disapproved the CAA requirement for the state to prohibit emissions from within the state that interfere with maintenance of the NAAQS in other states. The EPA has not, subsequent to that date, received and approved a complete good neighbor SIP revision to correct the deficiency identified by the partial disapproval.