



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2023-0272; FRL-11237-01-R8]

## **Air Plan Approval and Disapproval; Colorado; Serious Attainment Plan Elements and Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve and disapprove portions of a state implementation plan (SIP) revision submitted by the State of Colorado to meet Clean Air Act (CAA) requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS) in the Denver Metro/North Front Range nonattainment area (DMNFR Area). Specifically, the EPA is proposing approval of the submitted enhanced monitoring SIP element as meeting applicable Serious area requirements for the 2008 8-hour ozone NAAQS, and is proposing disapproval of the contingency measure element and certain reasonably available control technology (RACT) SIP submittals. The EPA is taking this action pursuant to the CAA.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2023-0272, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Abby Fulton, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-6563, email address: [fulton.abby@epa.gov](mailto:fulton.abby@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. What Action is the EPA Taking?**

As explained below, the EPA is proposing various actions on Colorado’s proposed SIP revisions that were submitted respectively on March 22, 2021, and May 20, 2022. Specifically, we are proposing to approve the submitted enhanced monitoring SIP element as meeting applicable Serious area requirements for the 2008 8-hour ozone NAAQS. We are proposing disapproval of the contingency measures and the categorical RACT rules for refinery fueled process heaters as well as landfill or biogas fired reciprocating internal combustion engines (RICE) and the State’s RACT determination for the Golden Aluminum facility.

The basis for our proposed action is discussed in this proposed rulemaking.

## II. Background

On March 12, 2008, the EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (based on the annual fourth-highest daily maximum 8-hour average concentration, averaged over three years), to provide increased protection of public health and the environment.<sup>1</sup> The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but is set at a more protective level. Specifically, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm.<sup>2</sup> Effective July 20, 2012, the EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008–2010) of air monitoring data.<sup>3</sup> With that rulemaking, the DMNFR Area was designated nonattainment and classified as Marginal.<sup>4</sup> Ozone nonattainment areas are classified based on the severity of their ozone levels, as determined using the area’s design value. The design value is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration at a monitoring site.<sup>5</sup> Areas designated as nonattainment at the Marginal classification level were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012–2014 monitoring data.<sup>6</sup>

On May 4, 2016, the EPA published its determination that the DMNFR Area, among other areas, had failed to attain the 2008 8-hour ozone NAAQS by the attainment deadline, and that it was accordingly reclassified to Moderate ozone nonattainment status.<sup>7</sup> Colorado submitted

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<sup>1</sup> Final rule, National Ambient Air Quality Standards for Ozone, 73 FR 16436 (March 27, 2008). The EPA has since further strengthened the ozone NAAQS, but the 2008 8-hour standard remains in effect. *See* Final Rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292 (Oct. 26, 2015).

<sup>2</sup> 40 CFR 50.15(b).

<sup>3</sup> Final rule, Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77 FR 30088 (May 21, 2012).

<sup>4</sup> *Id.* at 30110. The nonattainment area includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson Counties, and portions of Larimer and Weld Counties. *See* 40 CFR 81.306.

<sup>5</sup> 40 CFR part 50, appendix I.

<sup>6</sup> 40 CFR 51.903.

<sup>7</sup> Final rule, Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards, 81 FR 26697 (May 4, 2016).

SIP revisions to the EPA on May 31, 2017 to meet the DMNFR Area's requirements under the Moderate classification.<sup>8</sup> The EPA took final action on July 3, 2018, approving the majority of the May 31, 2017 submittal, but deferring action on portions of the submitted Regulation Number 7 (Reg. 7) RACT rules.<sup>9</sup> On February 24, 2021, the EPA took final action approving additional measures as addressing Colorado's RACT SIP obligations for Moderate ozone nonattainment areas.<sup>10</sup> Areas that were designated as Moderate nonattainment were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2018, based on 2015–2017 monitoring data.<sup>11</sup>

On December 26, 2019, the EPA published its determination that the DMNFR Area, among other areas, had failed to attain the 2008 8-hour ozone NAAQS by the attainment deadline for Moderate areas, and that it was accordingly reclassified as Serious.<sup>12</sup> Colorado submitted SIP revisions to the EPA on May 13, 2020, March 22, 2021, and May 20, 2022 to meet the DMNFR Area's requirements under the Serious classification. The EPA took final action on the majority of these revisions on November 5, 2021,<sup>13</sup> and May 9, 2023.<sup>14</sup>

The submittals that we are now proposing to act on include those revisions that we have not previously acted on that are addressing RACT for certain major sources of volatile organic compounds (VOC) or nitrogen oxides (NO<sub>x</sub>) as well as certain elements from the State's Serious ozone attainment plan.

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<sup>8</sup> CAA section 182, 42 U.S.C. 7511a, outlines SIP requirements applicable to ozone nonattainment areas in each classification category. Areas reclassified as Moderate under the 2008 8-hour ozone NAAQS had a submittal deadline of January 1, 2017 for these SIP revisions (81 FR 26699).

<sup>9</sup> Final rule, Approval and Promulgation of State Implementation Plan Revisions; Colorado; Attainment demonstration for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, and Approval of Related Revisions (83 FR 31068).

<sup>10</sup> Final rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7 and RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/ North Front Range Nonattainment Area, 86 FR 11125.

<sup>11</sup> See 40 CFR 51.903.

<sup>12</sup> Final rule, Finding of Failure to Attain and Reclassification of Denver Area for the 2008 Ozone National Ambient Air Quality Standard, 84 FR 70897 (Dec. 26, 2019); see 40 CFR 81.306.

<sup>13</sup> Final rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7; Aerospace, Oil and Gas, and Other RACT Requirements for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 61071 (Nov. 5, 2021).

<sup>14</sup> Final rule, Air Plan Approval, Conditional Approval, Limited Approval and Limited Disapproval; Colorado; Serious Attainment Plan Elements and Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area (88 FR 29827).

### **III. Summary of the State's SIP Submittals**

#### *March 22, 2021 Submittal*

This submittal contains the State's Serious Ozone Attainment Plan (OAP) and revisions to Reg. 7 to include RACT requirements in Colorado's ozone SIP that apply a major source threshold of 50 tons per year (tpy) for sources of VOC and/or NO<sub>x</sub>.<sup>15</sup> The Reg. 7 revisions include expansion of categorical requirements to reduce VOC emissions related to wood surface coatings in part C, section I.O.; adding NO<sub>x</sub> emission limits for turbines, boilers, and landfill or biogas engines in part E, section II.; and adding categorical requirements to reduce VOC emissions related to foam manufacturing in part E, section V. The Reg. 7 revisions also include typographical, grammatical, and formatting corrections. We previously acted on all parts of this SIP submittal<sup>16</sup> except for limited portions of Reg. 7 and parts of the OAP including the enhanced monitoring, contingency measures, attainment demonstration, and RACM elements. Here, we are proposing action on enhanced monitoring, contingency measures, the remaining outstanding Reg. 7 revisions,<sup>17</sup> and RACT for landfill and biogas engines at Golden Aluminum. The EPA is not reopening previous actions where the Agency acted on other parts of this SIP submittal.

#### *May 20, 2022 Submittal*

This submittal contains amendments to Reg. 7 that establish categorical RACT requirements for major sources of NO<sub>x</sub> and certain control techniques guidelines (CTG)-covered sources in the DMNFR Area. Specifically, on July 16, 2021, Colorado's Air Quality Control Commission (AQCC) adopted RACT requirements in Part C, section I. for miscellaneous metal

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<sup>15</sup> See CAA sections 182(c) and 182(f).

<sup>16</sup> Final rule, Air Plan Approval, Conditional Approval, Limited Approval and Limited Disapproval; Colorado; Serious Attainment Plan Elements and Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 88 FR 29827 (May 9, 2023).

<sup>17</sup> By letter dated July 5, 2023, the state withdrew its previous submission of an attainment demonstration and RACM for the Serious area SIP. Accordingly, the EPA does not have these items before it to act on, and we are therefore not proposing any action with respect to these two Serious area SIP elements.

parts coatings and Part E, section II. RACT requirements for process heaters at major sources of NO<sub>x</sub> emissions, along with various typographical, grammatical, and formatting corrections.

We previously acted on all parts of this SIP submittal<sup>18</sup> except for revisions in Reg. 7, Part E, section II.A.4. concerning categorical RACT rules for refinery fuel gas process heaters, which we are now proposing to act on. The EPA is not reopening previous actions where the Agency acted on other parts of this SIP submittal.

#### **IV. Procedural Requirements**

The CAA requires that states meet certain procedural requirements before submitting SIP revisions to the EPA, including the requirement that states adopt SIP revisions after reasonable notice and public hearing.<sup>19</sup> For the March 22, 2021 submittal, the AQCC provided notice in the Colorado Register (CR) on October 10, 2020,<sup>20</sup> and held a public hearing on the revisions on December 16, 2020. The Commission adopted the revisions on December 18, 2020. The revisions became state-effective on February 14, 2021.

For the May 20, 2022 submittal, the AQCC provided notice in the Colorado Register on May 10, 2021,<sup>21</sup> and held a public hearing on the revisions on July 16, 2021. The Commission adopted the revisions on July 16, 2021. The revisions became state-effective on September 14, 2021.

#### **V. The EPA's Evaluation of Colorado's Submittals**

##### *2008 Ozone Serious SIP Submittal*

CAA section 182 outlines SIP requirements applicable to ozone nonattainment areas in each classification category. A Serious area classification triggers requirements for state submittals described in CAA section 182(c) and further clarified in the EPA's regulations implementing the 2008 8-hour ozone NAAQS.<sup>22</sup> Examples of these requirements include an

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<sup>18</sup> *Id.*

<sup>19</sup> CAA section 110(a)(2), 42 U.S.C. 7410(a)(2).

<sup>20</sup> 43 CR 19.

<sup>21</sup> 44 CR 9.

<sup>22</sup> *See* 40 CFR part 51, subpart AA.

attainment demonstration, reasonable further progress (RFP), an enhanced inspection and maintenance program, RACT, and RACM.

Colorado submitted SIP revisions to the EPA on March 22, 2021, to meet the requirements of a Serious area classification for the DMNFR Area.

The following subsections A through C discuss in turn each part of this SIP submittal that we are proposing to act on.

#### *A. Enhanced Monitoring*

##### 1. Background

Section 182(c)(1) of the CAA requires that SIPs for all ozone nonattainment areas classified as Serious or higher “contain measures to improve the ambient monitoring” of ozone, NO<sub>x</sub>, and VOC. This subsection also requires the EPA to promulgate regulations for enhanced monitoring of these pollutants. As highlighted in the 2008 Ozone SIP Requirements Rule (SRR), the EPA’s monitoring regulations, including the enhanced monitoring network for ozone referred to as the Photochemical Assessment Monitoring Stations (PAMS) network, are in 40 CFR part 58.<sup>23</sup>

In 2006, the EPA significantly revised and reorganized 40 CFR part 58.<sup>24</sup> As revised, 40 CFR part 58 no longer requires that SIPs contain a demonstration of compliance with monitoring regulations. Instead, compliance with the EPA’s monitoring regulations is established through the Agency’s review of required annual monitoring network plans.<sup>25</sup> The 2008 Ozone SRR made no changes to these requirements. The 2015 ozone SRR noted that the PAMS provisions in 40 CFR part 58 had been revised, with the intent “to provide a more spatially dispersed monitoring network, reduce potential redundancy and improve data value while providing monitoring agencies flexibility in collecting additional information needed to understand their specific ozone

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<sup>23</sup> The 2008 ozone SIP requirements rule addresses PAMS-related requirements. *See* 80 FR 12264 at 12291 (March 6, 2015).

<sup>24</sup> 71 FR 61236 (Oct. 17, 2006).

<sup>25</sup> 40 CFR 58.2(b) now provides that, “The requirements pertaining to provisions for an air quality surveillance system in the SIP are contained in this part.”

issues.”<sup>26</sup> These revisions did not alter the 40 CFR part 58 approach under which compliance with monitoring regulations is established by EPA review of annual monitoring network plans.

## 2. Evaluation

Colorado’s March 21, 2021 SIP submittal contained a section addressing the enhanced monitoring requirement of CAA 182(c)(1) by reference to existing provisions that the EPA previously approved into the SIP.<sup>27</sup> On September 23, 1993, the EPA approved revisions to Colorado’s SIP for air quality monitoring, consistent with the requirements of 40 CFR part 58, as part 58 was written at that time.<sup>28</sup> The revisions addressed air quality surveillance network design, network description, station designations, air quality monitoring criteria, data reporting, annual review of the State’s monitoring network, prevention of significant deterioration monitoring, and public notification. The monitoring provisions are located in Colorado’s Air Quality Monitoring SIP<sup>29</sup> and provide for the continued implementation, maintenance, and enforcement of the State air pollution control program for meeting the NAAQS. Additionally, the OAP SIP chapter 2 provides an overview of PAMS requirements and describes how the State is complying with the requirements. This includes the development and implementation of an Enhanced Monitoring Plan (EMP) detailing enhanced ozone and ozone precursor monitoring activities to be performed. The EMP was sent to the EPA on October 2, 2019, after a 30-day comment period,<sup>30</sup> and is included as a Technical Support Document attached to the Serious OAP. The OAP also explains that the State operates an air quality monitoring network of State/Local Air Monitoring Systems (SLAMS) monitors in accordance with EPA regulations.<sup>31</sup>

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<sup>26</sup> 83 FR 62998, 63008 (Dec. 06, 2018).

<sup>27</sup> See p. 2-1 of the OAP.

<sup>28</sup> 58 FR 49434.

<sup>29</sup> Contained within the docket for this action.

<sup>30</sup> See “State of Colorado Enhanced Monitoring Plan for Ozone”, CDPHE, Air Pollution Control Division (Oct. 1, 2019), contained within the March 22, 2021 submittal, available in the docket.

[https://www.colorado.gov/airquality/tech\\_doc\\_repository.aspx#network\\_plan](https://www.colorado.gov/airquality/tech_doc_repository.aspx#network_plan)

<sup>31</sup> P. 2-8 of the OAP.

Furthermore, the EPA approved Colorado’s most recent annual monitoring network plan, which includes a description of the State’s PAMS, on August 3, 2022.<sup>32</sup>

Colorado collected 2006-2019 ozone monitoring data in accordance with monitoring requirements in 40 CFR part 58 as well as with the EPA’s “Quality Assurance Handbook for Air Pollution Measurement Systems, Vol. II—Ambient Air Quality Monitoring Program”;<sup>33</sup> the APCD Quality Management Plan;<sup>34</sup> the APCD Quality Assurance Project Plan;<sup>35</sup> and Colorado’s monitoring network plan.<sup>36</sup>

The monitoring section of Colorado’s OAP includes:

- A description of the State’s EMP and PAMS monitoring plan;
- A reference to Colorado’s monitoring SIP;
- Information on the location of ozone monitors in Colorado, from southern Metropolitan Denver to northern Fort Collins (including Rocky Mountain National Park);
- A list of fourth-maximum monitored 8-hour ozone values from 2006 through 2019, including levels recorded above the 75 parts per billion (ppb) 2008 ozone NAAQS;<sup>37</sup>
- A description of the State’s ambient air quality data assurance program; and
- Relevant 8-hour-average ozone monitoring data and recovery rates from 2006 through 2019.

Based on our review and approval of the State’s monitoring SIPs and the 2022 annual monitoring network plan, we propose to find that Colorado has satisfied the enhanced monitoring requirements under CAA section 182(c)(1) for the DMNFR Area with respect to the 2008 ozone NAAQS.

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<sup>32</sup> Letter from Monica Morales, EPA, to Michael Ogletree, CDPHE, available in the docket for this action.

<sup>33</sup> QA Handbook for Air Pollution Measurement Systems: “Volume II: Ambient Air Quality Monitoring Program” (EPA-454/B-13-003, *May 2013*) (available in the docket). The current version of the Handbook is available at [https://www3.epa.gov/ttn/amtic/files/ambient/pm25/qa/FinalHandbookDocument1\\_17.pdf](https://www3.epa.gov/ttn/amtic/files/ambient/pm25/qa/FinalHandbookDocument1_17.pdf) (EPA-454/B-17-001, Jan. 2017).

<sup>34</sup> Colorado Department of Public Health and Environment, Quality Management Plan (Feb 2018), available at [https://www.colorado.gov/airquality/tech\\_doc\\_repository.aspx?action=open&file=APCD\\_QMP\\_03102016.pdf](https://www.colorado.gov/airquality/tech_doc_repository.aspx?action=open&file=APCD_QMP_03102016.pdf).

<sup>35</sup> Colorado Department of Public Health and Environment, Quality Assurance Project Plan (July 2015), available at [https://www.colorado.gov/airquality/tech\\_doc\\_repository.aspx?action=open&file=QAPP\\_2018.pdf](https://www.colorado.gov/airquality/tech_doc_repository.aspx?action=open&file=QAPP_2018.pdf).

<sup>36</sup> Annual Network Plans available at [https://www.colorado.gov/airquality/tech\\_doc\\_repository.aspx](https://www.colorado.gov/airquality/tech_doc_repository.aspx).

<sup>37</sup> OAP Table 10, p. 2-3.

## *B. Contingency Measures*

### 1. Background

Under the CAA, states with ozone nonattainment areas classified under subpart 2 as Moderate or higher must adopt and submit nonattainment plans that include contingency measures consistent with section 172(c)(9). Similarly, states with ozone nonattainment areas classified as Serious or higher must include contingency measures consistent with section 182(c)(9). Contingency measures are additional controls or measures to be implemented in the event the area fails to meet RFP or fails to attain the NAAQS by the applicable attainment date. The SIP submittal should identify such controls or measures, specify a schedule for implementation, and indicate that the measures will be implemented without significant further action by the state or the EPA.<sup>38</sup>

In the September 12, 2016 decision by the U.S. Court of Appeals for the Ninth Circuit in *Bahr v. EPA*, the court concluded that contingency measures must be measures that only take effect when an area fails to meet RFP or attain by the applicable attainment date, not before.<sup>39</sup> After the *Bahr* decision, the EPA recognized that within the geographic jurisdiction of the Ninth Circuit (which does not include Colorado), the language of CAA sections 172(c)(9) and 182(c)(9) require contingency measures to be both prospective (*i.e.*, that they be undertaken in the future) and conditional (*i.e.*, that implementation is conditional upon the area's failure to meet RFP or to attain by the applicable attainment date).<sup>40</sup>

On January 29, 2021, the U.S. Court of Appeals for the District of Columbia Circuit in *Sierra Club v. EPA* issued a decision in response to challenges to the EPA's rule implementing the 2015 ozone NAAQS.<sup>41</sup> In *Sierra Club v. EPA*, the D.C. Circuit endorsed the holding of *Bahr*

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<sup>38</sup> See 70 FR 71612 (November 29, 2005); see also 80 FR 12264, 12285 (March 6, 2015).

<sup>39</sup> 836 F.3d 1218, 1235–1237.

<sup>40</sup> The *Bahr v. EPA* decision involved a challenge to an EPA approval of contingency measures under the general nonattainment area plan provisions for contingency measures in CAA section 172(c)(9), but, given the similarity between the statutory language in section 172(c)(9) and the additional ozone-specific contingency measure provision in section 182(c)(9), the EPA found that the decision affected how it should interpret both sections of the Act in the Ninth Circuit.

<sup>41</sup> 985 F.3d 1055, 1067-68; 83 FR 62998 (Dec. 6, 2018).

and vacated the EPA's interpretation of the CAA that had allowed states to rely on already-implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS.<sup>42</sup> The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.<sup>43</sup>

At the time Colorado was developing its Serious OAP, the EPA's long-standing interpretation of section 172(c)(9) was that states could rely on surplus emission reductions from already-implemented measures (*i.e.*, implemented as of the time that the EPA acts on the SIP submittal) to meet the contingency measures requirements. Thus, states could rely on surplus emissions reductions from already-implemented Federal measures (*e.g.*, Federal mobile source measures based on the incremental turnover of the motor vehicle fleet each year) or surplus emission reductions from already-implemented state or local measures in the SIP.

The EPA has previously approved nonattainment area plan submittals under the now invalidated interpretation that already-implemented measures were permissible as contingency measures. That is, we have approved contingency measures that consisted of one or more Federal or state control measures already in place that provided reductions in excess of the reductions needed to meet other requirements or relied upon in the modeled attainment demonstration.<sup>44</sup> However, after the D.C. Circuit's January 2021 *Sierra Club* decision, the EPA can no longer interpret the CAA to allow approval of already-implemented measures as meeting the requirements of CAA sections 172(c)(9) or 182(c)(9) for any nonattainment plan submittal (even if, as is the case here, the development of the submittal was nearing conclusion when the

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<sup>42</sup> See 985 F.3d at 1067-68; 83 FR at 63026-27.

<sup>43</sup> In *Sierra Club*, the D.C. Circuit held that "Contingency measures that are to take effect upon failure to satisfy standards are likewise not measures that have been implemented before such failure occurs." 985 F.3d at 1067-68 (internal quotations omitted).

<sup>44</sup> See, *e.g.*, 62 FR 15844 (April 3, 1997) (direct final rule approving an Indiana ozone SIP revision); 62 FR 66279 (December 18, 1997) (final rule approving an Illinois ozone SIP revision); 66 FR 30811 (June 8, 2001) (direct final rule approving a Rhode Island ozone SIP revision); 66 FR 586 (Jan. 3, 2001) (final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions); and 66 FR 634 (Jan. 3, 2001) (final rule approving a Connecticut ozone SIP revision).

decision was issued). Contingency measures must be prospective and conditional – they must be measures that would take effect when the area fails to meet RFP or attain by the applicable attainment date, not before.

## 2. Evaluation

For the DMNFR Area 2008 ozone NAAQS Serious nonattainment area, the contingency measures the State submitted as part of the March 22, 2021 SIP submittal consist of surplus emissions reductions from already-implemented control measures. The State relied on the surplus emissions reductions from such already-implemented measures to demonstrate compliance with the contingency measure requirements of the CAA.<sup>45</sup> The State determined the emissions reductions from these measures to be surplus, in that the State did not rely upon them in the OAP for demonstrating RFP or attainment, and in that no additional actions are required to garner these additional emission reductions after the attainment year regardless of whether the area attained. The March 22, 2021 SIP submittal explained that these surplus emission reductions would occur after the July 20, 2021 Serious attainment date, and thus the State identified them as contingency measures for the DMNFR Area. These measures consist of projected emission reductions from Federal vehicle and engine emissions certification programs and from fuel control programs for both on-road and non-road vehicles which were already adopted by the EPA, the implementation of which does not depend on whether a nonattainment area attains or meets its RFP requirements.<sup>46</sup> The State concluded that the projected combined VOC and NO<sub>x</sub> emissions reductions of over three percent for the DMNFR Area to be achieved in 2022 (from the 2011 baseline) satisfies the CAA requirements for contingency measures.

In evaluating the DMNFR Area contingency measures in the March 22, 2021 SIP submittal, we must consider whether they are both prospective and conditional, consistent with the D.C. Circuit's decision in *Sierra Club*. Because these contingency measures consist entirely

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<sup>45</sup> See Chapter 10 of the OAP.

<sup>46</sup> See chapter 4 of the OAP for a description of mobile source emission reduction measures.

of emission reductions from measures that will occur regardless of whether the nonattainment area fails to meet RFP or to attain by the applicable attainment date, they do not satisfy the requirements of CAA sections 172(c)(9) and 182(c)(9) that contingency measures be both prospective and conditional. Thus, we must propose to disapprove the contingency measures element of the March 22, 2021 SIP submittal.

This proposed action concerning contingency measures will have no impact on the EPA's prior determinations with respect to RFP or other attainment plan requirements for the area and this NAAQS.

### *C. Reasonably Available Control Technology (RACT)*

#### 1. Background

Section 172(c)(1) of the CAA requires that SIPs for nonattainment areas “provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology [RACT]).” CAA section 182(b)(2) specifies that RACT is required for certain types of sources and pollutants within ozone nonattainment areas classified Moderate and higher. The EPA has defined RACT as “[t]he lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.”<sup>47</sup> States must submit a SIP revision requiring the implementation of RACT for each source in the area covered by a CTG, and for any major source of VOC or NO<sub>x</sub> in the area.<sup>48</sup>

For a Moderate, Serious, or Severe area, a major stationary source is one that emits, or has the potential to emit, 100, 50, or 25 tpy or more, respectively, of VOCs or NO<sub>x</sub>.<sup>49</sup>

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<sup>47</sup> General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas—Supplement (on Control Techniques Guidelines), 44 FR 53761 (Sep. 17, 1979).

<sup>48</sup> See CAA section 182(b)(2), 42 U.S.C. 7511a(b)(2)); see also Note, RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers, William Harnett, Director, Air Quality Policy Division, EPA (May 2006), available at <https://www.regulations.gov/document/EPA-R08-OAR-2020-0114-0008>.

<sup>49</sup> See CAA sections 182(b), 182(c), 182(d), 182(f)(1), and 302(j).

Accordingly, for the DMNFR Serious nonattainment area, a major stationary source is one that emits, or has the potential to emit, 50 tpy or more of VOCs or NO<sub>x</sub>.<sup>50</sup>

On reclassification as Serious nonattainment, the DMNFR Area was required to implement RACT as expeditiously as practicable, but no later than August 3, 2020, for RACT needed for demonstrating attainment and July 20, 2021, for RACT not needed for demonstrating attainment.<sup>51</sup> The Division conducted a series of analyses and rulemakings to address 2008 ozone Moderate and Serious RACT requirements.

The EPA approved the majority of the State's CTG RACT analysis on July 3, 2018.<sup>52</sup> On February 24, 2021, the EPA approved categorical RACT requirements for combustion equipment at major sources, RACT requirements for major sources of VOC and NO<sub>x</sub>, and additional CTG VOC source RACT rules.<sup>53</sup> On November 5, 2021, the EPA approved additional RACT requirements for major sources of VOC and NO<sub>x</sub> in the DMNFR Area under the Serious classification, including expanded categorical combustion equipment and new categorical general solvent use requirements.<sup>54</sup> Finally, the EPA took action on several other RACT categories as part of its May 9, 2023 rulemaking.<sup>55</sup>

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<sup>50</sup> On October 7, 2022 the EPA finalized an action that reclassified the DMNFR Area to Severe nonattainment status for the 2008 ozone NAAQS. *See* Final rule, Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards, 87 FR 60926. Accordingly, the State of Colorado is required to submit a demonstration that the area will attain the Severe standard, and other elements of a Severe SIP.

<sup>51</sup> Final rule, Finding of Failure to Attain and Reclassification of Denver Area for the 2008 Ozone National Ambient Air Quality Standard, 84 FR 70897, 70900 (Dec. 26, 2019); *see also* Final rule, Determination of Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as Moderate for the 2008 Ozone National Ambient Air Quality Standards, 84 FR 44238 (Aug. 23, 2019).

<sup>52</sup> *See* 83 FR 31068. A negative declaration as to RACT for sources covered by the aerospace CTG was approved on November 5, 2021 (86 FR 61071). Colorado's RACT demonstrations for sources covered by the industrial cleaning solvents, metal furniture coatings (2007), and wood furniture CTGs were approved on February 24, 2021 (86 FR 11127); and the State's RACT demonstration for sources covered by the oil and gas CTG was conditionally approved on May 13, 2022 (87 FR 29228).

<sup>53</sup> 86 FR 11127.

<sup>54</sup> Final rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7; Aerospace, Oil and Gas, and Other RACT Requirements for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area 86 FR 61071 (Nov. 5, 2021).

<sup>55</sup> 88 FR 29827.

The RACT submittals that we are now proposing to act on include those that we have not previously acted on that address RACT for several non-CTG VOC and NO<sub>x</sub> sources and categories.

## 2. Evaluation

In preparing its RACT determinations, Colorado reviewed source permits, consulted with Division permitting and enforcement staff involved with each source, and consulted with the sources themselves.<sup>56</sup> Colorado also considered control strategies identified in the CTGs, Alternative Control Techniques (ACTs), RACT/Best Available Control Technology/Lowest Achievable Emission Rate Clearinghouse (RBLC), EPA's Menu of Control Measures,<sup>57</sup> New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and Colorado's regulations. For major sources, Colorado identified a list of major VOC and NO<sub>x</sub> sources in the DMNFR Area subject to RACT requirements under Moderate and Serious classifications.<sup>58</sup>

### a. Landfill and biogas fired RICE

Colorado's March 22, 2021 submittal contains categorical RACT rules for landfill gas or biogas fired reciprocating internal combustion engines (RICE) in Reg. 7, Part E, section II.A.4.f. Colorado evaluated technical information submitted by operators of five landfill or biogas-fired spark ignition engines and determined that additional add on emission controls are not RACT. Colorado then established a limit of 2.0 grams NO<sub>x</sub> per brake horsepower hour (g/bhp-hr) based on a 30-day rolling average for landfill or biogas-fired engines with a design power output greater than or equal to 500 hp and less than 1,350 hp.

The EPA's evaluation of the RACT analyses submitted to the AQCC by the two facilities that still have engines subject to section II.A.4.f., appears to show that they are meeting a limit

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<sup>56</sup> See Colorado's Technical Support Document for Reasonably Available Control Technology for Major Sources, December 14, 2020. Available within the docket.

<sup>57</sup> See <https://www.epa.gov/air-quality-implementation-plans/menu-control-measures-naaqs-implementation>.

<sup>58</sup> See chapter 6.3 of the OAP.

below 1.5 g NO<sub>x</sub>/hp-hr.<sup>59</sup> It is therefore unclear how a 2.0 g NO<sub>x</sub>/bhp-hr limit could be representative of RACT. Colorado has not provided sufficient information within the SIP submittal and associated documents for the EPA to determine that the proposed limit of 2.0 g NO<sub>x</sub>/bhp-hr constitutes RACT. Additionally, there are no emission monitoring requirements to determine NO<sub>x</sub> emission rates for landfill or biogas fired engines in section II.A.4.f. Without such requirements, the EPA cannot determine compliance with the applicable numerical emissions limitation. This is a problem for purposes of meeting the RACT requirement. We conclude that this was likely inadvertently excluded from the regulation, because the statement of basis provides that “owners or operators of these engines will continue to comply with the combustion process adjustment, periodic performance testing, and recordkeeping requirements.”<sup>60</sup> Finally, the recordkeeping provisions in Reg. 7, Part E, section II.A.7., require owners and operators to maintain records for a period of five years and to make those records available to the Division upon request. In a recent final action by the EPA, we explained that records must be periodically submitted to the State and made publicly available for citizens’ ability to participate in the enforcement of the SIP as allowed by CAA section 304.<sup>61</sup>

For these reasons, we propose to disapprove the categorical RACT rules for landfill and biogas fired RICE.

b. Golden Aluminum

Colorado’s March 22, 2021 submittal identifies Golden Aluminum, an individual aluminum sheet manufacturing facility, as a major VOC and NO<sub>x</sub> source. Equipment and operations at the facility include rigid can stock shredders, a delacquering kiln, three furnaces, degassing boxes, hot mill press and coiling, annealing furnaces, cold mill and spray, recoiling, coil coating line, packaging and an emergency generator. To address these emitting points the

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<sup>59</sup> See Leprino Foods and Waste Management RACT Analyses, available within the docket. We note that at the time of rule development, there were biogas engines located at Boulder Wastewater Treatment Plant with higher limits, but these engines are no longer in use. The engines were removed from the facility and appropriate cancellations were submitted.

<sup>60</sup> See “Reg Lang & SBSP Adopted\_R7” within the March 22, 2021 submittal.

<sup>61</sup> 88 FR 29827 (May 9, 2023).

State reviewed the EPA's RBLC for metal coil surface coating and miscellaneous boilers, furnaces, and heaters. The RBLC, which is an EPA database of air permit determinations that can help identify appropriate emissions control technologies, did not list any control measures for metal coil surface coating. For miscellaneous boilers, furnaces, and heaters, the RBLC listed low-NO<sub>x</sub> combustion technology, natural gas as fuel, selective catalytic reduction, efficient boiler design, low-NO<sub>x</sub> burners, and good combustion practices as potential control measures. For annealing furnaces, the RBLC listed low-NO<sub>x</sub> burners, combustion of clean fuel, and good combustion practices as potential control measures. The Division also conducted an analysis for operating the three furnaces at the facility in a natural gas/oxygen/air mixture mode. Colorado determined that compliance with the EPA CTG for coil coating operations,<sup>62</sup> on which Reg. 7, Part C, section I.D. is based, and with combustion process adjustments in Reg. 7, Part E, section II., constitutes RACT for the Golden Aluminum facility.

There is one cold rolling mill at the facility with a permit limit of 67.38 tpy of VOC, which is above the applicable 50 tpy major source threshold for RACT. Emissions from this unit are controlled with an air purifier centrifugal separator. Beyond referencing the coil coatings requirements in Reg. 7 that are based on the EPA's Coil Coating CTG, and which apply to the coil coating operation at the facility, VOC emitting points such as the cold rolling mill were not further analyzed for RACT. This cold rolling mill is not covered by the Coil Coating CTG, and therefore that CTG is not relevant for purposes of determining RACT for the cold rolling mill. The level of analysis provided in the submittal is not sufficient for purposes of demonstrating that the cold rolling mill is subject to RACT-level controls. The Reg. 7 coil coating requirements apply to the coating applicators, ovens, and quench areas of coil coating operations occurring *after* the cold rolling process, and are therefore not relevant to the control of VOC emissions associated with lubricant oil use during operation of the cold rolling mill. The Reg. 7, Part C,

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<sup>62</sup> Control of Volatile Organic Emissions from Existing Stationary Sources, Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks, EPA-450/2-77-008 (May 1977). "Coil Coating CTG"

section I.D. coil coating requirements that are referenced in the State's RACT analysis, and which are based on the applicable CTG, apply only to the coil coating operation, which is a different process than the cold rolling mill, which functions to shape the metal to a specified thickness.<sup>63</sup> Therefore, the State's SIP submittal does not contain any RACT analysis that is specific to the VOC emissions from the cold rolling mill itself. The cold rolling mill has not been sufficiently analyzed with respect to RACT.

In its 2008 ozone SIP requirements rule, the EPA described how states should meet RACT requirements. States are to consider existing CTGs and (ACTs) "as well as all relevant information (including recent technical information and information received during the public comment period) that is available at the time that they are developing their RACT SIPs for the 2008 ozone NAAQS."<sup>64</sup> In June 1992, the EPA released a technical guidance project report titled "Control of VOC Emissions from Nonferrous Metal Rolling Processes,"<sup>65</sup> which presents information on nonferrous metal rolling processes, VOC emissions generated during these operations, emission control techniques and their effectiveness, and costs associated with process changes and emission control options. This report includes information regarding the control of VOC emissions from cold rolling process equipment like the cold rolling mill at Golden Aluminum. The report was available at the time the Division was developing their RACT SIP for the 2008 ozone NAAQS under the Serious classification. Also, other states have evaluated RACT for cold rolling mills independently from CTG-covered emission points.<sup>66</sup> The aforementioned technical report, relevant regulations in other states, the RBLC Clearinghouse, the EPA's Menu of Control Measures, NSPS, and NESHAP are all resources that may be considered in evaluating RACT for cold rolling process equipment.

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<sup>63</sup> See Technical Support Document for Reasonably Available Control Technology for Major Sources, Dec. 2020. Contained within the State's March 22, 2021 SIP submittal. Available within the docket.

<sup>64</sup> Final rule, "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements," 80 FR 12264, 12279 (March 6, 2015).

<sup>65</sup> EPA-453/R-92-001.

<sup>66</sup> For example, see the Missouri non-CTG RACT rule for control of VOC emissions from aluminum foil rolling at 76 FR 66013 (October 25, 2011). Available at <https://www.regulations.gov/document/EPA-R07-OAR-2011-0859-0001>.

Because we conclude that RACT was not fully evaluated for the cold mill located at Golden Aluminum, we are proposing to disapprove the State's determination that RACT has been met for this facility. To address this disapproval, if it is finalized, we recommend that the Division evaluate the current emissions from the cold rolling mill and the effectiveness of the control device, conduct an analysis of whether further VOC reduction is technically and economically feasible for the cold rolling mill through the application of RACT, and determine if appropriate emission limits (including work practices) and associated monitoring and recordkeeping should be adopted as a SIP revision for purposes of meeting RACT.

c. Refinery fueled process heaters

Colorado's May 20, 2022 submittal contains categorical RACT rules for refinery fueled process heaters in Reg. 7, Part E, section II.A. The rules establish an emission limit of 0.1 pounds of NO<sub>x</sub> per million British thermal units (lb NO<sub>x</sub>/MMBtu) for refinery gas-fired process heaters with a heat input rate greater than or equal to 5 MMBtu/hr. Reg. 7, Part E, section II.A. also establishes performance testing requirements, and associated recordkeeping, for refinery gas-fired process heaters greater than or equal to 100 MMBtu/hr. We proposed approval of the revisions on November 9, 2022.<sup>67</sup> During the comment period, we received adverse comments regarding the categorical RACT limit for refinery-fueled process heaters. We did not act on this category in our May 9, 2023 final rule.

After further evaluation of the State's submitted RACT rules and technical information, we are proposing to find that the proposed emission limit in Reg. 7 is not enforceable for all refinery fueled process heaters, either because performance testing is not required or feasible, or because the unit does not have a continuous emission monitoring system (CEMS). Colorado's Technical Support Document for Reasonably Available Control Technology for Major Sources<sup>68</sup> explains that there are significant challenges for performance testing including "lack of test ports,

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<sup>67</sup> 87 FR 67617.

<sup>68</sup> July 12, 2021, contained within the May 16, 2022 submittal.

lack of platforms and safe access, and a refractory lining in some stacks.”<sup>69</sup> Nonetheless, CAA 110(a)(2)(A) requires the SIP to include “enforceable emission limitations.” The lack of testing or CEMS for some sources means that neither the State nor the EPA have a method to determine whether those sources are meeting the numerical emission limit of 0.1 lb NO<sub>x</sub>/MMBtu. There is no way to determine whether these sources are complying with the limit or whether the limit represents RACT for the specific units. Therefore, the categorical RACT limit is not enforceable for all refinery fueled process heaters controlled in Reg. 7.

Furthermore, the State’s record that accompanies the SIP submittal does not adequately demonstrate how the state determined that the limit of 0.1 lb NO<sub>x</sub>/MMBtu constitutes RACT for these sources. As explained above, the majority of refinery fueled process heaters have not had testing to establish an emission baseline. As such, the submittal is unclear on the amount of emissions coming from these sources. The State’s RACT analysis does not assess emission reductions that could be achievable through the application of lower emitting technology, nor does it discuss costs of such technology, presumably in part due to the lack of baseline emissions information. The EPA cannot fully determine that the State’s limit constitutes RACT without additional information regarding baseline emissions as well as potential control options and associated costs. Lastly, there are some units covered by the regulation that have low NO<sub>x</sub> burners and ultra low NO<sub>x</sub> burners, which have been shown through initial performance testing or the operation of CEMS to meet emission rates below the proposed categorical limit of 0.1 lb NO<sub>x</sub>/MMBtu.<sup>70</sup> This demonstrates to the EPA that the categorical limit may not be appropriate for these units. The State does not explain why its proposed limit represents RACT when information included in the record indicates these sources are capable of achieving a lower limit. The State has not provided sufficient information in its SIP submittal and associated documents to allow the EPA to conclude that the categorical RACT limit for refinery fueled process heaters

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<sup>69</sup> *Id.* at p. 11.

<sup>70</sup> *See* columns N and V of the Suncor Heaters spreadsheet, available within the docket.

is representative of RACT. For these reasons, we propose to disapprove the categorical RACT rules for refinery fueled process heaters.

## **VI. Proposed Action**

We propose to approve the enhanced monitoring element of the OAP submittal from the State of Colorado for the DMNFR Area submitted on March 22, 2021, as explained in section V.A. of this document. In light of the D.C. Circuit's decision in *Sierra Club v. EPA*, we propose to disapprove the contingency measure element of the March 22, 2021 OAP for the Serious nonattainment area under the 2008 8-hour ozone NAAQS. Additionally, we propose to disapprove certain RACT SIP revisions, as explained in section V.C. of this document. The EPA proposes disapproval of the contingency measures with respect to the requirements of CAA 172(c)(9) and 182(c)(9). The EPA proposes disapproval of RACT requirements with respect to the requirements of CAA sections 172(c)(1), 182(b)(2), and 182(c).

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA starts sanctions clocks. The March 22, 2021 and May 20, 2021 SIP revision submittals, including the contingency measures and RACT elements for the DMNFR 2008 ozone NAAQS nonattainment area, do address requirements of part D, and thus if the EPA finalizes this proposed disapproval, the sanctions clocks for these elements would start on the effective date of the final action.<sup>71</sup>

Additionally, section 110(c)(1) of the CAA requires the Administrator to promulgate a Federal implementation plan (FIP) at any time within two years after the Administrator finds that a state has failed to make a required SIP submittal, finds a SIP submittal to be incomplete, or disapproves a SIP submittal, unless the state corrects the deficiency, and the Administrator approves the SIP revision, before the Administrator promulgates a FIP. Therefore, if the EPA

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<sup>71</sup> Under 40 CFR 52.31, the offset sanction in CAA section 179(b)(2) would be imposed 18 months after the effective date of that final disapproval action, and, unless an exemption applies, the highway funding sanction in CAA section 179(b)(1) would be imposed six months after the offset sanction. Sanctions would not be imposed if the EPA determined, via a final approval, that a subsequent SIP submittal corrected the identified deficiencies before the applicable deadlines.

finalizes this proposed disapproval, the EPA will be obligated under CAA section 110(c)(1) to promulgate a FIP within two years after the effective date of the disapproval, unless the State submits and the EPA approves SIP revisions to correct the identified deficiencies in the rules before the EPA promulgates the FIP.

The EPA is soliciting public comments on the proposed actions discussed in this document. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

## **VII. Environmental Justice Considerations**

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of populations living within the DMNFR Area. The EPA then compared the data to the national averages for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that for populations within the DMNFR Area, there are census block groups in which the percentage of people of color (persons who reported their race as a category other than White alone and/or Hispanic or Latino) is greater than the national average of 39% with some census block groups ranking above the 80th percentile.<sup>72</sup> There are also census block groups within the DMNFR Area where the percentage of low income population is above the national average of 33% with some census block groups ranking above the 80th percentile.<sup>73</sup>

This proposed action identifies deficiencies in the contingency measure element of the March 22, 2021 SIP submittal for the DMNFR Area under the 2008 8-hour ozone NAAQS. The EPA's disapproval of these contingency measures, if finalized, would require that Colorado submit plans for the DMNFR Area containing prospective and conditional contingency measures consistent with the D.C. Circuit decision, which would help to improve air quality in the entire affected nonattainment area through ongoing reductions of ozone precursor emissions should

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<sup>72</sup> See "EJSCREEN Maps" pdf, available within the docket.

<sup>73</sup> *Id.*

those measures be triggered. Additionally, this action identifies deficiencies in the State's March 22, 2021 and May 20, 2022 RACT submittals. The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. The CAA requires this action, and the EPA recognizes the adverse impacts of ozone. Information on ozone and its relationship to negative health impacts can be found in the National Ambient Air Quality Standards for Ozone.<sup>74</sup> We expect that this action and resulting emissions reductions will generally be neutral or contribute to reduced environmental and health impacts on all populations in the DMNFR Area, including people of color and low-income populations. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to attain and/or maintain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

### **VIII. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

#### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA, because this proposed SIP disapproval, if finalized, will not in and of itself create any new information collection burdens, but will simply disapprove certain State requirements for inclusion in the SIP.

#### *C. Regulatory Flexibility Act (RFA)*

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<sup>74</sup> Final rule, 73 FR 16436 (March 12, 2008).

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed SIP disapproval, if finalized, will not in and of itself create any new requirements but will simply disapprove certain State requirements for inclusion in the SIP.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action proposes to disapprove certain pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that the EPA is proposing to disapprove would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because this

proposed SIP disapproval, if finalized, will not in and of itself create any new regulations, but will simply disapprove certain State requirements for inclusion in the SIP.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an EJ analysis, as is described above in the section titled “Environmental Justice

Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 31, 2023.

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KC Becker,  
Regional Administrator,  
Region 8.

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