



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2023-0483; FRL-11439-01-R8]

Air Plan Approval; 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: On May 9, 2023, the EPA took final action on State Implementation Plan (SIP) submissions made by the State of Colorado on March 22, 2021, related to Clean Air Act (CAA) requirements for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) for the Denver Metro/North Front Range (DMNFR) Serious nonattainment area. In that action we finalized a limited approval and limited disapproval of specific provisions intended to meet reasonably available control technology (RACT) requirements that were included in SIP submissions made by the State on May 14, 2018, May 8, 2019, May 13, 2020, March 22, 2021, May 18, 2021, and May 20, 2022. Further, we finalized a limited conditional approval and limited disapproval of additional provisions intended to address RACT requirements and that were within SIP submissions from May 31, 2017, and May 10, 2019. The EPA is now proposing to stay the limited disapproval portions of the May 9, 2023 final rule until June 1, 2024.

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-2023-0483, 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 <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://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the <https://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 <https://www.regulations.gov>. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

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.

SUPPLEMENTARY INFORMATION: In this document, “we,” “us,” and “our” refer to the EPA.

I. Background

On May 9, 2023, EPA took final action approving portions of the 8-hour ozone attainment plan for the DNFR area that were submitted by the State of Colorado on March 22, 2021, and portions of additional SIP submissions made by the State on May 8, 2019, May 13, 2020, March

22, 2021, May 18, 2021, and May 20, 2022.¹ The State made these SIP submissions to meet CAA requirements for the DMNFR area classified as Serious nonattainment, to address RACT requirements for certain source categories in the DMNFR area, and to adopt VOC standards for consumer products and architectural and industrial maintenance coatings. We also finalized a limited approval and limited disapproval of parts of the SIP submissions made on May 14, 2018, May 13, 2020, March 22, 2021, May 18, 2021, and May 20, 2022, and of certain RACT categories,² and we finalized a limited conditional approval and limited disapproval of specific provisions intended to meet RACT requirements.³ The limited disapproval portions of the May 9, 2023 final rule resulted from the Agency's determination that although the rules met RACT requirements concerning stringency, they lacked adequate reporting or other mechanisms to make them legally and practically enforceable by citizens in accordance with CAA section 304.

On July 10, 2023, the State submitted a Petition for Reconsideration asking the EPA to reconsider the issuance of the limited disapproval portions of the May 9, 2023 final rule. The EPA responded to the Petition for Reconsideration on August 31, 2023, informing the State that the EPA was granting the petition as to the limited disapproval portions of the May 9, 2023 final rule.⁴ The EPA intends to reopen the rulemaking for the limited purpose of accepting comment and considering whether these SIP provisions are enforceable by citizens as required under the CAA,⁵ or what revisions may be necessary to make them so.

II. Proposed Action

In this action, we are proposing to stay the limited disapproval actions listed in Tables 2 and 3 of the May 9, 2023 final rule until June 1, 2024. All other portions of the final rule were

¹ 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, Table 1, 29829-29830 (May 9, 2023).

² *Id.* at 29830-29831, Table 2 (listing portions subject to limited approval and limited disapproval), Table 3 (RACT categories).

³ *Id.* at 29830-29831, Table 3.

⁴ See letter from EPA Regional Administrator KC Becker to Colorado Attorney General Phil Weiser (Aug. 31, 2023), in the docket for this action.

⁵ See CAA section 304(a).

effective as of June 8, 2023, and remain in effect. The EPA is proposing this action to provide additional time for consideration of the Petition for Reconsideration, which will occur through a separate notice and comment process that the Agency will be describing in more detail in a later document. The effect of the stay, if finalized as proposed, and depending on the outcome of the reconsideration process, will be that the federal implementation plan and sanctions clocks⁶ for the limited disapprovals in Tables 2 and 3 of the May 9, 2023 final rule, restart on June 2, 2024. We are taking comment on today's proposal for 30 days. Any comments on this proposal should address only the issue of the stay of the limited disapproval actions; comments on other items will not be pertinent to this action.

III. Environmental Justice Considerations

As discussed in our May 9, 2023 final rule, 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.⁷ 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.⁸

This proposed action stays the limited disapproval portions of our May 9, 2023 final action. The limited disapprovals in that action related to the EPA's concern that certain Colorado regulations do not have adequate reporting requirements or other mechanisms to make them

⁶ See CAA sections 100(c)(1) and 179.

⁷ See "EJSCREEN Maps" pdf, available within the docket.

⁸ *Id.*

enforceable under the citizen suit provision of CAA section 304. The purpose of the stay of the disapproval portions is to allow the EPA to more fully evaluate a petition for reconsideration from the State. The reconsideration will allow public input from all parties concerning the adequacy, with respect to CAA requirements for enforceability, of the provisions that were subject to limited disapproval. We expect that this action will generally be neutral or (combined with the anticipated final action following reconsideration) 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, we expect that this action will not worsen any existing air quality. 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.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet CAA criteria. Accordingly, this action merely proposes to stay the limited disapprovals from our May 9, 2023 final rule and does not impose additional requirements beyond those imposed by state law.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the PRA, because this proposed action, if finalized, will not in and of itself create any new information collection burdens, but will simply stay the limited disapprovals from our May 9, 2023 final rule.

C. Regulatory Flexibility Act (RFA)

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 action, if finalized, will not in and of itself create any new requirements but will simply stay the limited disapprovals from our May 9, 2023 final rule.

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 stay the limited disapprovals from our May 9, 2023 final rule 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 proposed action 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 action, if finalized, will not in and of itself create any new regulations, but will simply stay the limited disapprovals from our May 9, 2023 final rule.

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)

This rulemaking does not involve technical standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

The EPA believes that human health or environmental conditions existing prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations, and/or Indigenous peoples. The results of our demographic analysis (see section III., Environmental Justice Considerations, above) indicate that for populations within the DMNFR Area, there are census block groups in which the percentage of people of color is greater than the national average of 39%, with some census block groups ranking above the 80th percentile. 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.

The EPA believes that this action is not likely to change existing disproportionate and adverse effects on people of color, low-income populations, or Indigenous peoples. While the EPA recognizes the importance of assessing impacts of our actions on potentially overburdened communities, a final approval of the proposed stay of the limited disapprovals from our May 9, 2023 final action would not exacerbate existing pollution exposure or burdens for populations in the DMNFR Area.

As discussed in the Environmental Justice Considerations section of this preamble, there is no information to support a conclusion that staying the limited disapproval of the May 9, 2023 final rule would result in additional disparate impact on minority populations (people of color and/or Indigenous peoples) or low-income populations.

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: __ September 28, 2023.

KC Becker,
Regional Administrator,
Region 8.