



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R08-OAR-2024-0622; FRL-12746-01-R8]**

### **Air Plan Approval; Colorado; Serious Attainment Plan Contingency Measures for the 2008 8-Hour Ozone National Ambient Air Quality Standards 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 state implementation plan (SIP) submittals under the Clean Air Act (CAA) that address contingency measures requirements for the 2008 ozone National Ambient Air Quality Standards (NAAQS) for the Denver Metro/North Front Range (DMNFR) ozone nonattainment area. The requirements at issue relate to the area's previous Serious nonattainment classification. The EPA is proposing to find that the State has met the applicable CAA requirements for Serious area contingency measures and is proposing approval of the contingency measures SIP submittals, except that we are not taking action on one of the two identified contingency measures included in the submittals. In addition, the EPA is proposing to approve regulatory revisions that Colorado adopted to implement the submitted motor vehicle coating contingency measure. 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-2024-0622 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:** Matthew Lang, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-AQ-R, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-6709, email address: [lang.matthew@epa.gov](mailto:lang.matthew@epa.gov).

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

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**I. What Action is the EPA Proposing to Take?**

The EPA is proposing to approve Colorado SIP revisions for three submittals related to the Serious area contingency measures requirement for the DMNFR area for the 2008 ozone NAAQS. These submittals also address certain organizational revisions affecting the submitted regulations, including the relocation of existing portions of Colorado's Regulation Number 7 ("Reg. 7") into new standalone regulations and renumbering of existing regulatory provisions. On June 26, 2023, Colorado submitted SIP revisions to address certain Moderate and Severe nonattainment requirements for the 2015 and 2008 ozone NAAQS, respectively, which included revisions to Reg. 7.<sup>1</sup> Of relevance to this proposed rulemaking, the June 26, 2023 SIP submittal identifies motor vehicle coatings emission control requirements as a contingency measure for the Moderate ozone nonattainment area plan for the DMNFR area for the 2015 ozone NAAQS, but as described below, this measure was not triggered by a failure to attain with respect to the 2015 ozone NAAQS Moderate nonattainment plan requirements in the DMNFR area. The State is now repurposing the requirement as a contingency measure for the Serious ozone nonattainment area plan requirements for the 2008 ozone NAAQS.

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<sup>1</sup> June 2023 SIP Submittal, Document Set 1 of 7, "Submittal Letter to EPA\_Ozone SIP." The letter is dated June 22, 2023, but the SIP was submitted to EPA on June 26, 2023. The June 2023 SIP Submittal was deemed complete on September 7, 2023.

On May 23, 2024, Colorado submitted SIP revisions to the existing approved Reg. 7 to separate out certain components of Reg. 7 and create Regulation Number 24 (“Reg. 24”), Regulation Number 25 (“Reg. 25”), and Regulation Number 26 (“Reg. 26”) as new standalone regulations.<sup>2</sup> On April 2, 2025, Colorado submitted SIP revisions to address the contingency measures requirement for Serious ozone nonattainment areas for the 2008 ozone NAAQS, which includes associated revisions to Reg. 25.<sup>3</sup> The EPA had finalized a disapproval of a prior Colorado SIP submittal with respect to the 2008 ozone NAAQS Serious area contingency measures requirement in November 2023.<sup>4</sup> In this rulemaking, we are proposing action only on the portions of the June 26, 2023, May 23, 2024, and April 2, 2025 submittals related to contingency measures, including associated revisions to Reg. 7, parts A and C as well as Reg. 25, parts A and B. The relevant portions of these submittals implement motor vehicle coatings emission control requirements, including provisions that function as a contingency measure for the Serious nonattainment classification of the DMNFR area for the 2008 ozone NAAQS.

More specifically, the EPA is also proposing to approve the June 26, 2023 revisions to Reg. 7, Part A that define new and existing sources and the applicability of requirements based on the nonattainment area in which they are located; revisions to Reg. 7, Part C, section I.P. regarding motor vehicle coating requirements that include provisions for those requirements to function as a contingency measure; and revisions to Reg. 7, Part C, section I.A. that update reference dates to the Code of Federal Regulations (CFR). In addition, the EPA is proposing to approve the May 23, 2024 revisions reorganizing Reg. 7, parts A and C into Reg. 25, parts A and B as well as the April 2, 2025 revisions to Reg. 25, parts A and B concerning motor vehicle coating provisions. The remaining revisions from the June 26, 2023, May 23, 2024 and April 2,

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<sup>2</sup> May 2024 SIP Submittal, “Submittal Letter to EPA\_Regs 7, 24, 25, 26\_signed.” The letter is dated May 21, 2024, but the SIP was submitted to EPA on May 23, 2024. The May 2024 SIP Submittal was deemed complete by operation of law on November 23, 2024.

<sup>3</sup> April 2025 SIP Submittal, Document Set 1 of 2, “Signed Submittal Letter to EPA.”

<sup>4</sup> Final Rule, 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; 88 FR 76676 (Nov. 7, 2023).

2025 submittals not described above, and not identified in table 3 of this preamble, will be addressed by the EPA in future rulemakings.

If the EPA finalizes this rulemaking as proposed, Colorado will have corrected the deficiency identified in the EPA's November 7, 2023 disapproval with respect to the Serious area contingency measures requirement for the 2008 ozone NAAQS. Consistent with applicable sanctions regulations,<sup>5</sup> in this issue of the *Federal Register* the EPA is concurrently making an interim final determination to defer application of CAA section 179 sanctions associated with the November 7, 2023 action. The deferral is based on this proposal to approve SIP revisions from Colorado to resolve the contingency measures requirement deficiency that was the basis for the November 7, 2023 disapproval. If the EPA does not finalize this approval as proposed and instead disapproves or proposes to disapprove these SIP revisions, then the offset sanction under CAA section 179(b)(2) for permitting of new or modified sources would apply in the DMNFR area on the later of: (1) the date the EPA issues such a proposed or final disapproval; or (2) June 7, 2025 (i.e., 18 months from the effective date of the finding that started the original sanctions clock).<sup>6</sup> Subsequently, highway sanctions under section 179(b)(1) would apply in the DMNFR area six months after the date the offset sanction applies.<sup>7</sup>

The basis for our proposed action is discussed in more detail below. Technical information that the EPA is relying on is contained in the docket, available at <https://www.regulations.gov>, Docket ID No. EPA-R08-OAR-2024-0622.

## **II. Background**

### *A. 2008 8-Hour Ozone NAAQS Nonattainment Area*

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-

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<sup>5</sup> 40 CFR 52.31(d)(2)(i).

<sup>6</sup> *See id.* In this case, the finding that started the original sanctions clock was the disapproval issued on November 7, 2023, which was effective on December 7, 2023.

<sup>7</sup> *See id.*

hour average concentration, averaged over 3 years).<sup>8</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 met 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>9</sup> Effective July 20, 2012, the EPA designated any area as nonattainment that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008–2010) of air monitoring data.<sup>10</sup>

Ozone nonattainment areas are classified based on the severity of their ambient 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>11</sup> In our July 20, 2012 action, the EPA designated the DMNFR area as nonattainment and classified the area as Marginal.<sup>12</sup> The DMNFR area did not attain the 2008 8-hour ozone NAAQS by the applicable Marginal area attainment deadline, and accordingly was reclassified as Moderate.<sup>13</sup> After not attaining the 2008 ozone NAAQS for subsequent attainment dates, the area was reclassified to Serious, and then to Severe nonattainment status.<sup>14</sup>

#### *B. The EPA's November 7, 2023 Final Rule*

Although the DMNFR area is currently classified as Severe nonattainment for the 2008 ozone NAAQS, the present action pertains only to the contingency measures requirement for the

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<sup>8</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>9</sup> 40 CFR 50.15(b).

<sup>10</sup> Final rule, Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77 FR 30088 (May 21, 2012).

<sup>11</sup> 40 CFR part 50, appendix I.

<sup>12</sup> Final rule, Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77 FR 30088 (May 21, 2012) 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>13</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).

<sup>14</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); 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 (Oct. 7, 2022); see 40 CFR 81.306.

prior Serious nonattainment classification. Among the requirements for Serious ozone nonattainment area plans, states must submit SIP provisions that constitute contingency measures that would go into effect and result in additional emission reductions in the event that the EPA determines the area fails to attain the applicable standard by the attainment date (in this case, the 2008 ozone NAAQS), make Reasonable Further Progress (RFP) toward attainment, or meet any applicable RFP milestone. As described above, the EPA disapproved a Colorado SIP submittal intended to meet the Serious area contingency measures requirement for the 2008 ozone NAAQS on November 7, 2023. The EPA has previously taken action to approve or conditionally approve SIP submittals to address the State's other Serious ozone nonattainment area requirements for the 2008 ozone NAAQS.<sup>15</sup>

### **III. Contingency Measures Requirements**

Under CAA section 172(c)(9), states are required to submit an attainment plan SIP that includes contingency measures to be implemented if the area fails to meet RFP or to attain the NAAQS by the applicable attainment date. For ozone nonattainment areas classified Serious or above, CAA section 182(c)(9) further specifies that states must include contingency measures to be implemented if the area fails to meet any applicable milestone. An EPA determination that a state failed to meet an RFP milestone or to attain the NAAQS by the applicable attainment date is referred to as a “triggering event” because it triggers the requirement to implement the contingency measures specified in the SIP.

The information provided below is explained in greater detail in EPA's “Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter”<sup>16</sup> (“2024 Contingency Measures Guidance”). The purpose of contingency measures is to continue progress in reducing

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<sup>15</sup> See 88 FR 29827, 88 FR 76676, and 88 FR 85511.

<sup>16</sup> “Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter” (Dec. 3, 2024), available at <https://www.epa.gov/air-quality-implementation-plans/final-contingency-measures-guidance>.

emissions while a state revises its SIP to meet a missed RFP requirement or to correct a failure to attain a NAAQS.<sup>17</sup> As part of a contingency measures SIP submittal, states should estimate the amount of anticipated emission reductions that the contingency measures would achieve if triggered. If a state is unable to identify and adopt contingency measures that would provide for approximately one year's worth of emission reductions, then the state may provide an "infeasibility justification" that demonstrates that a lesser amount of emission reductions is appropriate because additional contingency measures are infeasible in the area.<sup>18</sup> The EPA does not read the statute to require contingency measures that are not feasible, i.e. to require the imposition of control measures regardless of technological or cost constraints.

To satisfy the requirements of CAA sections 172(c)(9) and 182(c)(9), contingency measures should be fully adopted rules or control measures that are ready to be implemented upon a triggering event.<sup>19</sup> They consist of control measures for the area that are not otherwise required to meet other attainment plan requirements (e.g., to meet reasonably available control measure or reasonably available control technology (RACT) requirements). To comply with CAA sections 172(c)(9) and 182(c)(9), contingency measures must be both conditional and prospective. That is, they must be measures that go into effect and achieve emission reductions in the event of a future triggering event, but not before the triggering event. The EPA cannot approve already implemented measures, i.e., measures that have already achieved emission reductions or that are already adopted into law and will achieve reductions regardless of whether there is a future triggering event, as contingency measures, even if already implemented

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<sup>17</sup> See Proposed Rule, Conditional Approval; Contingency Measure State Implementation Plan for the 2008 Ozone Standard; San Joaquin Valley, California, 89 FR 85119, 85122 (Oct. 25, 2024); Proposed Rule, Air Plan Approval; AK, Fairbanks North Star Borough; 2006 24-Hour PM 2.5 Serious Area and 189(d) Plan, 90 FR 1600, 1623 (Jan. 8, 2025); see also 2024 Contingency Measures Guidance at 9.

<sup>18</sup> 2024 Contingency Measures Guidance at 29-40.

<sup>19</sup> See *Sierra Club v. EPA*, 21 F.4th 815, 827 (D.C. Cir. 2021) ("The Act's plain text expressly provides that valid contingency measures become operative only when the triggering conditions set forth in the statute occur, and not any earlier.").

measures would achieve surplus emission reductions beyond those necessary to meet other applicable CAA requirements.<sup>20</sup>

The EPA recommends that contingency measures achieve emissions reductions equivalent to one year's worth of "progress."<sup>21</sup> The EPA recommends that one year's worth of "progress" be calculated by determining the average annual reductions between the base year emissions inventory and the projected attainment year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, and then applying that percentage to the projected attainment year emissions inventory to determine the amount of reductions needed to ensure ongoing progress.

As to the time within which emission reductions from contingency measures should occur, the EPA recommends that emission reductions should occur within one year of the triggering event or up to two years of the triggering event if there are insufficient contingency measures available to achieve the recommended amount of emission reductions within one year.<sup>22</sup> The EPA's longstanding recommendation is that contingency measures take effect within 60 days of the triggering event.

As explained previously, if after an adequate evaluation a state is unable to identify contingency measures that would provide emission reductions achieving approximately one year's worth of progress, then the EPA recommends that the state provide an infeasibility justification for a lesser amount, which the state should support with an infeasibility justification. This infeasibility justification should explain and document the state's evaluation of existing and potential control measures relevant to the appropriate source categories and pollutants in the

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<sup>20</sup> See *Sierra Club*, 21 F.4th at 827-28 (holding that the specific wording of sections 172(c)(9) and 182(c)(9) unambiguously requires that contingency measures be "conditional and prospective," and that already implemented measures are not measures "to take effect" only if and when the contingency occurs).

<sup>21</sup> See 89 FR at 85123-85124 (explaining one year's worth of progress in connection with proposed approval of San Joaquin Valley contingency measures); 90 FR at 1624-1625 (explaining one year's worth of progress in connection with proposed approval of Fairbanks contingency measures); 2024 Contingency Measures Guidance at 28-29.

<sup>22</sup> 2024 Contingency Measures Guidance at 10.

nonattainment area, and the state's conclusions regarding whether such measures are feasible as contingency measures in the area.

The statutory scheme contemplates that a state will have approved contingency measures in place in the SIP and ready to be implemented in the event of a triggering event *before* the triggering event occurs. That is, contingency measures that are conditional and prospective upon a triggering event. In this case, the State did not have such approved contingency measures in place at the time of the relevant triggering event, which was EPA's determination that the State failed to attain the 2008 ozone NAAQS in the DMNFR area by the Serious attainment deadline.<sup>23</sup> But the State is still required to provide such contingency measures to the EPA. As discussed further below, when the State is developing and submitting required contingency measures for a triggering event that has already occurred, the timeframe for achieving reductions should be evaluated based on the adoption date of the measure rather than the now-passed trigger date.

#### **IV. Summary of State's SIP Submittals**

On June 26, 2023, Colorado submitted SIP submittals related to Moderate and Severe nonattainment plan requirements for the 2015 and 2008 ozone NAAQS, respectively, which included revisions to Reg. 7 establishing a motor vehicle coating contingency measure for the DMNFR nonattainment area for the 2015 ozone NAAQS. On June 8, 2024, before the EPA proposed action on this submitted contingency measure and before the Moderate area attainment date for the 2015 NAAQS, Colorado requested voluntary reclassification from Moderate to Serious nonattainment for the 2015 ozone NAAQS for this area. On July 24, 2024, the EPA granted the voluntary reclassification request.<sup>24</sup> Prior to the voluntary reclassification, EPA did not take action on the 2023 contingency measures submittal and Colorado was not required to implement the motor vehicle coating control measure as a contingency measure. In the April 2,

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<sup>23</sup> See 87 FR 60926.

<sup>24</sup> See 89 FR 59832.

2025 submittal, Colorado has included regulatory revisions to repurpose the motor vehicle coatings measure as a Serious area contingency measure with respect to the 2008 ozone NAAQS contingency measures requirement. Because the EPA has not yet approved the original motor vehicle coating measure as a contingency measure, the Agency must act on both the initial regulatory language for the motor vehicle coatings requirements from the June 26, 2023 SIP submittal and subsequent revisions as described in Colorado’s April 2025 SIP Submittal.

On May 23, 2024, Colorado submitted revisions to Reg. 7 to separate out certain components of Reg. 7 to create Reg. 24, Reg. 25, and Reg. 26 as new standalone regulations. On April 2, 2025, Colorado submitted the 2024 DMNFR Contingency Measures Plan as a revision to the Colorado SIP.<sup>25</sup> The State developed the 2024 DMNFR Contingency Measures Plan to address the EPA’s November 7, 2023 disapproval of the State’s submittal intended to meet the 2008 ozone NAAQS Serious area contingency measures requirements.<sup>26</sup> In this rulemaking, we are proposing approval of only the portions of the June 26, 2023, May 23, 2024, and April 2, 2025 SIP submittals related to contingency measures requirements for the 2008 ozone NAAQS, and of associated revisions to Reg. 7, Part A; Reg. 7, Part C, sections I.A. and I.P.; Reg. 25, Part A; and Reg. 25, Part B, sections I.A. and I.P. The EPA will address the remaining revisions from the June 26, 2023, May 23, 2024, and April 2, 2025 SIP submittals in future rulemakings.

*A. Revisions to Regulation 7, Parts A and C and Reorganization into Regulation 25, Parts A and B*

In the June 26, 2023 submittal, among other revisions, Reg. 7, Part C, section I.P. was added and Reg. 7, Part C, section I.A.3.a. was updated to reflect the applicable EPA reference method used to demonstrate compliance, as revised in the CFR on March 23, 2021.<sup>27</sup> Reg. 7, Part C, section I.P. established surface coating requirements for motor vehicle materials, including

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<sup>25</sup> April 2025 SIP Submittal, Document Set 1 of 2, “Technical Support Documents” at 490-561 (“2024 DMNFR Contingency Measures Plan”).

<sup>26</sup> See 88 FR 76676.

<sup>27</sup> June 2023 SIP Submittal, Document Set 5 of 7, “Reg Lang & SBAP Adopted\_R7” at 25-31.

provisions that would function as a contingency measure that would be triggered within 60 days after the effective date of a finding by the EPA of failure to attain by the 2015 ozone NAAQS Moderate ozone attainment date of August 3, 2024.

Distinct from the aforementioned motor vehicle coating requirements, the June 26, 2023 submittal included revisions to the applicability and general provisions found in Reg. 7, Part A that are relevant to requirements across Reg. 7. These revisions are not specific to the contingency measures requirement that the EPA is addressing in this rulemaking, but the EPA is proposing approval of these revisions because the revised sections are included in the reorganization of Reg. 7 parts A and C into Reg. 25, parts A and B. This includes revisions expanding the general applicability of provisions in Reg. 7 to sources in the portion of northern Weld County within the DMNFR ozone nonattainment area for the 2015 ozone NAAQS that are not included in the DMNFR ozone nonattainment area for the 2008 ozone NAAQS, revisions clarifying the dates defining new and existing sources for respective ozone standards, and revisions updating the regulation to refer to a newer version of applicable EPA reference methods used to demonstrate compliance.

The June 26, 2023 submittal includes revisions to Reg.7 in addition to those identified above, but the EPA is not proposing action on those revisions in this rulemaking. They will instead be addressed by the EPA in separate rulemakings at a later date. As described previously, the rule provisions of the June 26, 2023 submittal for motor vehicle coating materials, and which were structured as a contingency measure for the DMNFR nonattainment area for the 2015 ozone NAAQS, were no longer required with respect to the Moderate area classification for that NAAQS following the EPA granting Colorado's voluntary reclassification request. Included with its April 2, 2025 submittal, the State adopted revisions described below to repurpose these emission control requirements as a Serious nonattainment area contingency measure for the 2008 ozone NAAQS.

In the State's May 23, 2024 submittal, Reg. 7 was retitled from "Control of Ozone via Ozone Precursors and Control of Hydrocarbons via Oil and Gas Emissions (Emissions of Volatile Organic Compounds (VOC) & Nitrogen Oxides (NO<sub>x</sub>))" to "Control of Emissions from Oil and Gas Emissions Operations." In addition, the State moved Reg. 7, Part C, sections I.A. and I.P.; copied over portions of Reg. 7, Part A concerning applicability/general provisions; and relocated other rule sections from Reg. 7 to the newly established Reg. 25 for the "Control of Emissions from Surface Coating, Solvents, Asphalt, Graphic Arts and Printing, and Pharmaceuticals."<sup>28</sup> The State intended these revisions to narrow Reg. 7 to be primarily focused on oil and gas emission controls, and to relocate provisions addressing other source categories from Reg. 7, including coatings, solvents, and similar sources, to Reg. 25.

After adopting Reg. 25, on April 2, 2025, the State submitted a third SIP submittal to the EPA, which included revisions to parts A and B of Reg. 25. This includes revisions to Reg. 25, Part A at section II.C.2. concerning general emission limitations for all new sources, and which are clerical in nature and reflect that the listed regulations are not applicable to all emission sources. The revisions to Reg. 25, Part B, section I.P. included: (1) in section I.P.7., correcting the numbering, with references in several subsections changed from I.P.6. to I.P.7.; (2) in sections I.P.1.b., I.P.3., I.P.4.b. and I.P.7., changing "sixty days" to "May 1, 2026"; changing "moderate" to "serious"; changing "2015" to "2008" in relation to the relevant ozone NAAQS; and (3) adding section I.P.8., which is related to reporting requirements.<sup>29</sup> The revisions to Regulation 25, Part B, section I.P. from Colorado's April 2, 2025 submittal were made, in part, to require that the motor vehicle coatings contingency measure contained therein be repurposed as a contingency measure for the State's 2008 ozone NAAQS Serious area plan for the DMNFR nonattainment area. The motor vehicle coatings contingency measure was originally adopted for

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<sup>28</sup> May 2024 SIP Submittal, "Adopted Language\_R7" at 71-77, "Adopted Language\_R25" at 40-46. As part of the May 23, 2024, submittal, other provisions, apart from Reg. 7, Part C, section I.P., were removed from Reg. 7, but the relocation of those provisions are not being addressed in this action.

<sup>29</sup> April 2025 SIP Submittal, Document Set 1 of 2, "Reg Language Adopted R25 (redline)" at 4-11.

the purposes of the State’s 2015 ozone NAAQS Moderate nonattainment area plan. The April 2, 2025 SIP submittal included revisions to Reg. 7, Part B, section III.C.4. identifying requirements for pneumatic controllers as a contingency measure, but the EPA is not acting on this portion of the SIP submittal in this rulemaking. Several additional revisions unrelated to the contingency measures requirement are included in Colorado’s June 26, 2023, May 23, 2024, and April 2, 2025 SIP submittals, but the EPA is not addressing these revisions in this rulemaking and will act on them in a separate action.

### *B. 2024 DMNFR Contingency Measures Plan*

The 2024 DMNFR Contingency Measures Plan submitted to the EPA identifies two contingency measures that Colorado deemed feasible for the Serious area attainment plan for the 2008 ozone NAAQS.<sup>30</sup> Additionally, Colorado’s contingency measures submission includes an infeasibility justification to justify its submission of contingency measures that achieve less than one year’s worth of progress. The State’s evaluation of the feasibility of specific measures is presented in greater detail in the “Strategy Summary” included as a part of the supporting technical information in the State’s April 2, 2025 SIP Submittal.<sup>31</sup>

#### 1. One Year’s Worth of Progress

Section 3.1 of the 2024 DMNFR Contingency Measures Plan includes the State’s calculations for determining emission reductions representing “one year’s worth” of progress for the area.<sup>32</sup> The emission reductions representing one year’s worth of emission reductions progress as determined by Colorado are 8.9 tons per day of NO<sub>x</sub> and 14.2 tons per day of VOC.

#### 2. Contingency Measures Infeasibility Justification

Colorado reviewed each source category in the 2026 emissions inventory for NO<sub>x</sub> and VOC that the State developed for other attainment planning requirements, in order to identify

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<sup>30</sup> 2024 DMNFR Contingency Measures Plan at 20-22.

<sup>31</sup> April 2025 SIP Submittal, Document Set 1 of 2, “Technical Support Documents” at 562-584 (“Strategy Summary”). Subsequent citations to the Strategy Summary use the page numbers within that document; so, for example, “Strategy Summary at 1” refers to the 562nd page of the Technical Support Documents file.

<sup>32</sup> 2024 DMNFR Contingency Measures Plan at 18-19.

feasible control measures that could serve as contingency measures.<sup>33</sup> Table 1 provides the major categories from the 2026 emissions inventory; the inventory is provided in greater detail in appendix C of the 2024 DMNFR Contingency Measures Plan. The State’s submittal explains that “[e]ach category was vetted for any potential strategies that are regulatory, non-regulatory, and tax or grant funded that may be SIP-eligible.”<sup>34</sup> The State identified potential and current emission reduction measures as part of their analysis. (Current emission reduction measures have already been implemented, and therefore need not be evaluated as a part of an infeasibility justification. But the evaluation should consider whether *additional* requirements are feasible for a given source category.)

After Colorado disqualified already adopted measures and measures that the State lacked authority to adopt, the State evaluated the feasibility of candidate measures (control measures that may be appropriate as contingency measures if they are determined to be technologically and economically feasible) based on the time required to implement the measure, technological/economic feasibility, and whether a measure met legal criteria for adoption. Based on this analysis, the 2024 DMNFR Contingency Measures Plan identifies two control strategies for EPA evaluation as contingency measures, as described in section IV.B.3. of this preamble, and provides an infeasibility justification to show that its 2024 DMNFR Contingency Measures Plan is approvable despite providing less than the recommended amount of emission reductions, due to a lack of feasible measures in the DMNFR nonattainment area.

**Table 1–DMNFR 2026 Emissions Inventory of NO<sub>x</sub> and VOC [Tons per day]**

Source Type	NO <sub>x</sub>	VOC
Point .....	19.6	21.5
Area/Nonpoint .....	0.3	66.3
On-road Mobile .....	21.7	27.0
Nonroad Mobile .....	34.6	47.4
Oil & Gas .....	68.4	90.4

<sup>33</sup> *Id.* at 43-49.

<sup>34</sup> *Id.* at 27.

Total .....	144.5	252.7
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The 2024 DMNFR Contingency Measures Plan describes various measures that the State has already implemented (referred to as “on-the-books” measures), several of which are state-only requirements, but which are not candidate contingency measures because “they are already implemented.”<sup>35</sup> Colorado’s 2024 Contingency Measures Plan further evaluates candidate measures for feasibility with respect to the appropriate time within which a contingency measure should achieve emission reductions.

The State also evaluated whether the potential contingency measures that it identified are subject to technological or economic factors that would render a candidate measure infeasible as a contingency measure.<sup>36</sup> Finally, Colorado evaluated the feasibility of potential measures as contingency measures by considering whether they would be “permanent, enforceable, quantifiable, and surplus,” including whether a measure “is otherwise ineligible because of federal preemption.”<sup>37</sup>

Feasibility Analysis

Colorado evaluated potential contingency measures for feasibility and summarized the measures the State deemed infeasible.<sup>38</sup> The State evaluated measures across the five major source categories within the State’s emission inventory in the DMNFR nonattainment area for the 2008 ozone NAAQS: point, area, on-road mobile, nonroad mobile, and oil and gas sources.

With respect to point sources, Colorado considered non-oil and gas point sources (the State evaluated oil and gas point sources separately) through evaluation of existing stationary source regulations.<sup>39</sup> Colorado identified the existing stationary source regulations in Regs. 3, 6, 7, 8, 23, 24, 25, and 26, including both state-only and SIP-approved control requirements. The

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<sup>35</sup> *Id.* at 31.  
<sup>36</sup> *Id.* at 34-35.  
<sup>37</sup> *Id.* at 36-39.  
<sup>38</sup> *See* Strategy Summary.  
<sup>39</sup> 2024 DMNFR Contingency Measures Plan at 43-45.

2024 DMNFR Contingency Measures Plan identifies these existing requirements as not being candidates to satisfy the contingency measures requirement for several reasons, principally because they are already adopted, implemented, and achieving emission reductions (whether approved into the SIP or on a state-only basis). These control measures may also be required to meet other nonattainment SIP requirements or present difficulties in meeting SIP creditability requirements.

Among other specific contingency measures considered for the stationary point source sector, Colorado evaluated the feasibility of implementing a minor source emission offset program, but determined that it would be infeasible to implement and achieve emission reductions within two years, given the volume of stationary sources that would be affected.<sup>40</sup> The State also considered the feasibility of establishing boiler emission limitations such as those established by rules in neighboring Utah, but found that it has already effectively implemented requirements comparable to the Utah boiler rules.<sup>41</sup> Colorado also examined the scope of existing rules in the SIP to meet RACT requirements, and determined that it has already adopted requirements for “minor source RACT”<sup>42</sup> as part of its construction permit program.<sup>43</sup> A more detailed accounting of the specific measures for the point source category that the State considered is included in appendix D to the 2024 DMNFR Contingency Measures Plan as well as in the Strategy Summary technical support document.

Colorado also evaluated potential contingency measures for oil and gas sources. This evaluation included the potential for prohibiting venting of gas associated with blowdowns during the ozone season as well as implementing best management practices in response to

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<sup>40</sup> Strategy Summary at 6.

<sup>41</sup> *Id.* at 21.

<sup>42</sup> CAA ozone RACT requirements only apply to major sources of NO<sub>x</sub> or VOC, as well as sources covered by a Control Techniques Guideline, *see* CAA secs. 182(b)(2), 182(f). Minor source RACT is therefore generally not required under the CAA, but Colorado’s SIP-approved minor source RACT program establishes control requirements for permitting non-exempt minor sources. This “minor source RACT” should not be confused with RACT determinations made by a state to meet CAA requirements, which the EPA must evaluate and take a regulatory action on.

<sup>43</sup> 2024 DMNFR Contingency Measures Plan at 30.

ozone advisories that request that operators take voluntary measures to reduce emissions on days with forecasted high ozone. The State deemed these two measures infeasible as contingency measures based on the economic feasibility on a cost per ton basis of prohibiting venting to the atmosphere associated with blowdowns,<sup>44</sup> and challenges concerning enforceability with respect to quantifying emission reductions from voluntary best management practices.<sup>45</sup>

In the 2024 DMNFR Contingency Measures Plan, the State further described the existing requirements for oil and gas sources that could not be candidate contingency measures because they are already adopted, which include requirements for leak detection and repair, hydrocarbon liquid loadout from storage tanks, flowback vessels, and natural-gas reciprocating internal combustion engines (RICE).

Colorado included an evaluation of area source measures, including for cannabis cultivation operations, asphalt formulation restrictions, non-fumigant pesticide requirements, and emission reductions from livestock waste, as well as an evaluation of existing rules in other states. In the 2024 DMNFR Contingency Measures Plan and Strategy Summary, the State justifies its finding of infeasibility as to emission control requirements for cannabis cultivation operations and hot mix asphalt plants on the basis that the State could not feasibly achieve further emission reductions within two years.<sup>46</sup> Colorado explains that cultivation operations involve a large number of small operators with limited experience with the regulatory process. There is an incomplete data record concerning asphalt plants, of which there are no major sources in the nonattainment area. These factors contribute to the inability of the State to develop rules for these categories to be adopted and achieve emission reductions within two years. Colorado's submittal characterizes potential emission control requirements for livestock waste emissions and non-fumigant pesticide requirements as being infeasible due to legal constraints,

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<sup>44</sup> See Regional Air Quality Council's Blowdowns Control Strategy Overview available at <https://raqc.org/episodic-emissions-venting-and-blowdowns/> and in the docket for this proposed rulemaking.

<sup>45</sup> Strategy Summary at 4, 6, and 13.

<sup>46</sup> Strategy Summary at 1 and 14.

including the lack of statutory authority for the State to impose such measures on agricultural sources.<sup>47</sup> Regarding asphalt formulation restrictions, Colorado justifies infeasibility based on technological considerations due to the impact of regional altitude on paving operations.<sup>48</sup>

The State also evaluated mobile source control measures, including for both on-road and nonroad mobile sources, as potential contingency measures.<sup>49</sup> The State's 2024 DMNFR Contingency Measures Plan describes the difficulty in identifying potential contingency measures for nonroad sources, in particular given Colorado's lack of authority to impose regulatory requirements on certain sources due to federal preemption, which limits the pool of candidate measures from the mobile source category. In addition to measures that are non-regulatory in nature and for which it would be difficult to quantify anticipated emission reductions, and measures implemented in other areas that the State deemed infeasible due to timing constraints, the State evaluated the feasibility of indirect source rule requirements, including those that would apply to sources that drive significant mobile source activity, as well as potential emission control requirements for lawn and garden equipment. Colorado determined the indirect source rules it considered to be infeasible as contingency measures due to the State's inability to accelerate ongoing research and data collection with respect to developing such rules, which would not be completed in time for the measure to be implemented and achieve emission reductions within two years.<sup>50</sup> The State also explains in the 2024 DMNFR Contingency Measures Plan that prohibitions on gasoline-powered lawn and garden equipment sales have already been adopted, with emission reductions to be achieved in 2025, and therefore this measure is already implemented and disqualified as a candidate contingency measure.<sup>51</sup>

### 3. Adopted Contingency Measures

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<sup>47</sup> *Id.* at 14.

<sup>48</sup> *Id.*

<sup>49</sup> 2024 DMNFR Contingency Measures Plan at 46-48.

<sup>50</sup> Strategy Summary at 3.

<sup>51</sup> *Id.*

Colorado identified two control measures as contingency measures for purposes of the 2008 ozone NAAQS in the DMNFR Serious nonattainment area, and submitted these to the EPA for evaluation and inclusion into the SIP: (1) an existing state-only requirement for retrofitting pneumatic controllers at upstream oil and gas facilities which the EPA is not proposing action on in this rulemaking, and (2) a rule for control of VOC emissions from motor vehicle coating facilities including VOC content limitations, control efficiency requirements, and periodic reporting. A summary of the two measures identified by Colorado is below. Colorado also determined the expected emission reductions from these measures, which are presented in table 2.

**Table 2–Emissions Reductions from Identified Measures [Tons per day]<sup>a</sup>**

Contingency Measure	NO <sub>x</sub>	VOC
Pneumatic Controller Retrofit .....	0.00	4.37
Motor Vehicle Coatings.....	0.00	0.54
Total.....	0.00	4.91

<sup>a</sup> 2024 DMNFR Contingency Measures Plan, section 4., table 3.

As stated previously, the EPA is not acting on the pneumatic controller retrofit contingency measure in this action and therefore is not evaluating the measure further as part of this rulemaking. Our proposed approval of Colorado’s 2024 DMNFR Contingency Measures Plan is based solely on the motor vehicle coatings measure described below and the infeasibility justification.

#### Motor Vehicle Coatings

Colorado’s June 26, 2023 SIP submittal included requirements to reduce VOC emissions from motor vehicle coating facilities, which the State initially intended for use as a contingency measure for the Moderate nonattainment area plan for the DMNFR area for the 2015 ozone

NAAQS.<sup>52</sup> The measure was not triggered with respect to the 2015 ozone NAAQS.<sup>53</sup> With Colorado’s April 2, 2025 SIP submittal, the State adopted revisions to require that the motor vehicle coating control measure be repurposed as a contingency measure for the DMNFR Serious nonattainment area for the 2008 ozone NAAQS.<sup>54</sup> Under Reg. 25, Part B, section I.P.3., this contingency measure would require the State to implement VOC content limitations for motor vehicle coatings, which would apply to manufacturing for sale as well as to the sale, supply, offer for sale, or distribution for sale of such coatings. Under this measure, motor vehicle coating facilities must use products that meet VOC content limitations or apply emission controls with a control efficiency of 90% or greater. The revisions to Reg. 25, Part B, section I.P. also include recordkeeping and reporting requirements to ensure that upon triggering, affected sources maintain records that document the VOC content of products used, and periodically report those records to the Colorado Air Pollution Control Division: annually for facilities with VOC emissions greater than 2.7 tons per 12-month rolling period, or semiannually with the operating permit report for facilities with emissions greater than 25 tons per year.<sup>55</sup>

Colorado’s June 26, 2023 submittal explains that the motor vehicle coatings contingency measure is based on the California Air Resource Board (CARB) Suggested Control Measure for Automotive Coatings, which “achieves additional reductions of VOCs from automotive coatings beyond EPA’s national automobile refinish rule.”<sup>56</sup> As shown in table 2, when fully implemented, the measure would achieve VOC emission reductions of 0.54 tpd. The EPA is proposing approval of the motor vehicle coatings contingency measure.

## **V. Procedural Requirements**

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<sup>52</sup> June 2023 SIP Submittal, Document Set 5 of 7, “Reg Lang & SBAP Adopted\_R7” at 25-31.

<sup>53</sup> Although the vehicle coatings measure was included as a contingency measure in the Moderate area SIP for the 2015 NAAQS, before the area’s Moderate attainment date the area was reclassified to Serious for the 2015 NAAQS in response to a request from the State for voluntary reclassification. Final Rule, Clean Air Act Reclassification; Colorado; Reclassification of the Denver Metro/North Front Range 2015 Ozone Nonattainment Area to Serious, 89 FR 59832 (July 24, 2024). As a result, the 2015 Moderate contingency measure for failure to attain was never triggered.

<sup>54</sup> April 2025 SIP Submittal, Document Set 1 of 2, “Reg Language Adopted R25 (redline)” at 4-11.

<sup>55</sup> *Id.* at 10.

<sup>56</sup> June 2023 SIP Submittal, Document Set 5 of 7, “Reg Lang & SBAP Adopted\_R7” at 123.

The CAA requires that states meet certain procedural requirements before submitting a SIP revision to the EPA, including the requirement that states adopt SIP revisions after reasonable notice and public hearing.<sup>57</sup> Colorado adopted the June 26, 2023 submittal following a September 17, 2022 notice of rulemaking in the Denver Post and a December 13-16, 2022 rulemaking hearing.<sup>58</sup> Colorado adopted the May 23, 2024 submittal following a January 21, 2023 notice of rulemaking in the Denver Post and an April 20, 2023 rulemaking hearing.<sup>59</sup> Colorado adopted the April 2, 2025 submittal following an August 17, 2024 notice of rulemaking in the Denver Post and a December 18-20, 2024 rulemaking hearing.<sup>60</sup>

## **VI. The EPA’s Evaluation of Colorado’s SIP Submittals**

### *A. Revisions to Regulation 7, Parts A and C and Reorganization into Regulation 25, Parts A and B*

As discussed in section IV.A. of this document, Colorado’s June 26, 2023 submittal added motor vehicle coating requirements in Reg. 7, Part C as a new section I.P., which included provisions that the State structured to serve as a contingency measure for the Moderate nonattainment area plan with respect to the 2015 ozone NAAQS. The June 26, 2023 submittal also revised Reg. 7, Part A concerning applicability and general provisions that apply across Reg. 7, including the relevant motor vehicle coating requirements. The EPA is proposing to approve these revisions from the June 26, 2023 submittal. The EPA is not proposing action on revisions to other sections of Reg. 7, Part C from the June 26, 2023 submittal besides those described above and will take action on them in a future rulemaking.

Furthermore, the EPA is proposing to approve the revisions from the May 23, 2024 submittal that duplicate portions of Reg. 7 Part A in Reg. 25 Part A, and relocate Reg. 7 Part C requirements into Reg. 25 Part B. Reg. 7, Part A concerns “Applicability and General

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<sup>57</sup> CAA section 110(a)(2), 42 U.S.C. 7410(a)(2).

<sup>58</sup> June 2023 SIP Submittal, Document Set 1 of 7, “Denver Post Legal Ad”.

<sup>59</sup> May 2024 SIP Submittal, “Denver Post Legal Ad”.

<sup>60</sup> April 2025 SIP Submittal, Document Set 1 of 2, “Denver Post Legal Ad”.

Provisions” that apply across Reg. 7, but only the pieces of Reg. 7, Part A relevant to the control of emissions from surface coating, solvents, asphalt, graphic arts and printing, and pharmaceuticals are included in the newly established Reg. 25, Part A. Reg. 7, Part A is not being removed from Reg. 7 given its applicability to the sections of Reg. 7 that are not being relocated to standalone regulations. Because the EPA is not yet taking action on all of the June 26, 2023 revisions to Reg. 7, Part C, we are not taking action to relocate these provisions to Reg. 25, Part B in this action and will propose action on the relocation of these requirements in a future rulemaking.

The EPA also is proposing to approve revisions from the April 2, 2025 submittal including the clerical revision to Reg. 25, Part A, section II.C.2.; the corrected numbering of Reg. 25, Part B, section I.P.7.; and the addition of reporting provisions related to the VOC content of products used at motor vehicle coating facilities in Reg. 25, Part C, section I.P.8. Lastly, because the motor vehicle coatings contingency measure was never triggered for the Moderate DMNFR nonattainment area for the 2015 ozone NAAQS (see discussion above at sections I. and IV.), the EPA proposes to approve the revisions to Reg. 25, Part B, section I.P. in the April 2, 2025 submittal that serve to repurpose the motor vehicles coating measure as a contingency measure for the 2008 ozone NAAQS.

In summary, the EPA is proposing to approve the revisions to Reg. 7, Part A concerning applicability and general provisions; the addition of Reg. 7, Part C, section I.P. motor vehicle coating requirements; a revision to Reg. 7, Part C, section I.A.3.a. updating a reference date; the copying over, with minor revisions, of Reg. 7 Part A to Reg. 25, Part A; the relocation of Reg. 7, Part C, sections I.A and I.P to Reg. 25, Part B, sections I.A. and I.P.; the revision to Reg. 25, Part A, section II.C.2.; and the revisions to Reg. 25, Part B, section I.P. Given that the revisions that the EPA is evaluating span multiple SIP submittals from Colorado, we have included table 3 detailing the revisions from each submittal that we are proposing to approve in this document.

The remainder of the revisions included with each submittal that we are not proposing action on in this proposed rulemaking will be addressed by the EPA in separate rulemakings at a later date.

**Table 3–Summary of EPA’s Proposed Approval of Revisions to Regulations 7 and 25**

Submittal	Revisions Included in the EPA’s Proposed Approval
June 26, 2023	Reg. 7, Part A, sections I.A.1.a, I.B.2.a.(i)-(iii), I.B.2.c, I.B.2.d, I.B.2.d.(iii)-(iv), I.B.2.e, II.A.13-18, II.C.1; Reg. 7, Part C, sections I.A.3.a., I.P.
May 23, 2024	Reg. 7, Part C, section I.P.; Reg. 25, Part A; Reg. 25, Part B, sections I.A., I.P.; appendix D-E
April 2, 2025	Reg. 25, Part A, section II.C.2.; Reg. 25, Part B, sections I.P.1.b., I.P.3., I.P.4.b., I.P.7.a., I.P.7.a.(vi), I.P.7.b., I.P.8.

Note: At this time, the EPA is not proposing action on any of the revisions included in the June 26, 2023, May 23, 2024, and April 2, 2025 submittals besides those identified in table 3. Additionally, those sections marked as “state-only” are not included for incorporation into the SIP. Therefore, the EPA is not proposing action on these sections, and any such sections which were relocated from Reg. 7 to separate a separate regulation will continue to be “state-only.”

*B. 2024 DMNFR Contingency Measures Plan*

1. One Year’s Worth of Progress

The EPA has reviewed the calculations in the 2024 DMNFR Contingency Measures Plan, as summarized in section IV.B.1. of this document, and is proposing to find that the State calculated one year’s worth of progress for NO<sub>x</sub> and VOC for the 2008 ozone NAAQS in a manner consistent with the EPA’s recommendations.

2. Contingency Measures Infeasibility Justification

The EPA has reviewed the State’s infeasibility justification submitted to support its determination that there are no feasible control measures that could be adopted as contingency measures in addition to the motor vehicle coatings measure. The EPA has reviewed the processes used by Colorado to assess a range of potential measures across the stationary, area, mobile, and oil and gas source categories. For the reasons explained below, and considering the relevant emission sources and other facts specific to this nonattainment area, the EPA is proposing to find that the motor vehicle coatings contingency measure together with the State’s infeasibility justification satisfies the Serious ozone nonattainment area contingency measures requirement

under CAA sections 172(c)(9) and 182(c)(9) for the DMNFR area with respect to the 2008 ozone NAAQS.

Colorado evaluated other potential contingency measures and justified its determination of infeasibility, where applicable, using EPA-recommended procedures.<sup>61</sup> As described in section IV.B. of this proposed rule, Colorado evaluated several potential control measures across the source categories from the State's emission inventory for VOC and NO<sub>x</sub> source categories in the DMNFR area, including point, area, nonroad/on-road mobile, and oil and gas sources. After setting aside measures that it has already adopted and implemented as state-only provisions or to fulfill other SIP requirements, and measures for which there are constraints for adoption concerning federal preemption and are therefore not candidates for contingency measures, the State made feasibility determinations based on whether the remaining candidate measures could be implemented and achieve emission reductions within two years, and whether the measures were technologically and economically feasible.<sup>62</sup>

While air agencies do not need to evaluate measures that they do not have the legal authority to implement, the EPA recommends that an infeasibility justification include a description of any such measures that were recommended by the public or are being implemented elsewhere, and an explanation of why the air agency lacks the legal authority to implement them.<sup>63</sup> The EPA is proposing to find that Colorado reasonably excluded certain mobile source control measures from consideration as candidate contingency measures due to difficulty in ensuring such measures are not federally preempted. This includes emission standards for new motorcycles, emission standards for new off-road compression ignition engines, zero-emission off-road equipment requirements, zero-emission cargo handling equipment requirements, retirement of older diesel locomotives, evaporative emission standards,

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<sup>61</sup> 2024 DMNFR Contingency Measures Plan at 23-26.

<sup>62</sup> *Id.* at 29-30.

<sup>63</sup> *See* 2024 Contingency Measures Guidance at 39.

and a prohibition on adding Tier 2 engines to fleets.<sup>64</sup> These control measures may be directly preempted; if not, the additional complexity involved in ensuring that a potential regulation is not preempted would prevent timely implementation of the measure to satisfy the Serious nonattainment area contingency measures requirement for the DMNFR area for the 2008 ozone NAAQS.

The EPA is proposing to determine that the emission reductions that could be achieved for this nonattainment area from livestock waste emission reduction measures like diet manipulation and manure management practices would be difficult to quantify over the two-year timeframe in which reductions from contingency measures should be achieved, and therefore would not be appropriate candidates as contingency measures. Regarding pesticide application, associated emissions represent a negligible amount of the emission inventory for the DMNFR area. Therefore, the EPA is proposing to find that the pesticide application category produces negligible emissions, and that control measures for the category need not be considered further for purposes of the contingency measures requirement.

The EPA agrees with Colorado's assessment that emission reductions in the SIP must be permanent, enforceable and quantifiable. In particular, contingency measures must be surplus over and above what is required for other nonattainment plan requirements. Accordingly, the EPA is proposing to find that Colorado reasonably excluded certain potential measures from consideration as candidate contingency measures due to challenges concerning SIP creditability. This includes measures where there is limited ability to quantify associated emission reductions over the two-year timeframe in which reductions from contingency measures should be achieved, like zero-fare transit, anti-idling programs, an incentive program for electric vehicles/charging stations, planting of lower-VOC tree species, an incentive program providing financial assistance following failed vehicle emission tests, a heavy-duty truck engine chip

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<sup>64</sup> Strategy Summary at 16, 18, and 20.

retrofit program, and an incentive program to replace older light-duty vehicles.<sup>65</sup> While the EPA agrees that these measures or types of programs may result in emission reductions, we see no basis to conclude that such measures could be developed for this nonattainment area in a way that would support their use as contingency measures. In particular, it would be difficult to design these incentive-based measures in a way that would allow them to achieve quantifiable reductions within the timeframe in which reductions from contingency measures should be achieved. To the extent these measures require funding for their implementation, the necessity to authorize such funding could further delay the implementation of such measures, making them further inappropriate for consideration as contingency measures for this area.<sup>66</sup>

If a triggering event occurs before an air agency adopts measures to satisfy the contingency measures plan requirement, the timeframe for achieving reductions (one year; if necessary, two years) should be evaluated based on the adoption date of the measure rather than the now-passed trigger date.<sup>67</sup> Thus, in this situation, we do not consider the past triggering event date of November 7, 2022 (the date of EPA's finding that the DMNFR area failed to attain the 2008 ozone NAAQS) the relevant starting point for the two-year period for: (1) identifying the time window during which contingency measures should achieve emission reductions in order to be creditable toward one year's worth of progress, and (2) identifying the time window for a measure to be deemed infeasible if it cannot be implemented within such period.<sup>68</sup>

Technological feasibility includes consideration of factors such as operating procedures, raw materials requirements, physical plant layout, and adverse environmental impacts such as water pollution, waste disposal, and energy requirements that would negate the environmental benefit of the emissions control. Colorado determined that implementing standards for materials

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<sup>65</sup> Strategy Summary at 8-10 and 14-15.

<sup>66</sup> A potential measure may also be infeasible if it requires program funding to be available upon triggering the contingency measure, but the funding or irrevocable funding commitment cannot be secured prior to the time the state submits, and the EPA approves, the contingency measure. Securing program funding or irrevocable funding commitments in advance for a contingency measure that may never be triggered may be a challenge for states.

<sup>67</sup> See 2024 Contingency Measures Guidance at 46 n. 92.

<sup>68</sup> Colorado has included an evaluation of feasibility with respect to timing using both 2 years beginning with the original 2022 triggering date, as well as the EPA's recommended evaluation of 2 years from adoption.

to reduce VOC emissions from the use of cutback/emulsified asphalt would not be technologically feasible given the impact of altitude on paving operations. The EPA is proposing to find that Colorado provided an appropriate justification for the exclusion of the measure based on technological infeasibility. As described previously and evaluated below, technological infeasibility also encompasses the inability to implement a measure and achieve emission reductions from the measure in a suitable timeframe for contingency measures. In this evaluation, we have separated the consideration of timing of emission reductions from the broader technological infeasibility categorization to better characterize Colorado's analysis.

The EPA considers measures to be technologically infeasible if they could not be implemented and achieve emission reductions in two years. Colorado's 2024 DMNFR Contingency Measures Plan includes information on the lack of available underlying data for source categories, and other considerations for certain source types that the State determined would preclude a full consideration of how candidate measures for such categories could be developed and implemented, and whether such measures would be technologically and economically feasible. For example, Colorado determined that for the following potential control measures the pool of affected sources consists of a relatively large number of facilities, including small operations with minimal experience with regulatory requirements. These potential control measures would include measures for cannabis cultivation operations, diesel inspection/maintenance (I/M) programs for NO<sub>x</sub>, an indirect source rule for nonroad equipment, a minor source offset program, and heavy equipment usage restrictions. The EPA is proposing to concur with Colorado's determination that such characteristics preclude a full consideration of how the potential measures could be developed and implemented for this area, and whether such measures would be technologically and economically feasible, within the two-year timeframe that control measures would need to achieve emission reductions. While adequate information may not presently be available to move forward with the potential measures, these measures may become feasible as additional information becomes available to Colorado.

As explained previously, in this circumstance where the triggering event for the required contingency measures is in the past, we consider the two-year timeframe applied from adoption of a candidate measure appropriate. It is still important for a state to have measures that will serve the purpose of achieving the additional emission reductions that the contingency measures were intended to achieve, had a state adopted contingency measures as part of the attainment plan SIP submittal or at least in advance of the triggering event.

Accordingly, we are proposing to find that Colorado adequately assessed the feasibility of potential control measures as contingency measures. Colorado followed a process to address the contingency measures requirement that included (1) identifying candidate contingency measures, (2) assessing the feasibility of each candidate measure, and (3) providing a infeasibility justification for each candidate measure explaining why the State rejected it as infeasible as a contingency measure for the Serious DMNFR nonattainment area under the 2008 ozone NAAQS.<sup>69</sup> Concerning the control measures identified in Colorado’s Strategy Summary, we are proposing to find that Colorado appropriately excluded certain control measures (i.e., determined that the measures are not candidate contingency measures) according to the criteria identified in table 4 and adequately demonstrated infeasibility for the remaining candidate measures according to the criteria identified in table 5.

**Table 4–2024 DMNFR Contingency Measures Plan Identification of Non-Candidate Measures**

Rationale for Exclusion	Identified Control Measures	The EPA’s Evaluation
Already Implemented Measures	Lower VOC Content Consumer Products/AIM Coatings; Enhanced Vehicle I/M Program; Diesel I/M Program; Clean Fuel Fleet Equivalent; Advanced Clean Cars II Standards; Low Reid Vapor Pressure (RVP)/ Reformulated Gasoline Standards; Prohibitions for Lawn/Garden Equipment; Stage I Vapor Recovery at Gas Stations; Widen CTG VOC RACT Applicability; Regional Haze SIP Provisions; Expand Use of Alternative Fuels in Government and Private Fleets; Road Use Restrictions; Clean Air Fleets Diesel Retrofits; Electric Vehicle Group	These are already implemented measures; whether approved into the SIP, promulgated on a state-only basis, or are otherwise in effect and achieving emission reductions, they are ineligible for purposes of

<sup>69</sup> 2024 DMNFR Contingency Measures Plan at 23-26.

	<p>Purchase Program; Alternative Fuel Vehicle Tax Credit; Electric Car Share Program; Commercial Lawn and Garden Program; Building and Appliance Efficiency Standards; Emission Controls for Municipal Solid Waste Landfills; Diesel Idling Rule; Emission Standards for Space and Water Heaters</p>	<p>contingency measures.<sup>a</sup> Therefore, the EPA is proposing to find Colorado’s exclusion of the identified measures as candidate measures to address emissions from the relevant source categories is appropriate.</p>
<p>Federal Preemption /SIP Creditability</p>	<p>Low-Emissions Diesel Fuel; Reduce Public Transit Fares; Increase Public Transit Service; Employer-based Transportation Management Plans/Incentives; Expanded Commuter Trip Reduction Program; Increased/Permanent Funding for Zero Fare Initiative and Bicycle/Walking Infrastructure; Limit Sections of Metro Area to Non-motorized Use; Limit/Restrict Vehicle Use in Downtown Areas; High Occupancy/Shared Ride Program; Secure Bicycle Storage; Anti-idling Programs; Charge Ahead Electric Vehicle Charging Station Program; Mow Down Pollution Lawn Mower Exchange; Mandate Use-based Vehicle Insurance; Increase State Tax on Fuel; Local Government Diesel Equipment Specifications; Commercial Diesel Best Practices; Mobile Source Credits in Nonattainment New Source Review; Voluntary/Mandatory Emission Reduction Action Days; Work Crew Carpooling; Oil and Gas Best Management Practices: Defer Haul Trips, Altered Vehicle Fleet Maintenance, Additional Leak Detection and Repair, Defer Liquid Hauling to/from Field, Postpone Well Unloading Activities, Reschedule Pipeline Maintenance, Vapor Return on Truck Loading, Setting Pump Units Ahead of Ozone Season, Grouping Maintenance Activities, Delay Compression Unit Start Up, Improve Chemical Storage; Eco-driving Best Practices; Boating Restrictions; Diesel Vehicle Best Management Practices; Out of Area Inspection and Driver Education; Low-VOC Tree Species; Diesel Engine Chip Reflash; Regional Diesel Fuel; Car Scrap Programs (Vehicle Exchange Colorado, Clean Cars 4 all, Clean Vehicle Rebate); CARB Clean Off-Road Fleet Recognition Program; San Joaquin Valley (SJV) Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project; Low RVP Gasoline/Low Emission Diesel in Nonroad Vehicles and Equipment; Evaporative Emission Standards for Recreational Boats; Urban Heat Island/Tree Canopy</p>	<p>Colorado’s infeasibility justification includes federally preempted measures and measures for which there is difficulty in the associated emission reductions meeting the permanent, enforceable, and quantifiable requirements for SIP creditability as a contingency measure in the DMNFR area. The EPA is proposing to find Colorado’s demonstration reasonably excludes these measures as candidate measures to address emissions from the relevant source categories.</p>

<sup>a</sup> Note that accelerating the implementation of a control requirement (e.g., control measures that would have been implemented at some point in the future to meet other attainment plan requirements but that could be implemented earlier upon a triggering event so that upon triggering, reductions would occur in the two-year window) may still be approvable as a contingency measure.

**Table 5–2024 DMNFR Contingency Measures Plan Infeasibility Justification Summary**

Rationale for Infeasibility	Identified Control Measures	The EPA’s Evaluation
Technological /Economic	Episodic/Seasonal Restrictions on Operation of Industrial, Commercial, Oil and Gas Operations; Prohibition of Certain Oil and Gas Operations during Ozone Season; Asphalt Formulation Paving Restrictions; Colorado Department of Public Health and Environment (CDPHE) Extended Air Quality Forecasting	The EPA is proposing to find Colorado appropriately determined that the listed measures are infeasible as contingency measures on the basis of technological and/or economic infeasibility.
Inability to Implement and Achieve Emission Reductions within Two Years	Cannabis Cultivation Operations; Diesel I/M NO <sub>x</sub> Testing Program; Indirect Source Rule Nonroad Equipment; Flaring Minimization Requirements; Oil and Gas RICE Rule; Minor Source Emission Offset Program Including for Well Production Facilities; Reassessment of Oil and Gas NO <sub>x</sub> /VOC Emissions Fees; Trip Reduction Ordinances; Heavy-Equipment Use Restrictions; Control of Emissions from Hot Mix Asphalt Plants; Sale and Installation of Aftermarket Catalytic Converter Model Rule Expansion; CARB On-Road Motorcycles Emission Standards; CARB Clean Miles Standard; CARB Transport Refrigeration Unit Regulation Part 2; CARB In-Use Off-Road Diesel Fueled Fleets Regulation; CARB Large Spark-Ignition Engine Fleet Requirements; CARB Tier 5 Off-Road New Compression-Ignition Engine Standards; CARB Off-Road Zero-Emissions Targeted Manufacturer Rule; CARB Cargo Handling Equipment Requirements; Accelerated Intro to Cleaner Line-Haul Locomotives; Additional Evaporative Vehicle Emission Standards; Tier 3 or Newer Nonroad Equipment Including Agricultural Equipment/Rec Vehicle Emission Standards/Clean Construction Policies; Utah Commercial Cooking Rule; Model Rule for Reducing VOC Emissions from Adhesives and Sealants; CARB 1,3-Dichloropropene Health Risk Mitigation, SJV In-Use Locomotive Regulation; Utah Appliance Pilot Light Rule	For several measures, Colorado describes the present lack of data available to make determinations on technological or economic feasibility, which would, in several instances, require engaging with businesses consisting of small operators with relative unfamiliarity with the regulatory process. Where adequate technical data is unavailable, and which would preclude a full consideration of how candidate measures for such categories could be developed and implemented, and whether such measures would be technologically and economically feasible, such measures may be

		infeasible as contingency measures. Therefore, the EPA proposes to find Colorado's infeasibility justification approvable in this regard.
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Furthermore, although not directly addressed in Colorado's infeasibility justification, the EPA evaluated the stringency of the State's existing SIP-approved emission limitations for combustion equipment in Regulation 26, Part B, section II.A.4. (previously Regulation 7, Part E, section II.A.4.). This includes emission limitations for boilers, stationary combustion turbines, RICE, and process heaters. The EPA has previously determined that these emission limitations constitute RACT as required by the CAA for major stationary sources of NO<sub>x</sub>. While an emission limitation constituting RACT does not in itself preclude a state from strengthening the existing limitation as a contingency measure, as a practical matter, for these specific source categories a more stringent limitation with respect to NO<sub>x</sub> concentrations or on a per heat/power basis would likely require replacement of burners or add-on, pre/post-combustion emission controls. The equipment retrofits on individual pieces of combustion units that would be needed to achieve additional emission reductions would require the Colorado Air Pollution Control Division within CDPHE, and the significant number of potentially impacted individual operators to plan, prepare for installation, and install the air pollution control equipment, which would take time likely causing the measure to exceed the two-year timeframe for contingency measures to achieve emission reductions. Furthermore, we note that Colorado's SIP already includes combustion process adjustments for combustion equipment, where owners/operators must conduct inspections of fuel burning equipment and combustion controls and perform maintenance as applicable. Therefore, the EPA is proposing to find that establishing more stringent emission limitations for combustion equipment than those required by Regulation 26, Part B, section II.A.4. for boilers, stationary combustion turbines, RICE, and process heaters,

would be infeasible as a contingency measure because it would not achieve emissions reductions within two years.

### 3. Adopted Contingency Measures

The emission reductions from the motor vehicle coatings measure will be considered as the contingency measures reductions that should have been triggered by EPA's prior finding that the DMNFR Serious nonattainment area failed to attain the 2008 ozone NAAQS by its applicable attainment date. The EPA is proposing to find that this measure is consistent with applicable CAA requirements for contingency measures, and accordingly to approve the motor vehicle coatings measure as a contingency measure with respect to the contingency measures requirement for the 2008 ozone NAAQS Serious nonattainment plan for the DMNFR area.

### 4. Conclusion

Based on the VOC emission reductions achieved by the motor vehicle coatings contingency measure, and Colorado's infeasibility justification for having contingency measures that achieve less than one year's worth of progress, the EPA proposes to find that the 2024 DMNFR Contingency Measures Plan fulfills the contingency measures requirements for the Serious nonattainment plan for the DMNFR area for the 2008 ozone NAAQS. Final approval of the 2024 DMNFR Contingency Measures plan would cure the EPA's prior disapproval of the State's March 22, 2021 SIP submittal intended to meet the contingency measures requirement for the 2008 ozone NAAQS for the DMNFR Serious nonattainment area.

## **VII. Proposed Action**

The EPA is proposing to approve SIP revisions submitted by the State of Colorado to address the contingency measures requirement for the Serious area nonattainment plan for the DMNFR area for purposes of the 2008 Ozone NAAQS. The EPA is proposing this action based on our determination that the 2024 DMNFR Contingency Measures Plan meets the requirements of CAA section 172(c)(9) and 182(c)(9). The EPA is also proposing to approve revisions to

Colorado Regulations 7 and 25 related to the contingency measures requirement and as summarized in section IV.A. of this proposed rulemaking.

In this same issue of the *Federal Register*, we are also issuing an interim final determination, effective upon publication, to defer the imposition of sanctions. Specifically, the determination will defer application of the offset sanction for permitting of new or modified sources and highway sanctions for which clocks were triggered by the EPA's November 7, 2023 disapproval of SIP revisions submitted to address the contingency measures requirement for the 2008 ozone NAAQS for the DMNFR Serious classification nonattainment area.<sup>70</sup> The determination to defer sanctions is based upon our proposed approval action detailed in this document, with respect to the SIP submittals addressing the contingency measures SIP requirement. Please see the interim final determination for further information concerning sanctions and the basis for issuing the interim final determination.

The EPA is soliciting public comments on the proposed action, our rationale for the proposed action, and any other pertinent matters related to the issues discussed in this document. We encourage comments regarding whether there are new or more stringent control measures not identified in Colorado's analysis and which may be feasible as contingency measures. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

### **VIII. Consideration of Section 110(l) of the CAA**

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state be adopted by the state after reasonable notice and public hearing. The Colorado SIP provisions that the EPA is proposing to approve in this action do not interfere with any

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<sup>70</sup> See 40 CFR 52.31(d)(2)(ii).

applicable requirements of the Act. Thus, the EPA is proposing to find that the approval of portions of the State's June 26, 2024, May 23, 2023, and April 2, 2025 SIP submittals as described in this notice of proposed rulemaking is consistent with section 110(*I*). Therefore, the EPA proposes to determine the CAA section 110(*I*) requirements are satisfied.

## **IX. Incorporation by Reference**

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Colorado Air Quality Control Commission Regulation 25 pertaining to the "Control of Emissions from Surface Coating, Solvents, Asphalt, Graphic Arts and Printing, and Pharmaceuticals" and Regulation 7 pertaining to the "Control of Ozone via Ozone Precursors and Control of Hydrocarbons via Oil and Gas Emissions (Emissions of Volatile Organic Compounds (VOC) & Nitrogen Oxides (NO<sub>x</sub>))" (as specified in sections IV.A. and VI.A. above). The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to 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. The proposed rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **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:** April 21, 2025.

**Cyrus M. Western,**  
*Regional Administrator,*  
*Region 8.*

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