



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2024-0622; FRL-12746-02-R8]

Air Plan Approval; Colorado; Interim Final Determination to Stay and Defer Sanctions in the Denver Metro/North Front Range 2008 Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: In the Proposed Rules section of this *Federal Register*, EPA is proposing approval of portions of State Implementation Plan (SIP) submissions from the State of Colorado dated June 26, 2023, May 23, 2024, and April 2, 2025. The submissions relate to Colorado Air Quality Control Commission Regulation Number 7 (Reg. 7) and Regulation Number 25 (Reg. 25) and address Colorado's SIP obligations for the contingency measures Serious ozone nonattainment area requirement for the 2008 ozone National Ambient Air Quality Standard (NAAQS). In this action, the EPA is making an interim final determination based on that proposed approval. The effect of this interim final determination is that the imposition of sanctions that were triggered by the EPA's November 7, 2023 disapproval are now deferred. Although this action is effective upon publication, the EPA will take comment on this interim final determination.

DATES: This interim final determination is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. However, comments will be accepted until [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://www2.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.

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

I. Background

On November 7, 2023, the EPA took final action disapproving portions of the 2008 8-hour ozone serious attainment plan for the Denver Metro/North Front Range (DMNFR) nonattainment area that were submitted by the State of Colorado on March 22, 2021.¹ The State

¹ 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, 2024).

made the SIP submission in part to meet the contingency measures Serious ozone nonattainment plan requirement for the DMNFR area, as required under sections 172(c)(9) and 182(c)(9) of the Clean Air Act (CAA). On April 2, 2025, Colorado submitted SIP revisions to address the disapproved contingency measures requirement. In the Proposed Rules section of this *Federal Register*, the EPA has proposed to approve portions of Colorado's June 26, 2023, May 23, 2024, and April 2, 2025 SIP submittals that include SIP revisions needed to fully address the disapproved contingency measures requirement.

II. What Action is the EPA Taking?

We are making an interim final determination to defer application of the offset sanction for permitting of new or modified sources and highway sanctions under CAA section 179 that are associated with the November 7, 2023 disapproval. Under 40 CFR 52.31(d)(2)(i), if the State has submitted a revised plan to correct the deficiencies identified in the disapproval actions, and the EPA proposes to fully or conditionally approve the plan and issues an interim final determination that the revised plan corrects the identified deficiencies, application of the offset sanction for permitting of new and modified sources and highway sanctions shall be deferred. If not deferred, the offset sanction for permitting of new and modified sources would apply on June 7, 2025 for the November 7, 2023 contingency measures disapproval in the DMNFR nonattainment area. Additionally, highway sanctions would apply on December 7, 2025, for the disapproval.

Based on the proposed approval of portions of Colorado's June 26, 2023, May 23, 2024, and April 2, 2025 SIP submittals set forth in this document, Colorado has made revisions that adequately address the EPA's disapproval relating to contingency measures. This interim final determination is consistent with the requirements of the Administrative Procedure Act (APA)² for federal agency rulemaking. Generally, under the APA, agency rulemaking affecting the rights of individuals must comply with certain minimum procedural requirements, including publishing

² 5 U.S.C. 551 *et. seq.*

a notice of proposed rulemaking in the *Federal Register* and providing an opportunity for the public to submit written comments on the proposal before the rulemaking can have final effect.³

While in this matter the EPA is not providing an opportunity for public comment before the deferral of CAA section 179 sanctions is effective, the EPA is providing an opportunity, after the fact, for the public to comment on the interim final determination. The EPA will consider any comments received in determining whether to reverse the interim final determination.

Additionally, the EPA is providing an opportunity to comment on the proposed approval, within a separate action, that is the basis for this interim final determination, so the public has an opportunity to comment on that action before any sanctions clock could be permanently terminated.

The basis for allowing such an interim final action stems from the APA, which provides that the notice and opportunity for comment requirements do not apply when the Agency “for good cause finds” that those procedures are “impracticable, unnecessary, or contrary to the public interest.”⁴ The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State’s SIP submissions, and for the reasons explained further in its proposed action the EPA believes that it is more likely than not that the State’s submissions adequately address the Serious nonattainment area contingency measures requirement for the 2008 ozone NAAQS. This is accomplished by the State adopting an approvable contingency measure, and through the inclusion of an infeasibility justification that provides a reasoned explanation for why it is not feasible for Colorado to adopt contingency measures achieving emission reductions in the amount recommended by EPA. Accordingly, CAA sanctions would not serve their intended purpose of encouraging the state to develop a better SIP. The EPA also believes that the risk of an inappropriate deferral is comparatively small, given the limited scope of a deferral and given

³ See 5 U.S.C. 553(b)-(d).

⁴ 5 U.S.C. 553(b)(B).

that sanctions would become effective pursuant to 40 CFR 52.31(d)(2)(i) in the event the EPA reverses its determination that the State has corrected the deficiencies. Consequently, the EPA finds that the “good cause” exception to the APA notice and comment requirement applies, and that notice and comment procedures are not required before the deferral and stay of sanctions become effective.

The EPA is also invoking the “good cause” exception to the 30-day publication requirement of the APA. Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the *Federal Register* “except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.”⁵ The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.”⁶ However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. Because this rule relieves a restriction, in that it defers imposition of sanctions upon the state, the EPA finds that there is good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

As explained above, the EPA is making this interim final determination based on our concurrent proposal to approve portions of Colorado’s June 26, 2023, May 23, 2024, and April 2, 2025 SIP submittals that correct the deficiencies identified in our November 7, 2023 disapproval action with respect to the adequacy of contingency measures submitted by Colorado for the Serious nonattainment requirement in the DMNFR area under the 2008 ozone NAAQS. If the EPA does not finalize the approval as proposed and instead disapproves or proposes to disapprove these SIP revisions, then the offset sanction for permitting of new and modified sources under CAA section 179(b)(2) would apply in the affected 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

⁵ 5 U.S.C. 553(d).

⁶ *Omnipoint Corp. v. Fed. Comm'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history).

from the effective date of the finding that started the original sanctions clock).⁷ Subsequently, highway sanctions under section 179(b)(1) would apply in the affected area six months after the date the offset sanction applies.⁸

III. Statutory and Executive Order Reviews

This action defers Federal sanctions and imposes no additional requirements. 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.

⁷ See 40 CFR 52.31(d)(2)(i). 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.

⁸ See *id.*

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 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).

This action is subject to the Congressional Review Act (CRA), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). The EPA has made such a good cause finding, including the reasons thereof, and established an effective date of **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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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