

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2022-0632; EPA-R08-OAR-2022-0857; FRL-10362-02-R8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final action the Environmental Protection Agency (EPA) is addressing all or part of several State Implementation Plan (SIP) revisions submitted by the State of Colorado (as explained further in this document, we are taking no action on some specific portions of the State's submittals). We are approving specified parts of SIP revisions submitted by Colorado on March 22, 2021, related to Clean Air Act (CAA) requirements for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) for the Denver Metro/North Front Range (DMNFR) Serious nonattainment area. We are also finalizing a limited approval and limited disapproval of reasonably available control technology (RACT) SIP revisions from submissions made on May 14, 2018, May 8, 2019, May 13, 2020, March 22, 2021, May 18, 2021, and May 20, 2022. Further, we are finalizing a limited conditional approval and limited disapproval of additional RACT related SIP submissions made on May 31, 2017, and May 10, 2019. Finally, in this document, the EPA is notifying the public of findings as to certain motor vehicle emissions budgets in the DMNFR nonattainment area. This action is being taken under the authority of the CAA.

DATES: This rule is effective on June 8, 2023.

ADDRESSES: The EPA has established two dockets for this action under Docket ID No. EPA-R08-OAR-2022-0632 and EPA-R08-OAR-2022-0857. All documents in the dockets are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

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

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means the EPA.

I. Background

The background and rationale for this action are discussed in detail in our November 9, 2022¹ and December 2, 2022² proposed rules, the associated technical support documents (TSDs), and our Response to Comments document for this action. In the proposed rules, we proposed to approve and conditionally approve various actions on Colorado's SIP revisions that were submitted on May 31, 2017; May 14, 2018; May 10, 2019; May 13, 2020; March 22, 2021; May 18, 2021; and May 20, 2022. On November 9, 2022,³ we proposed to approve portions of Colorado's Serious attainment plan for the 2008 8-hour ozone NAAQS. In addition, we proposed to approve the motor vehicle emission budgets and revisions to Colorado Regulation Number 7 (Reg. 7) in the State's March 22, 2021 submittal. We also proposed to approve all other aspects of the March 22, 2021 submittal, except for the RACT submission for certain sources and enhanced monitoring, which we will be acting on at a later date, and for the attainment demonstration and contingency measures. We also proposed to approve revisions to Colorado Regulation Number 21 (Reg. 21) from the State's May 13, 2020 submittal, and to Reg. 7 from the State's May 18, 2021 submittal. Finally, we proposed to approve the Reg. 7 revisions from the State's May 14, 2018 and May 13, 2020 submittals that were conditionally approved on May 13, 2022

¹ Proposed rule, Air Plan Approval; Colorado; Serious Attainment Plan Elements and Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 87 FR 67617.

² Proposed rule, Air Plan Conditional Approval; Colorado; Revisions to Regulation Number 7 and RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 87 FR 74060.

³ 87 FR 67617.

and to convert that conditional approval to a full approval.⁴

On December 2, 2022,⁵ we proposed to conditionally approve various revisions to the Colorado SIP that were submitted to the EPA on May 31, 2017, and May 10, 2019. In particular, we proposed to conditionally approve into the SIP certain Reg. 7 rules as fulfilling the requirement to implement RACT for sources that are covered by the 2008 miscellaneous metal coatings control techniques guidelines (CTG)⁶ and for major sources of nitrogen oxides (NO_x) located in the Moderate DMNFR Area that were not acted on in our July 3, 2018,⁷ February 24, 2021,⁸ or November 5, 2021⁹ rulemakings.

II. Comments

We received comments on the November 9, 2022 proposal from several parties, including Boulder County, the City and County of Broomfield, the City and County of Denver, the City of Longmont, and Colorado Communities for Climate Action (CC4CA); the Center for Biological Diversity, 350 Colorado, the Colorado Chapter of the Sierra Club, the National Parks Conservation Association, and Earthworks; individual supporters of the Center for Biological Diversity; and from participants in a mass mailer campaign. The comments were related to compliance with the CAA, disproportionate impacts of ozone, approvability of the attainment plan, emission inventories, reasonable further progress, motor vehicle emissions budgets, RACT and Reasonably Available Control Measures (RACM), suggested control measures, enforceability, and CAA section 110(l).

⁴ Final rule, Air Plan Conditional Approval; Colorado; Revisions to Regulation Number 7 and Oil and Natural Gas RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 87 FR 29228.

⁵ 87 FR 74060.

⁶ Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, EPA-453/R-08-003, September 2008, available at <https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques>.

⁷ Final rule, Approval and Promulgation of State Implementation Plan Revisions; Colorado; Attainment Demonstration for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, and Approval of Related Revisions, 83 FR 31068, 31069-31072.

⁸ Final rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7 and RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 11125, 11126-11127.

⁹ Final rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7; Aerospace, Oil and Gas, and Other RACT Requirements for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 61071, 61072.

A summary of the comments and the EPA's responses are provided in the Response to Comments document, which is in the docket for this action.

III. Final Action

This final action includes approvals, limited approvals and limited disapprovals, and a limited conditional approval and limited disapproval. Below we will explain which type of action we are taking on each of the submitted measures that is the subject of this action. First, though, we note that we are further evaluating the comments received related to the submitted revisions to the State's RACM demonstration and RACT emission limits for refinery gas fueled process heaters. Therefore, in this final action, the EPA is not acting on the following: Reg. 7, Part E, section II.A.4.g.(i) (NO_x emission limit for refinery fuel gas heaters) from the May 20, 2022 submittal for process heaters, and RACM from the March 22, 2021 submittal. The EPA proposed to approve these portions of the respective SIP submittals in our November 9, 2022 proposal. These portions of the SIP submittals will be acted on at a later date. This final action also does not address the submitted attainment demonstration, enhanced monitoring, RACM, or contingency measures.

Below is our explanation of the different elements of this final action.

Approvals

The EPA is approving portions of the 8-Hour Ozone Attainment Plan submitted by the State of Colorado for the DMNFR Area on March 22, 2021, specifically:

- Milestone and future year emission inventories;
- Reasonable further progress (RFP) demonstration;
- Motor vehicle emissions budgets for the 2020 RFP milestone year, as shown in Table 4, because they are consistent with the RFP demonstration for the 2008 ozone NAAQS finalized for approval herein and meet the other criteria in 40 CFR 93.118(e);
- Demonstration that Colorado meets the Clean Fuel Fleet Program requirements of CAA section 182(c)(4);
- Motor vehicle inspection/maintenance (I/M) program; and
- Nonattainment new source review (NNSR) program.

We are also approving SIP revisions to Reg. 7, submitted by the State on May 8, 2019, May 13, 2020, March 22, 2021, May 18, 2021, and May 20, 2022, as shown in Table 1. Finally, the EPA is approving and finding that the motor

vehicle emissions budgets¹⁰ for NO_x and volatile organic compounds (VOCs) for 2020 in the DMNFR area, as well as the northern and southern sub-areas of the DMNFR area, submitted with the RFP demonstration in the March 22, 2021 SIP submittal, are adequate for transportation conformity purposes. Under CAA section 176(c), transportation conformity requires that federally supported highway and transit project activities conform to the applicable SIP; EPA's transportation conformity regulations establish the criteria and procedures for determining whether projects conform.¹¹ Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.¹² The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).¹³ As a result of our approval of the budgets and our adequacy finding, the DMNFR area, and the area's northern and southern sub-areas, must use the budgets from the submitted RFP demonstration for future transportation conformity determinations.

Limited Approvals and Limited Disapprovals

After evaluating comments received on the proposal for this action, we are finalizing a limited approval and limited disapproval of the rules submitted by the State on May 14, 2018, May 13, 2020, March 22, 2021, May 18, 2021, and May 20, 2022, as shown in Table 2, and of the RACT categories in Table 3.

We are also finalizing a limited conditional approval and limited disapproval of two RACT submissions related to the miscellaneous metal coatings CTG and glass melting furnaces. That part of this action is explained separately below.

We are finalizing a limited approval and limited disapproval of the regulations submitted on May 14, 2018, May 13, 2020, March 22, 2021, May 18, 2021, and May 20, 2022, because we have determined that they strengthen the existing EPA-approved Colorado SIP and are largely consistent with the relevant CAA requirements, but that some aspects of these rules prevent the EPA from finding that they satisfy *all* of

the applicable requirements of the CAA. Specifically, these rules do not include sufficient reporting requirements to ensure that citizens will be able to enforce the SIP requirements, as is necessary under the CAA and EPA regulations.¹⁴ That is, the regulations in Table 2 require facilities to maintain records necessary to establish compliance with these rules for a certain period of time and to make them available to the state on request. But if there is no requirement for these records to be submitted to the state absent a request, then unless the state requests the compliance records and then makes them publicly available, no parties other than the state or the EPA under its CAA section 114 authority will have practical access to the basic information necessary to determine compliance by the regulated entities under these rules. This undermines citizens' ability to participate in the enforcement of the SIP as allowed by CAA section 304. As EPA has repeatedly stated, to be enforceable, a CAA SIP rule must be legally and practically enforceable.¹⁵ We find that a requirement to provide records to the state only on request, without any required periodic reporting to the state, is inconsistent with CAA and regulatory requirements for enforceability. Therefore, due to the lack of adequate reporting requirements (or some equivalent means of ensuring enforceability), the EPA is simultaneously finalizing a limited approval and disapproval of these rules, as authorized under sections 110(k)(3) and (4) and 301(a). This action incorporates the submitted rules into the Colorado SIP.

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

¹⁴ See 40 CFR 51.211; see also the Response to Comments document for additional explanation of the rationale for this action.

¹⁵ See, e.g., Proposed rule, State Implementation Plans: Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 88 FR 11842 (Feb. 24, 2023) (noting "requirement that all SIP provisions be legally and practically enforceable by states, the EPA and parties with standing under the citizen suit provision" of the CAA).

¹⁰ See Table 4, below.

¹¹ See 69 FR 40004 (July 1, 2004); 40 CFR part 93, subpart A.

¹² See 69 FR at 40005.

¹³ See also *id.* at 40038–40047.

date of this limited disapproval, unless the state submits, and the EPA approves, SIP revisions to correct the identified deficiencies before EPA promulgates the FIP.

In addition, this final limited disapproval will trigger mandatory sanctions in accordance with the timelines and provisions of CAA section 179 and 40 CFR 52.31 unless the state submits, and EPA approves, SIP revisions that correct the identified deficiencies within 18 months of the effective date of the final limited disapproval action.

Note that the submitted rules have been adopted by the Colorado Air Quality Control Commission (AQCC), and the EPA's final limited disapproval does not prevent the State from enforcing these rules. The limited disapproval also does not prevent any portion of the rules from being incorporated by reference into the federally enforceable SIP, as discussed in the July 9, 1992 EPA memo found at <https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>.

Limited Conditional Approval and Limited Disapproval

We are finalizing a limited conditional approval and a limited disapproval of SIP submissions that were made on May 31, 2017, and May 10, 2019, respectively addressing RACT for the miscellaneous metal coatings CTG and glass melting furnaces. See Table 3. This section will first explain the conditional nature of this approval, and then explain the limited approval/disapproval.

We are conditionally approving these rules based on the State's October 13, 2022, letter committing to make specified revisions to the rules for

miscellaneous metal coatings that were part of the May 31, 2017 submission, and to the rules for glass melting furnaces that were part of the May 10, 2019 submission. This commitment to further revisions was necessary because on reviewing these RACT rules the EPA had identified certain deficiencies. Under section 110(k)(4) of the Act, the EPA may conditionally approve a deficient SIP revision based on a commitment by a state to adopt specific enforceable measures by a date certain, but not later than one year after the date of conditional approval of the plan revision. As to these miscellaneous metal coatings and glass melting furnaces rules, on October 13, 2022, Colorado submitted a letter¹⁶ committing to adopt and submit specific revisions by June 30, 2023.¹⁷ Specifically, the State committed to adopt and submit additional VOC coating content limits, associated work practices, definitions, recordkeeping, and recording requirements for motor vehicle materials; to submit a negative declaration (that is, a certification that there are no covered sources in the area) for pleasure craft surface coatings; and to adopt and submit NO_x emission limits for glass melting furnaces at major sources.¹⁸ We find that the letter includes the necessary commitments to allow us to conditionally approve these rules.

Colorado must adopt and submit the specific revisions it has committed to by June 30, 2023, in order for the conditional approval portion of this action to convert to approval. We note that the Colorado AQCC adopted the revisions as outlined in the commitment letter on December 16, 2022, and we anticipate that the State will meet its deadline to submit these measures as

SIP revisions. However, if Colorado does not comply with its commitment by June 30, 2023, if we find Colorado's SIP submission provided to fulfill the commitment to be incomplete, or if we disapprove that SIP submission, the conditional approval portion of this action will convert to a disapproval. If any of these occur and our conditional approval converts to a disapproval, that will constitute a disapproval of a required plan element under part D of title I of the Act, which will start an 18-month clock for sanctions¹⁹ and the two-year clock for a FIP.²⁰

As noted above, this conditional approval is a *limited* conditional approval, and is paired with a limited disapproval. The reason for this limited approval and disapproval is the same as explained above under the heading "Limited Approvals and Disapprovals": some of the rule provisions do not require the reporting necessary under the CAA and EPA regulations to ensure that citizens will be able to enforce SIP requirements. We did not identify these reporting deficiencies until after the State had developed proposed revisions and submitted its commitment letter. We have concluded that conditional approval is appropriate despite the reporting deficiencies because the State has fully addressed the issues discussed in connection with our proposed conditional approval action. But we have also concluded that our conditional approval must be *limited* in nature, and must be paired with a limited disapproval, because of the separate issues that we later identified after reviewing comments received on EPA's November 9, 2022 proposed action. As explained above, this limited disapproval starts the FIP and sanctions clocks associated with disapprovals.

TABLE 1—LIST OF REVISIONS TO COLORADO REG. 7 THAT THE EPA IS APPROVING IN THIS ACTION

Revised sections in May 8, 2019, May 14, 2018, May 13, 2020, March 22, 2021, May 18, 2021, and May 20, 2022 submittals for approval
<i>May 8, 2019 Submittal:</i> XVI.D.4.d. (title only).
<i>May 13, 2020, Oil and Gas Submittal:</i> Reg. 7, Part D, sections I.D.4 (renumbering), I.F.1. (renumbering), and I.J.1.–j. (renumbering).
<i>March 22, 2021 Submittal:</i> Part E, sections II.A.1.b., II.A.4., II.A.4.a.(iii), II.A.4.b.(i), II.A.6.a.(ii), II.A.6.b.(viii)(B), and III.B.
<i>May 18, 2021 Submittal:</i> Reg. 7, Outline of Regulation, Part A, B, C, and D; Part E and Part F; Part E, section I.A.3. and I.D.4.–a.(ii) (renumbering).
<i>May 20, 2022 Misc. Metals and Process Heaters Submittal:</i> Reg. 7, Part C, section I.A.6.b., Part E, sections II.A.2.e–f., II.A.4.b.(iii), II.A.4.e.(ii), II.A.5.a., II.A.5.b.–(i), II.A.5.b.(i)(A)(1)–(ii)(A), II.A.5.b.(ii)(C)–(D), II.A.6.b.(viii)(D) and II.A.6.c.(ii). ²¹
<i>May 20, 2022 Part D Definitions Submittal:</i>

¹⁶ The letter is dated October 13, 2022 and was received on October 14, 2022. See "Colorado Commitment Letter: 2008 Ozone NAAQS Serious SIP," email from Jessica Ferko, Planning & Policy Program Manager, Colorado Department of Public Health and Environment (in the docket).

¹⁷ Although CAA section 110(k)(4) allows the EPA to make a conditional approval based on a commitment to act within one year of the final conditional approval, Colorado has committed to act on a much more accelerated schedule.

¹⁸ See our proposed conditional approval at 87 FR 74060 for additional explanation.

¹⁹ See CAA section 179(a)(2).

²⁰ See CAA section 110(c)(1)(B).

²¹ In our proposed rule we inadvertently included Part D, section III.C.4.e.(i)(D)(3)(b) as a revision proposed for approval. However, this section of Reg. 7 is state-only and thus not included in our final action for approval in the SIP.

TABLE 1—LIST OF REVISIONS TO COLORADO REG. 7 THAT THE EPA IS APPROVING IN THIS ACTION—Continued

Revised sections in May 8, 2019, May 14, 2018, May 13, 2020, March 22, 2021, May 18, 2021, and May 20, 2022 submittals for approval
Reg. 7, Part D, section III.B.2., III.B.5., III.B.7., III.B.11., and III.B.13. May 20, 2022 Part D Oil and Gas Submittal: Reg. 7, Part D, section I.J.1.i.-(D) (renumbering).

TABLE 2—LIST OF COLORADO REVISIONS TO REGS. 7 AND 21 FOR WHICH THE EPA IS FINALIZING A LIMITED APPROVAL AND LIMITED DISAPPROVAL IN THIS ACTION

Submittals	Revised section for limited approval	Reason for limited disapproval
May 14, 2018 Submittal	Reg. 7, Part D, sections XII.J.1.-h., XII.J.h.(i)(A)-(D), XII.J.1.i.-j	No requirements within these provisions to submit records to the state.
May 13, 2020 Oil and Gas Submittal.	Reg. 7, Part D, sections I.D.-D.3.a.(i), I.D.3.b.-b.(i), I.D.3.b.(ii), I.D.3.b.(v), I.D.3.b.(vii), I.D.3.b.(ix), I.E.1.a., I.E.2.-c.(ii), I.E.2.c.(iv)-c.(viii), I.F.1., F.2.a., I.F.2.c.-c.(vi), I.F.3.-3.a, and I.F.3.c.-c.(i)(C)	No requirements to submit Reg. 7, Part D, section I.F.1.d. or I.F.2.c.(iii) records to the state.
May 13, 2020 Reg. 21 Submittal	Reg. 21, Part A, sections I-I.A.1, I.B.-VI.AAAAAA., Part B, sections I-I.A.1., I.B.-VI.TTTT.	No requirements within these provisions to submit records to the state.
March 22, 2021 Submittal	Reg. 7, Part C, sections I.O., I.O.2., I.O.3.a., I.O.3.b.-c., I.O.4.a., I.O.5.a., Part E, sections II.A.4.a.(iv), II.A.4.b.(i)(A)(1), II.A.4.b.(iv), II.A.4.c., II.A.5.c.(i)(A)-(2), and V.	No requirements within these provisions to submit records to the state.
May 20, 2022 Misc. Metals and Process Heaters Submittal.	Reg. 7, Part C, sections I.L.1.a., I.L.1.b.(i), I.L.b.(ii), I.L.1.b.(iii)-(vii), I.L.1.c.(ii)-(xxvi), I.L.2.a., I.L.2.b.-I.L.5.d., Part E, sections II.A.2.e-f., II.A.3.p., II.A.4., II.A.4.a.(iv), II.A.4.g.-g.(ii) (except NO _x emission limit for refinery fuel gas), II.A.5.a.(i)(A), and II.A.5.b.(ii)(B).	No requirements within these provisions to submit records to the state.
May 20, 2022 Part D Oil and Gas Submittal.	Reg. 7, Part D, section I.E.3-a.(iii) and I.J.1.g.-h., and I.J.1.(i)(E)-(F)	No requirements within these provisions to submit records to the state.

TABLE 3—RACT CATEGORIES, FINAL ACTION, AND CORRESPONDING SECTIONS OF SUBMITTALS

RACT category	Final action	Location of RACT demonstration
Storage tanks and centrifugal compressors in the oil and natural gas industry covered by EPA's 2016 Oil and Gas CTG.	Converting previous conditional approval ²² to a limited approval and limited disapproval (conversion to approval appropriate because Colorado sufficiently corrected the deficiency identified in the rulemaking related to the previous conditional approval, but that approval is limited because of a newly identified issue separate from the deficiency that was identified as basis for previous conditional approval. The newly identified issue concerns the lack of requirements within these provisions to submit records of the inspections required in Reg. 7, Part D, section I.E. or performance tests required in I.E.3.a.(iii) and I.J.i.(i). to the state.	Technical Support Document for Reasonably Available Control Technology for the Oil and Gas Industry, Dec. 17, 2021 (contained within the May 20, 2022 submittal).
Combustion equipment at major sources (combustion turbines, combustion equipment at boilers, lightweight aggregate kilns, and natural gas fired process heaters).	Limited approval and limited disapproval because there are no requirements to submit records to the state.	Technical Support Document for Reasonably Available Control Technology for Major Sources, Dec. 14, 2020 (contained within the March 22, 2021 submittal) and Technical Support Document for Reasonably Available Control Technology for Major Sources, July 16, 2021 (contained within the May 20, 2022 submittal).
Combustion equipment at major sources (glass melting furnaces).	Conditional approval and disapproval because there are no requirements to submit records to the state.	Technical Support Document for Reasonably Available Control Technology for Major Sources, Draft, October 31, 2022 (contained in the docket of the December 2, 2022 proposed rule).

²² See 87 FR 29228.

TABLE 3—RACT CATEGORIES, FINAL ACTION, AND CORRESPONDING SECTIONS OF SUBMITTALS—Continued

RACT category	Final action	Location of RACT demonstration
Wood coating	Limited approval and limited disapproval because there are no requirements to submit records to the state.	Technical Support Document for Reasonably Available Control Technology for Major Sources, Dec. 14, 2020 (contained within the March 22, 2021 submittal).
Miscellaneous Metal Coatings, Tables 2 and 7 of the CTG.	Limited approval and limited disapproval because there are no requirements to submit records to the state.	Technical Support Document for Reasonably Available Control Technology for Major Sources, July 16, 2021 (contained within the May 20, 2022 submittal).
Miscellaneous Metal Coatings, Table 5, Pleasure Craft Surface Coating VOC Content Limits of the CTG.	Conditional approval	N/A—In October 13, 2022 commitment letter, state committed to provide negative declaration (certification that there are no sources in the area).
Miscellaneous Metal Coatings, Table 7, Motor Vehicle Materials VOC Content Limits of the CTG.	Limited conditional approval and limited disapproval because there are no requirements to submit records to the state.	October 13, 2022 commitment letter.
Foam manufacturing	Limited approval and limited disapproval because there are no requirements to submit records to the state.	Technical Support Document for Reasonably Available Control Technology for Major Sources, Dec. 14, 2020 (contained within the March 22, 2021 submittal).

TABLE 4—ADEQUATE TOTAL AREA AND SUB-AREA 2020 MOTOR VEHICLE EMISSIONS BUDGETS FOR NO_x AND VOC IN THE DMNFR NONATTAINMENT AREA

Area of applicability	2020 NO _x emissions (tpd)	2020 VOC emissions (tpd)
Northern Sub-area	9.7	8.2
Southern Sub-area	45.0	41.2
Total Nonattainment Area	54.7	49.4

IV. 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.

As further explained in the response to comments document, the Colorado SIP revisions that the EPA is approving, conditionally approving, and finalizing a limited approval for do not interfere with any applicable requirements of the Act. None of the Reg. 7 and Reg. 21 revisions submitted by the State would be weakening the SIP. Rather, the SIP revisions here will be strengthening the SIP. The Response to Comments for this action provides a full technical basis for this conclusion. Colorado’s submittals provide adequate evidence that the revisions were adopted after reasonable public notices and hearings. Therefore, CAA section 110(l) requirements are satisfied.

V. Environmental Justice Considerations

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of populations living within the DMNFR Area. The EPA then compared the data to the national averages for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that for populations within the DMNFR Area, there are census block groups in which the percentage of people of color (persons who reported their race as a category other than White alone and/or Hispanic or Latino) is greater than the national average (39%) and above the 80th percentile.²³ There are also census block groups within the DMNFR Area that are below the national average (33%) poverty level and above the 80th percentile.²⁴

This final action approves the majority of the State’s ozone attainment plan submittal for the DMNFR Area and finalizes a limited approval of state

rules as meeting RACT and satisfying other CAA requirements. The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. The CAA requires this action, and the EPA recognizes the adverse impacts of ozone. Information on ozone and its relationship to negative health impacts can be found in the National Ambient Air Quality Standards for Ozone.²⁵ We expect that this action and resulting emissions reductions will generally be neutral or contribute to reduced environmental and health impacts on all populations in the DMNFR Area, including people of color and low-income populations. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to attain and/or maintain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

²³ See “EJSCREEN Maps” pdf, available within the docket.

²⁴ *Id.*

²⁵ Final rule, 73 FR 16436 (March 12, 2008).

VI. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Colorado AQCC Regulation 7 pertaining to the control of ozone via ozone precursors and control of hydrocarbons via oil and gas emissions and Regulation 21 pertaining to Control of Volatile Organic Compounds from Consumer Products and Architectural and Industrial Maintenance Coatings (as specified in Tables 1, 2, and 3 above). The EPA has made, and will continue to make, these materials generally available through 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). Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.²⁶

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act. This final action does not establish any new information collection requirement apart from what is already required by law. This finding relates to the requirement in the CAA for states to submit SIPs under CAA section 182(b) and (c) addressing obligations associated with the 2008 ozone NAAQS.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a

substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action is disapproving SIP submissions for not containing the necessary provisions to satisfy CAA enforceability requirements and related regulatory reporting requirements under 40 CFR 51.211.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP 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, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it merely disapproves SIP submissions as not containing the necessary provisions to satisfy interstate transport requirements under CAA section 110(a)(2)(D)(i)(I).

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

This action is not subject to Executive Order 13211, because it is not a

significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

This final action approves parts of Colorado's 2008 ozone Serious attainment plan and finalizes a limited approval, limited conditional approval, and limited disapproval of various other submissions. As a result of EPA's approval, limited conditional approval, limited approval, and limited disapproval, Colorado Department of Public Health and Environment (CDPHE) is required to undertake additional actions to meet CAA requirements. The impact of the limited disapproval is described in section III, *Limited Approvals and Limited Disapprovals and Limited Conditional Approval and Limited Disapproval*, of this preamble. Information concerning the EPA's efforts to identify potential environmental burdens and susceptible populations in the DMNFR Area is in our November 9, 2022 proposed rule, 87 FR 67633. This action is expected to help ensure that the DMNFR Area meets CAA requirements and there is no information in the record indicating that this action is expected to have disproportionately high or adverse health or environmental effects on a particular group of people.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the 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).

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2016. 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)).

²⁶ 62 FR 27968 (May 22, 1997).

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.

Dated: April 26, 2023.

K.C. Becker,

Regional Administrator, Region 8.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

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

Subpart G—Colorado

- 2. In § 52.319, revise paragraph (a) to read as follows:

§ 52.319 Conditional approval.

(a) The EPA is making a limited conditional approval and limited disapproval of revisions committed to correcting deficiencies identified with submissions made on May 31, 2017, and May 10, 2019. The conditional approval is based upon the October 13, 2022 commitment from the State to submit a SIP revision consisting of rule revisions that will cure the identified deficiencies within twelve months after the EPA’s conditional approval. If the State fails to meet its commitment, the conditional approval will be treated as a disapproval with respect to the rules and CTG category for which the corrections are not met. The following rules are conditionally approved, except as they

relate to periodic reporting requirements to the state for which we are disapproving, because we have determined that the rules strengthen the SIP and are largely consistent with the relevant CAA requirements:

(1) Regulation number 7 (Reg. 7), Part C, section I.P. and Reg. 7, Part E, section II.A.4. RACT requirements for the Colorado ozone SIP for the “Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings,” Tables 5 and 7, EPA453/R08003, September 2008 and glass melting furnaces.

(2) [Reserved]

* * * * *

- 3. In § 52.320:

- a. In the table in paragraph (c):
- i. Under the center heading “5 CCR 1001–09, Regulation Number 7, Control of Ozone Via Ozone Precursors and Hydrocarbons via Oil and Gas Emissions, (Emissions of Volatile Organic Compounds and Nitrogen Oxides), Part C, Surface Coating, Solvents, Asphalt, Graphic Arts and Printing, and Pharmaceuticals”, revise the entry “I. Surface Coating Operations”.
- ii. Under the center heading “5 CCR 1001–09, Regulation Number 7, Control of Ozone Via Ozone Precursors and Hydrocarbons via Oil and Gas Emissions, (Emissions of Volatile Organic Compounds and Nitrogen Oxides), Part D, Oil and Natural Gas Operations”, revise the entries “I. Volatile Organic Compound Emissions from Oil and Gas Operations” and “III. Natural Gas-Actuated Pneumatic Controllers Associated with Oil and Gas Operations”.
- iii. Under the center heading “5 CCR 1001–09, Regulation Number 7, Control of Ozone Via Ozone Precursors and Hydrocarbons via Oil and Gas Emissions, (Emissions of Volatile Organic Compounds and Nitrogen

Oxides), Part E, Combustion Equipment and Major Source RACT”, revise the entries “I. Control of Emissions from Engines” and “II. Control of Emissions from Stationary and Portable Engines and Other Combustion Equipment in the 8-Hour Ozone Control Area”.

- iv. Add the center heading “5 CCR 1001–21, Regulation Number 21, Control of Volatile Organic Compounds from Consumer Products and Architectural and Industrial Maintenance Coatings” and the entries “I. Applicability”, “II. Consumer Products”, “III. Architectural and Industrial Maintenance Coatings”, and “IV. Definitions” at the end of the table, after the entry “VIII. Steamboat Springs PM₁₀ Attainment/Maintenance Area”.
- b. In the table in paragraph (e):
- i. Revise the entry “2008 Ozone Moderate Area Attainment Plan”.
- ii. Remove the entry “Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP)” and add the entry “Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) Moderate State Implementation Plan (RACT SIP)” in its place.
- iii. Add the entries “2008 Ozone Serious Area Attainment Plan” and “Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) Serious State Implementation Plan (RACT SIP)” after the entry “Ozone (8-hour, 2015) DMNFR NNSR Certification”.

The revisions and additions read as follows:

§ 52.320 Identification of plan.

* * * * *
 (c) * * *

Title	State effective date	EPA effective date	Final rule citation/date	Comments
*	*	*	*	*
5 CCR 1001–09, Regulation Number 7, Control of Ozone Via Ozone Precursors and Hydrocarbons via Oil and Gas Emissions, (Emissions of Volatile Organic Compounds and Nitrogen Oxides), Part C, Surface Coating, Solvents, Asphalt, Graphic Arts and Printing, and Pharmaceuticals				

I. Surface Coating Operations.	2/14/2021	6/8/2023	[insert Federal Register citation], 5/9/2023.	Previous SIP approval 8/5/2011; nonsubstantive changes approved 7/3/2018; substantive changes approved 2/24/2021; nonsubstantive changes approved 11/5/2021. Substantive changes limited approval/disapproval 5/9/2023.
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Title	State effective date	EPA effective date	Final rule citation/date	Comments
*	*	*	*	*

5 CCR 1001–09, Regulation Number 7, Control of Ozone Via Ozone Precursors and Hydrocarbons via Oil and Gas Emissions, (Emissions of Volatile Organic Compounds and Nitrogen Oxides), Part D, Oil and Natural Gas Operations

I. Volatile Organic Compound Emissions from Oil and Gas Operations.	1/30/2022	6/8/2023	[insert Federal Register citation], 5/9/2023.	Previous SIP approval 2/13/2008. Substantive changes to section XII; state-only provisions excluded, approved 7/3/2018. Substantive changes approved 11/25/2021 except no action on sections I.D., I.E., I.F. and I.J.1. Conditional approval of sections I.D., I.E., I.F., and I.J.1. 5/13/2022. Limited approval/disapproval section I.D., I.E., I.F., and I.J.1 5/9/2023.
III. Natural Gas-Actuated Pneumatic Controllers Associated with Oil and Gas Operations.	2/14/2020	6/8/2023	[insert Federal Register citation], 5/9/2023.	Substantive changes to III.–III.B.3., III.B.5., III.B.7.–III.C.2.c.(ii), III.D.–III.D.2.b., III.D.3.b., and III.E.–III.E.2.c. approved 11/5/2021. Revisions to definitions for pneumatic controls approved 5/9/2–23.

5 CCR 1001–09, Regulation Number 7, Control of Ozone Via Ozone Precursors and Hydrocarbons via Oil and Gas Emissions, (Emissions of Volatile Organic Compounds and Nitrogen Oxides), Part E, Combustion Equipment and Major Source RACT

I. Control of Emissions from Engines.	11/14/2020	6/8/2023	[insert Federal Register citation], 5/9/2023.	Previous SIP approval 8/19/2005 and 12/31/2012; nonsubstantive changes to sections XVI.A.–C. 7/3/2018; substantive changes approved 2/24/2021, except sections XVI.D.4.b.(i) and XVI.D.4.d. section XVII.E.3.a. from the Regional Haze SIP approved in SIP. Previous SIP approval 12/31/2012; nonsubstantive changes approved 2/24/2021 and 11/5/2021. Limited approval/disapproval 5/9/2023.
II. Control of Emissions from Stationary and Portable Engines and Other Combustion Equipment in the 8-Hour Ozone Control Area.	2/14/2020	6/8/2023	[insert Federal Register citation], 5/9/2023.	Previous SIP approvals 8/19/2005 and 12/31/2012; nonsubstantive changes to approved 7/3/2018; substantive changes approved 2/24/2021 except sections XVI.D.4.b.(i) and XVI.D.4.d. Substantive changes approved 11/5/2021. Limited approval/disapproval 5/9/2023 except NO _x emission limits for refinery fuel heaters in II.A.4.g.

5 CCR 1001–21, Regulation Number 21, Control of Volatile Organic Compounds from Consumer Products and Architectural and Industrial Maintenance Coatings

I. Applicability	09/14/2019	6/8/2023	[insert Federal Register citation], 5/9/2023.	Limited approval/disapproval 5/9/2023.
II. Consumer Products	09/14/2019	6/8/2023	[insert Federal Register citation], 5/9/2023.	Limited approval/disapproval 5/9/2023.
III. Architectural and Industrial Maintenance Coatings.	09/14/2019	6/8/2023	[insert Federal Register citation], 5/9/2023.	Limited approval/disapproval 5/9/2023.
IV. Definitions	09/14/2019	6/8/2023	[Insert Federal Register citation], 5/9/2023.	Limited approval/disapproval 5/9/2023.

* * * * * (e) * * *

Title	State effective date	EPA effective date	Final rule citation/date	Comments
*	*	*	*	*

Maintenance and Attainment Plan Elements

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Denver Metropolitan Area

Title	State effective date	EPA effective date	Final rule citation/date	Comments
2008 Ozone Moderate Area Attainment Plan.	1/14/2017	8/2/2018	83 FR 31068, 7/3/2018	
Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) Moderate State Implementation Plan (RACT SIP).	11/21/2017	6/8/2023	[insert Federal Register citation], 5/9/2023.	Except major source NO _x RACT. Previous SIP approvals 7/03/2018, 2/24/2021, and 11/05/2021. Limited approval/limited disapproval of RACT regulations 5/9/2023.
2008 Ozone Serious Area Attainment Plan.	2/14/2020	6/8/2023	[insert Federal Register citation], 5/9/2023.	Except for contingency measures, RACM, enhanced monitoring, and attainment demonstration.
Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) Serious State Implementation Plan (RACT SIP).	2/14/2020	6/8/2023	5/9/2023	Limited approval and limited disapproval.

[FR Doc. 2023-09229 Filed 5-8-23; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA-HQ-OPP-2019-0508; FRL-7261-05-OCSP]

RIN 2070-AK54

Notification of Submission to the Secretary of Agriculture; Pesticides; Exemptions of Certain Plant-Incorporated Protectants (PIPs) Derived From Newer Technologies; Draft Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of submission to the Secretary of Agriculture.

SUMMARY: This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture (USDA) a draft regulatory document entitled “Pesticides; Exemptions of Certain Plant-Incorporated Protectants (PIPs) Derived from Newer Technologies; Final Rule.” The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

DATES: Notification effective as of May 1, 2023.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2019-0508, is

available at <https://www.regulations.gov>. That docket contains historical information and this **Federal Register** document; it does not contain the draft final rule.

FOR FURTHER INFORMATION CONTACT: Amanda Pierce, Biopesticides and Pollution Prevention Division (7511M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-1470; email address: pierce.amanda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

FIFRA section 25(a)(2)(B) requires the EPA Administrator to provide the Secretary of USDA with a copy of any draft final rule at least 30 days before signing it in final form for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary of USDA comments in writing regarding the draft final rule within 15 days after receiving it, the EPA Administrator shall include the comments of the Secretary of USDA, if requested by the Secretary of USDA, and the EPA Administrator’s response to those comments with the final rule that publishes in the **Federal Register**. If the Secretary of USDA does not comment in writing within 15 days after receiving the draft final rule, then the EPA Administrator may sign the final rule for publication in the **Federal Register** any time after the 15-day period.

II. Do any statutory and Executive Order reviews apply to this notification?

No. This document is merely a notification of submission to the Secretary of USDA. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Plant-incorporated protectants, Reporting, and recordkeeping requirements.

Dated: May 1, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023-09542 Filed 5-8-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2022-0005; FRL-10908-01-OCSP]

Fomesafen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fomesafen in or on Vegetable, bulb, group 3-07; Vegetable, cucurbit, group 9; Vegetable, fruiting, group 8-10; and Vegetable, legume, forage and hay, except soybean,