

- (5) Striking pleadings, in whole or in part;
(6) Staying further proceedings;
(7) Dismissing or granting the appeal, in whole or in part; and
(8) Imposing other appropriate sanctions.

(c) The Board may sanction individual attorneys who violate a Board order, direction, or standard of conduct if the violation seriously affects the integrity of the Board, its processes, or its proceedings. Sanctions may be public or private and may include admonishment, disqualification from a particular matter, disqualification from practice before the Board (see 39 CFR part 951), referral to a licensing authority, or other appropriate action under the circumstances.

§ 955.29 (Rule 29) Subpoenas.

(a) *General.* On written request of either party, or on the Board's own initiative, the Board may issue a subpoena requiring:

(1) The deposition of a witness in the city or county where the witness resides, is employed, transacts business in person, or at another convenient location as determined by the Board;

(2) The deposition of a witness as described in Rule 30(b)(6) of the Federal Rules of Civil Procedure;

(3) The testimony of a witness at a hearing; or

(4) The production of documents, electronically stored information, and tangible things, and as appropriate, the appearance of a witness or custodian of those records.

(b) *Voluntary cooperation.* Each party is expected to:

(1) Cooperate and make witnesses and evidence under its control available as requested by the other party, without issuance of a subpoena; and

(2) Secure voluntary attendance of third-party witnesses and production of documents, electronically stored information, and tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena must normally be filed at least:

(i) 15 days before the scheduled deposition of a witness or production by a witness or custodian of documents, electronically stored information, and tangible things;

(ii) 30 days before a scheduled hearing; or

(ii) Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, the Board may honor requests for subpoenas not made within these time limits.

(2) The scope of the request for a subpoena must be reasonable, and the request must describe the general relevance of the request.

(d) *Requests to quash or modify.* A request to quash or modify a subpoena must be filed within 10 days after receipt of the subpoena.

(1) The Board may grant a request to quash or modify a subpoena if the subpoena is unreasonable or oppressive. The Board may also quash or modify a subpoena for other good cause shown.

(2) The Board may require the person on whose behalf the subpoena was issued to advance the reasonable cost of complying with the subpoena.

(3) Notwithstanding paragraphs (d)(1) and (2) of this section, the Board may consider a request to quash or modify a subpoena at any time after a copy has been served on the opposing party.

(e) *Form and issuance.* (1) Every subpoena for the appearance of a witness must:

(i) Include the caption of the appeal;
(ii) Identify the person to whom it is directed;

(iii) List the time and place of the deposition or hearing; and

(iv) Where appropriate, command the person to produce specified documents, electronically stored information, and tangible things.

(2) The judge issuing the subpoena may enter the name of the witness and otherwise leave the subpoena blank. The requesting party must then fill in the remaining information before serving the subpoena.

(3) If the witness is located in a foreign country, a letters rogatory, letter of request, or subpoena may be issued and served as provided in 28 U.S.C. 1781–84.

(f) *Service.* (1) The requesting party must arrange for service.

(2) A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena on an individual must be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The requesting party is responsible for the payment of fees and mileage of the witness and the serving officer. The failure to make payment of such charges on demand may be a sufficient reason for the Board to strike the testimony of the witness and any evidence the witness has produced.

(g) *Refusal to obey a subpoena.* If a person who refuses to obey a subpoena either resides in, is found, or transacts business within the jurisdiction of a United States District Court, the Board may apply to the Court through the Attorney General of the United States for an order requiring the person to

comply with the Board's subpoena. The Court may punish a person's failure to obey the Court's order with a contempt citation.

§ 955.30 (Rule 30) Applicability.

This part governs proceedings in all appeals docketed by the Board on or after October 1, 2025, and to appeals filed before that date, unless doing so is inequitable or unfair.

Kevin Rayburn,

Attorney, Ethics and Legal Compliance.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2025–0233; FRL–12746–04–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, May 30, 2024, and April 2, 2025. The submissions relate to Colorado Air Quality Control Commission Regulation Number 7 (Reg. 7) and Regulation Number 26 (Reg. 26), and address Colorado's SIP obligations for the Reasonably Available Control Technology (RACT) 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 December 8, 2023 disapproval are now deferred. Although this action is effective on publication, the EPA will take comment on this interim final determination.

DATES: This interim final determination is effective June 18, 2025. However, comments will be accepted until July 18, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2025–0233, to the Federal Rulemaking Portal: <https://www.regulations.gov>

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.

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

I. Background

On December 8, 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 made the

SIP submission in part to meet the RACT Serious ozone nonattainment plan requirement for the DMNFR area, as required under sections 172(c)(1) and 182(b)(2) of the Clean Air Act (CAA). On May 30, 2024 and April 2, 2025, Colorado submitted SIP revisions to address the disapproved RACT 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, May 30, 2024, and April 2, 2025 SIP submittals that include SIP revisions needed to fully address the disapproved RACT 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 major sources and highway sanctions under CAA section 179 that are associated with the December 8, 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 major sources and highway sanctions shall be deferred. If not deferred, the offset sanction for permitting of new and modified major sources would apply on July 8, 2025 for the December 8, 2023 RACT disapproval in the DMNFR nonattainment area. Additionally, highway sanctions would apply on January 8, 2026, for the disapproval.

Based on the proposed approval of portions of Colorado’s June 26, 2023, May 23, 2024, May 30, 2024, and April 2, 2025 SIP submittals, EPA is making an interim final determination that Colorado has made revisions that adequately address the EPA’s disapproval relating to RACT. 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 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 RACT requirement for the 2008 ozone NAAQS. This is accomplished by the State’s submission of revised regulations that establish RACT, with supporting analysis, for landfill/biogas fired RICE, refinery fuel process heaters, and a cold rolling mill. 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 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

¹ Final Rule, Air Plan Disapproval; Colorado; RACT Elements for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area; 88 FR 85511 (Dec. 8, 2023).

² 5 U.S.C. 551 *et seq.*

³ See 5 U.S.C. 553(b)–(d).

⁴ 5 U.S.C. 553(b)(B).

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, May 30, 2024, and April 2, 2025 SIP submittals that correct the deficiencies identified in our December 8, 2023 disapproval action with respect to the adequacy of Colorado’s RACT determinations 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 DMNFR area on the later of: (1) the date the EPA issues such a proposed or final disapproval; or (2) July 8, 2025 (*i.e.* 18 months 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);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- 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 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 June 18, 2025.

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 August 18, 2025. 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: June 2, 2025.

Cyrus M. Western,
Regional Administrator, Region 8.

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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).

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 December 8, 2023, which was effective on January 8, 2024.

⁸ See *Id.*