Submitted via www.regulations.gov

June 13, 2022

The Honorable Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

ATTN: Docket ID Nos. EPA-HQ-OAR-2021-0741 and EPA–HQ–OAR–2021–0742

RE: Concerned Stakeholders' Comments on the Proposed Reclassification of Ozone Nonattainment Areas Under the 2008 and 2015 National Ambient Air Quality Standards

Dear Administrator Regan:

The Denver Metro Chamber of Commerce (Chamber), and like-minded organizations named in this letter, respectfully submit the attached comments on the Environmental Protection Agency's (EPA) proposed Determinations of Attainment by the Attainment Date, Extension of the Attainment Date, and Reclassification of Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) (Docket ID No. EPA-HQ-OAR-2021-0741) and the EPA's corresponding proposal for the 2015 NAAQS ((Docket ID No. EPA-HQ-OAR-2021-0742).

The Chamber and the organizations joining in this comment letter are dedicated to operating cleanly and sustainably. We are committed to implementing effective, pragmatic, and business-friendly policies to improve air quality, protect public health, and deliver the quality of life Coloradans deserve. We value public health and clean air for our member companies, their employees, and their customers who live here. We ask the EPA and Colorado to treat us as partners in Colorado's efforts to improve ozone.

Air pollution is a significant public health issue. It causes numerous conditions that impact population health and increases demand for chronic and acute care management, including but not limited to asthma, bronchiolitis, lung cancer, cardiovascular events, and central nervous system disfunctions. Ozone exacerbates these health conditions. Air pollution can also threaten access to health care, as poor air conditions can create surges in demand that jeopardize hospitals' ability to treat all those in need of care.

At the same time, air pollution is a complex issue with no easy answers. Prescriptive one-size-fits-all federal regulations have adverse effects on the community and are less effective than state and local

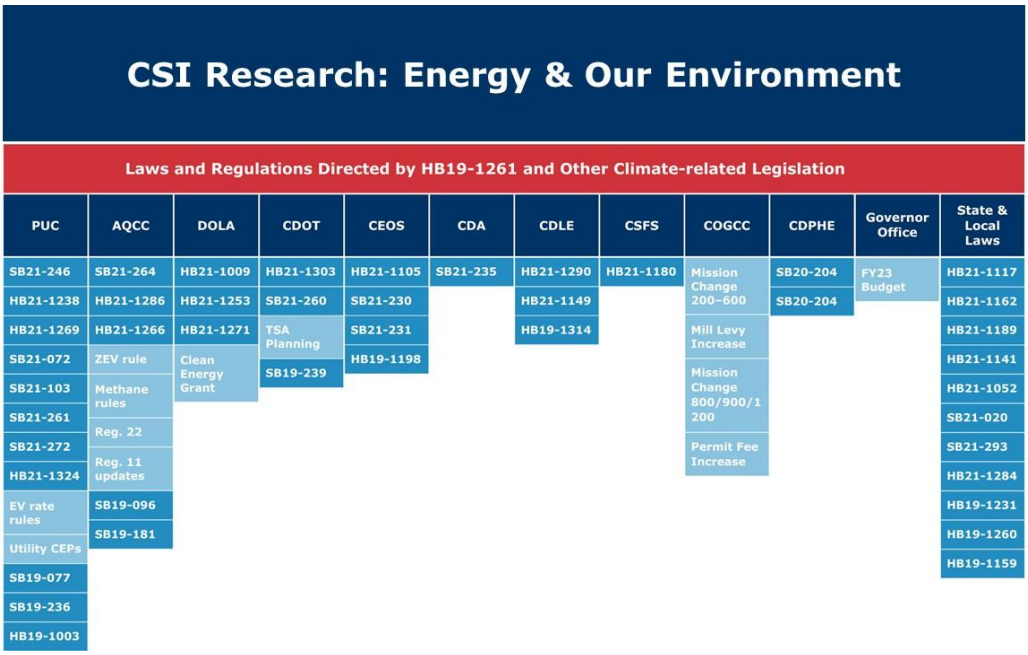
initiatives that are tailored to solve local concerns. Overly burdensome regulations can prevent our region and our people from reaching their full potential and can even create other limits to accessing health care that perversely jeopardize public health. Strong economies and high-paying jobs generate the revenues that enable states to improve the environment and cut ozone.

1. Summary of EPA's Proposed Action and Air Quality Regulation in Colorado

Colorado has two overlapping ozone nonattainment areas. The Denver Metro/North Front Range (DMNFR) was designated as a Marginal nonattainment area under the 2008 ozone NAAQS of 75 parts per billion (ppb), effective July 20, 2012. The DMNFR has since been reclassified as a Moderate and then a Serious nonattainment area. EPA now proposes to reclassify or "bump up" the DMNFR to Severe status under the 2008 NAAQS.

The DMNFR was separately designated as a Marginal nonattainment area under the 2015 ozone NAAQS of 70 ppb, effective Aug. 3, 2018. The EPA subsequently expanded the DMNFR boundary to include all of Weld County, Colorado, for purposes of the 2015 NAAQS. The boundary expansion is subject to pending litigation. EPA now proposes to reclassify the original DMNFR, plus northern Weld County, as a Moderate nonattainment area under the 2015 ozone NAAQS.

Federal ozone standards and ozone nonattainment areas are only one component of air quality regulation in our state. Since 2019, the Colorado General Assembly has passed at least 45 statutes addressing energy, the environment, and air quality, as shown in the following graphic from the Common Sense Institute (CSI). Statutes are shown in blue by bill number and grouped by the state agency responsible for implementation. Significant agency rulemakings are shown in light blue.



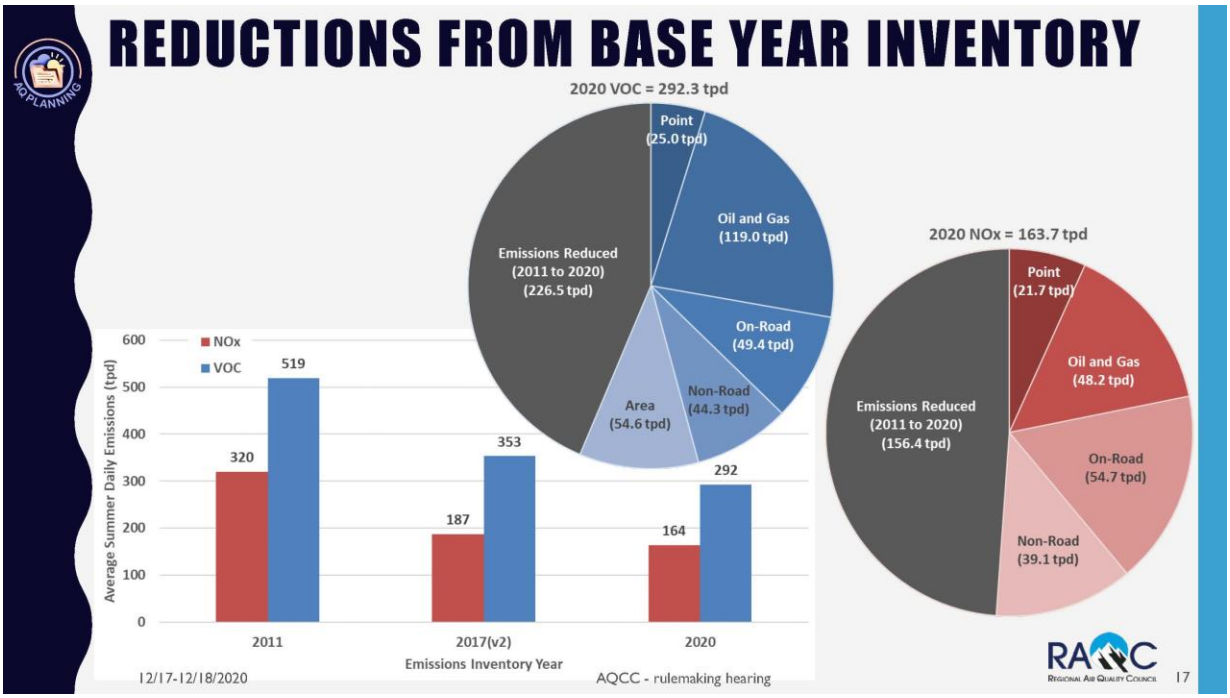
In addition, Colorado state agencies regulate air quality very aggressively. The state's Air Quality Control Commission (AQCC), the Colorado Department of Transportation (CDOT), Colorado Oil and Gas Conservation (COGCC), Public Utilities Commission (PUC), and other agencies are adopting regulations at breakneck speed. The state regulations target ozone precursors either directly or indirectly.

For example, Colorado has adopted California's Low Emissions Vehicle and Zero Emissions Vehicle standards for light-duty vehicles and plans to adopt standards for heavy-duty trucks. Colorado adopted transportation planning regulations for greenhouse gases (GHGs). Legislation passed in 2021 imposed road user charges on delivery and transportation network companies such as Uber and Lyft, along with gasoline and diesel fees to fund zero emission vehicle and infrastructure incentives. The state has numerous air quality regulations for electric utilities and oil and gas operators, and it is developing rules for natural gas utilities. The state adopted GHG rules for large industrial sources. The Colorado Energy Office and Air Pollution Control Division (APCD) are developing proposals to regulate GHG emissions related to larger buildings.

In short, Colorado is swimming in new regulations. The rules place substantial burdens on Colorado businesses and residents. State agencies are struggling to implement the volume of new rules. The impact of the new rules has grown so large that in 2022 the legislature passed House Bill 22-1351 to delay the implementation of the road user charges it enacted just the year before. Reclassifying the DMNFR would add to the regulatory overload, and many of the State Implementation Plan (SIP) strategies the state could adopt would duplicate the emission reductions the state is already pursuing, or that Colorado businesses are achieving on their own through voluntary measures.

2. <u>Colorado Has Cut Ozone Precursor Emissions Nearly in Half</u>

Emissions of ozone precursors in Colorado have decreased dramatically in recent years. The Regional Air Quality Council (RAQC) presented the following summary of ozone precursor emission trends to the AQCC in December 2020. The RAQC is expected to publish an updated inventory report this summer. As shown in the slide, volatile organic compound (VOC) emissions fell by 44% and oxides of nitrogen (NOx) emissions fell by 49% between 2011 and 2020.



*** RAQC Testimony, AQCC Regulation 3 & 7 Rulemaking Hearing (Dec. 17, 2020), slide 17**

3. The Ozone Bump-Up Will Have Significant Impacts on Coloradans

The proposed reclassifications or "bump-ups" will have significant impacts on all Coloradans residing in the DMNFR and Northern Weld County, including our members, but will not significantly improve ozone or air quality.

The regulatory burdens manifest in many ways. Millions of individual Coloradans will pay an extra 50 cents or more per gallon for the "reformulated gasoline" (RFG) required in Severe ozone areas. This will translate into an additional $800 million borne by Colorado residents and businesses. In 2018, The University of Denver conducted a study titled "Evaluation of Emissions Benefits of Federal Reformulated Gasoline versus Conventional Gasoline". This study states "since the beginning of the Federal RFG program, fuel properties have significantly changed for both CG and RFG resulting in fuels today that are similar in most properties, the one exception is RVP where CG is allowed a 1lb psi waiver for the addition of 10% ethanol. Beginning with the phase-in of Tier 3 fuels in 2017, the differences between the two fuels will decrease again and on- road vehicle emissions will continue to remain very low, and it is unlikely that differences in fuel properties between Federal RFG and CG any longer plays a significant role in these low emissions."

Colorado is part of the Rocky Mountain gas supply infrastructure, a region which is relatively isolated in terms of multiplicity of fuel supply sources compared to other regions. We have a limited number of refineries, with limited capacity of product pipelines that supply the market. The current pipeline system supplying the market operates at a very high utilization rate, especially during the summer nonattainment months, which are peak gasoline demand seasons. Only 40% of the fuel used in our state is produced in Colorado, with the remaining amount coming from other states where there would be no mandate to produce RFG. This fuel would need to be transported longer distances by rail or truck from suppliers in California or Texas, increasing both the cost of fuel and the emissions caused by transporting it. The Denver metro area already experiences fuel supply shortages when there is a disruption in the market. The bump-up to Severe promises to exacerbate this problem.

The burden of gasoline shortages and price spikes will fall primarily on front-line workers who are more likely to have jobs that require driving every day and may have longer commutes due to housing costs. Low-income communities are already struggling with gas prices. The national average real price for regular grade gasoline, adjusted for inflation, has already doubled from May 2020 ($2.11 per gallon) to May 2022 ($4.21 per gallon), according to the Energy Information Agency's Real Petroleum Price Viewer. We have seen $5/gallon gasoline before in other Severe or Extreme ozone areas, such as California, but these prices are not right for Colorado. With prices already high due to supply shortages, now is not the time to drive prices even higher.

The looming change to the major source permitting threshold will impact numerous sectors of the economy, including the construction industry, transportation, commercial and residential buildings, pharmaceutical and biopharmaceutical manufacturing, aerospace manufacturing, electric utilities, oil and gas, landfill methane capture operations, aluminum and glass recycling, and some agricultural operations. It has the potential to impact any businesses that need air permits for equipment that burns fuel on site, such as back-up power generators, heaters, and boilers. In some cases, the bump-up will make it harder to obtain air permits for hospitals, cloud servers and data facilities, universities, and large

hotels or convention centers. High-tech industries that Colorado should want to attract, such as electric vehicle manufacturing, may be deterred from locating here.

Air quality permits will take longer and cost more to obtain, hurting jobs and the economy. The bump-up to Severe will reduce the threshold at which sources of air emissions become major sources by half, from 50 tons per year (tpy) to 25 tpy of VOCs or NOx. Forcing businesses to obtain a major source air permit before they can construct or expand in the DMNFR creates barriers to investing here. Air permits are already difficult to get in Colorado. It routinely takes many months, if not longer, to obtain permits to construct minor sources, despite statutory deadlines to issue minor source permits within 90 or 135 days. Obtaining a permit to construct a new major source in Colorado's ozone nonattainment area is so daunting that, according to Colorado Air Pollution Control Division ("Division") staff, no one has ever submitted a permit application in the decade since the DMNFR was designated.

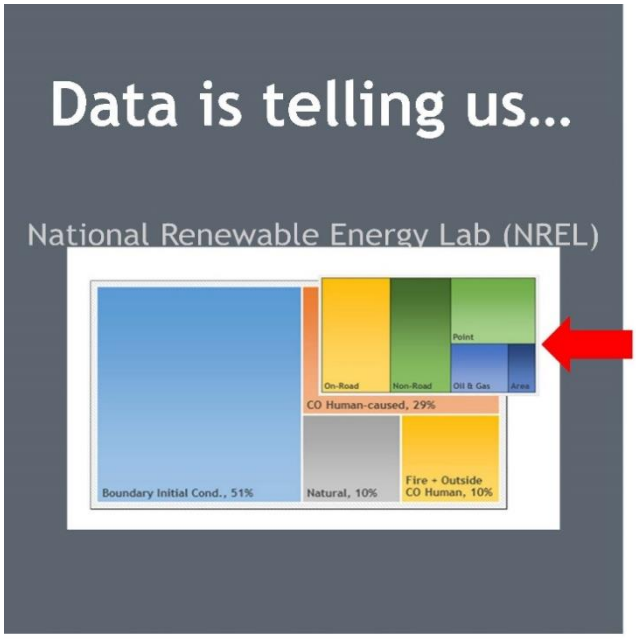
Ozone SIPs for Severe areas must impose enforceable transportation control strategies and transportation control measures to offset emissions increases from growth in vehicle miles traveled (VMT) or the number of vehicle trips in the area. State agencies have suggested "indirect source rules" that would also regulate emissions from vehicles. Coloradans and visitors do not want restrictions that make it harder to get to work, school, or our fabled mountains. In 2021, the Division proposed an Employee Trip Reduction Program (ETRP) to discourage Coloradans from driving to work. This idea was so unpopular that the state pulled its proposal. EPA should not mandate air quality measures that Colorado residents have so recently rejected.

The ozone SIP must also have reasonably available control measures ("RACM") and reasonably available control technologies ("RACT"). It may also lead to annual penalty fees of approximately $10,000 per ton of VOCs or NOx emitted in excess of a certain threshold, starting in 2028, if the area fails to timely attain the 2008 ozone NAAQS.

The cumulative impact of these SIP requirements will cost jobs and hit Coloradans directly in their pocketbooks, without achieving significant new emissions reductions.

4. <u>The Potential Benefits of the Ozone Bump-Up Do Not Justify Its Costs</u>

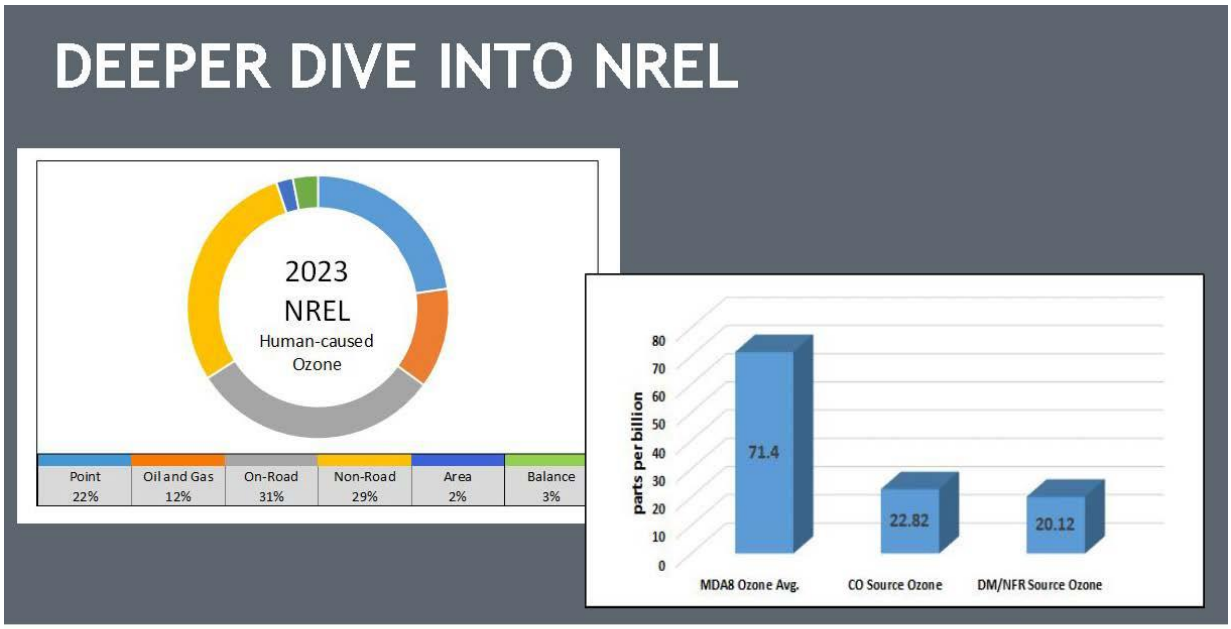
One might expect that such a far-reaching rule and expensive EPA action would at least promise large benefits to Colorado. Unfortunately, this is not the case. The rule would do little to improve ozone because most of our ozone is caused by emissions from other states, other countries, and naturally occurring or "biogenic" sources like pine trees. Colorado's RAQC conducted a local source apportionment analysis in 2021 that modeled ozone concentrations in the DMNFR and identified the responsible sources of emissions. The two graphics below, which were prepared by the Air Pollution Control Division, summarize the results for the ozone monitoring site at the National Renewable Energy Laboratory (NREL), where Colorado's worst ozone levels are projected to occur.



- Colorado's human-caused emissions are about ⅓ of emissions causing ozone at the monitors
  - Transportation/Mobile (On-road/Non-road)
  - Industrial/Commercial (O&G and Non-O&G Point)
  - More dispersed sources/activities - i.e. residential solvent use, lawn mowing, etc. (Area)

10

COLORADO
Air Pollution Control Division
Department of Public Health & Environment



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COLORADO
Department of Public Health & Environment

*** Colorado Air Pollution Control Division, "Ozone in Colorado's North Front Range," April 26, 2022, Public Listening Session, Slides 10-11.**

The data paint a clear picture. The first slide shows that for the NREL site, 71% of Colorado's ozone is outside of the state's control. The largest source, 51% (36 ppb) is from interstate and international transport or "boundary conditions." Naturally occurring emissions cause 10% (7 ppb), as do the combined category of fires and human-caused emissions from outside Colorado. Out of the 71.4 ppb ozone concentration projected for 2023, only 29% (21 ppb) is from in-state human-caused emissions.

The second slide breaks down the in-state human caused ozone contributions at the NREL site. 60% of the 21 ppb is from on-road and non-road vehicles, which are subject to federal regulations and generally cannot be regulated by the state. This means that Colorado has jurisdiction over approximately 8-9 ppb of the ozone at Colorado's highest monitoring site. If EPA reclassifies the DMNFR, Colorado will have very little leverage to improve ozone and will be penalized for something it has very little influence over.

5. Wildfires and Exceptional Events Are Responsible for Many of Colorado's High Ozone Days

Wildfires are tragic natural disasters that impact all Coloradans. Our member, partners and their employees and customers have experienced fire impacts first-hand. Our members and partners contribute to wildfire relief and help our neighbors repair or rebuild their homes and businesses after a fire.

These uncontrollable events have real impacts on ozone. The Severe ozone bump-up will not reduce the ozone impacts from wildfires because they are, by definition, uncontrollable events. On the days when wildfires impact Front Range ozone concentrations, tighter restrictions on Colorado businesses will not and cannot stop the smoke from causing a NAAQS exceedance or impacting public health.

We ask the EPA to evaluate the impacts of wildfire smoke on Colorado's ozone concentrations and to exclude smoke-influenced data from the data sets when determining whether the DMNFR attained the ozone NAAQS. EPA should exclude the DMNFR from the Proposed Rule to allow Governor Polis and CDPHE an opportunity to submit technical data regarding wildfires, stratospheric intrusions, and other uncontrollable events. Colorado is submitting exceptional event demonstrations for the Pikes Peak region and should do the same for the DMNFR.

6. International Transport is Responsible for Many of Colorado's High Ozone Days

The RAQC published a briefing paper in 2017 that discussed the impact of international emissions and Colorado's legal options. "Ozone Planning: Options Moving Forward with the 2008 Standard" (Sept. 1, 2017). As recognized in that briefing paper, and confirmed in subsequent EPA guidance, the Clean Air Act provides two mechanisms for responding to international ozone impacts. The first mechanism is forward-looking. If modeling projects that a state will not attain the ozone NAAQS by the attainment deadline, but the state would be able to demonstrate attainment "but for" the international ozone impacts, Clean Air Act Section 179B(a) allows EPA to approve the SIP. The second mechanism looks back. If air monitoring shows that an area did not attain the ozone NAAQS by the deadline but would have attained but for the impact of international emissions, Clean Air Act Section 179B(b) prevents the area from being reclassified as a consequence of failing to attain. In both cases, the state must continue to meet all other requirements applicable to ozone nonattainment areas. These provisions apply anywhere in the country, not just to border states.

The RAQC and its modeling contractor performed a preliminary technical analysis of ozone impacts in April 2017. That analysis found that about 75% of Colorado's ozone comes from outside Colorado; this result was similar to the results of the source apportionment analysis conducted in 2021. Unlike the 2021 study, in 2017 the RAQC's contractor estimated the impact of international emissions. The analysis concluded that if international anthropogenic emissions were removed from the model (known as "zero-out" modeling), ozone concentrations at the four worst monitoring sites would improve by

approximately 6-7 ppb. "Ozone Planning: Options Moving Forward with the 2008 Standard," p. 8. To our knowledge, Colorado has not conducted a more recent analysis of international emissions.

The international contribution is sizable and should not be ignored. For comparison, the RAQC's current modeling results project that ozone concentrations at NREL, the site with the highest ozone concentrations, will be 72 – 73 ppb in 2023. The projected value would attain the 2008 NAAQS but not the 2015 NAAQS. However, the 2 to 3 ppb exceedance projected at NREL is smaller than the 6-7 ppb of international impacts estimated by the zero-out modeling.

CREA hereby petitions the EPA to evaluate the impact of international emissions on Colorado's ozone concentrations. As with exceptional events, EPA should exclude the DMNFR from the Proposed Rule to allow the Governor to submit technical data regarding international ozone impacts.

Granting Colorado relief from exceptional events or from international emissions will not slow down Colorado's emission reduction initiatives. It will instead allow Colorado to focus on its aggressive state-level emission reduction strategies. The statutes and regulations adopted in Colorado over the last several years will have a substantial impact on greatly lowering emissions, but these programs require some time to be implemented and take effect. Recognizing the impact of exceptional events and international emissions will maintain local control over ozone planning so that Colorado can focus on local solutions that are more effective than federal mandates.

EPA and Colorado should take a pragmatic approach to reducing ozone that protects public health while using the tools Congress enacted to avoid the most detrimental impacts of NAAQS bump-ups. When the Clean Air Act will place burdens on Colorado that exceed the benefits of regulation, state leaders must not be afraid to request relief and EPA must not be afraid to grant it.

7. <u>EPA Should Not Reclassify the DMNFR Under Either the 2008 or 2015 NAAQS</u>

The EPA should not reclassify the DMNFR. Reclassification would impose substantial new burdens for very small benefits. Colorado is regulating air quality and ozone precursor emissions very aggressively, and the costs have adverse impacts on our people and our economy. There are few ozone strategies left that Colorado is not already pursuing. Colorado's ozone concentrations are driven primarily by emissions from other states and countries that we cannot control. The impacts of international emissions and wildfires are significant and should be recognized.

There are other federal actions that will reduce ozone in Colorado and nationwide, providing additional reasons not to reclassify the DMNFR. EPA recently announced a proposal to regulate emissions from gasoline storage and distribution sites (https://www.eenews.net/articles/epa-proposes-updating-gasoline-regs-slashing-emissions/). The proposed rule targets emissions from bulk gasoline storage terminals and the equipment used to load gas into tanker trucks for delivery to service stations. In addition, EPA in late March proposed new and more stringent emission standards for heavy-duty vehicles and engines starting in model year 2027. The proposed standards would significantly reduce emissions of smog- and soot-forming nitrogen oxides (NOx) from heavy-duty gasoline and diesel engines and set more stringent greenhouse gas (GHG) standards for certain commercial vehicle categories. Both of these rules should reduce emissions considerably within our state over the next several years. Adding additional regulations through a reclassification to Severe would create a substantial and unreasonable burden on the state and its citizens.

The EPA and Colorado should use incentives, not mandates, to improve air quality. Our member companies and their employees are dedicated to continuous improvement. A growing number of Colorado businesses have ESG goals to operate more sustainably with lower environmental impacts. The high cost of reducing emissions is frequently a barrier to operating sustainably, especially in competitive markets and inflationary periods where consumers are unlikely to pay more for the greener option. Smart incentives will enable businesses to invest in emissions reduction while remaining competitive so they can thrive.

Thank you for considering these comments. If you have any questions regarding these comments, please contact Adam Burg, Vice President of Government Affairs at Adam.Burg@DenverChamber.org.

Sincerely,

J.J. Ament, President and CEO
Denver Metro Chamber of Commerce

Partnering Organizations:
- Associated General Contractors of Colorado
- BOMA Colorado
- Colorado Association of Realtors
- Colorado Contractors Association
- Colorado Hospital Association
- Colorado Motor Carriers Association
- Colorado Petroleum Association
- Colorado Springs Chamber & EDC
- Colorado-Wyoming Petroleum Marketers Association
- NAIOP Colorado
- Rocky Mountain Mechanical Contractors Association

CC: KC Becker, Regional Administrator, EPA Region 8