



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R08-OAR-2017-0567; FRL-9979-64-Region 8]**

**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**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On May 31, 2017, the State of Colorado submitted State Implementation Plan (SIP) revisions related to attainment of the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) for the Denver Metro/North Front Range (DMNFR) Moderate nonattainment area by the applicable attainment date of July 20, 2018. The Environmental Protection Agency (EPA) is approving the majority of the submittal, as well as revisions made to Colorado's Reg. No. 7 in a May 5, 2013 SIP submission. The EPA is deferring action on portions of the submitted reasonably available control technology (RACT) rules. This action is being taken in accordance with the Clean Air Act (CAA).

**DATES:** Effective **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA-R08-OAR-2017-0567. All documents in the docket are listed on the <http://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 <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional available information.

**FOR FURTHER INFORMATION CONTACT:** Abby Fulton, (303) 312-6563,  
fulton.abby@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The DMNFR nonattainment area includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson Counties, and portions of Larimer and Weld Counties. *See* 40 CFR 81.306. The area was designated nonattainment for the 2008 ozone NAAQS effective July 20, 2012 (77 FR 30088, May 21, 2012) and reclassified as a Moderate ozone nonattainment area on May 4, 2016 (81 FR 26697; *see* 40 CFR 81.306). Moderate areas are required to attain the 2008 8-hour ozone NAAQS by no later than 6 years after the effective date of designation, which for the DMNFR nonattainment area is July 20, 2018. *See* 40 CFR 51.903.

On April 6, 2018, 83 FR 14807, the EPA proposed approval of certain revisions to Colorado’s SIP submitted to the EPA on May 5, 2013, and May 31, 2017. Specifically, we proposed approval of Colorado’s 2017 attainment demonstration for the 2008 8-hour ozone NAAQS. In addition, we proposed approval of the motor vehicle emissions budgets (MVEB) contained in the State’s 2017 submittal. We also proposed approval of all other aspects of the 2017 submittal, except for certain area source categories and major source RACT, which we will be acting on at a later date. We proposed approval of the revisions to Colorado’s Reg. 7 and 11, except for Sections X.E and XIX of Reg. 7, which we will be acting on at a later date. We proposed approval of the revisions to Colorado Reg. 7 Section XII from the State’s May 5, 2013

submittal.

The factual and legal background for this action is discussed in detail in our April 6, 2018 proposed approval. 83 FR 14807. The proposal provides a detailed description of the revisions and the rationale for the EPA's proposed actions.

## **II. Response to Comments**

We received nineteen comments during the public comment period. After reviewing the comments, the EPA has determined that sixteen of the comments are outside the scope of our proposed action or fail to identify any material issue necessitating a response. We received two comments supporting our proposal to approve the DMNFR moderate nonattainment area attainment demonstration and related revisions, and one adverse comment. Below is a summary of the material comments and the EPA's responses.

### *Comments from Colorado Department of Public Health and Environment:*

The Colorado Department of Public Health and Environment (CDPHE) stated that "Colorado supports EPA's proposal to approve the DMNFR moderate nonattainment area attainment demonstration and many of the related revisions." The State further requested that the EPA delay taking action on the combustion adjustment and tuning work practice requirements in Reg. 7, Section XVI.D, due to "Colorado's ongoing efforts to further establish RACT for combustion sources on a categorical basis." Colorado stated that it anticipates submitting to the EPA additional RACT standards for combustion equipment in Summer 2019, and requested that the EPA delay action on Reg. 7, Section XVI.D revisions from the May 31, 2017 submittal so that the Agency "can incorporate and approve Colorado's RACT standards for combustion equipment all at once."

*Response:* The Agency acknowledges the State's support for this action. We agree with

the request that we refrain from acting on Reg. 7, Section XVI.D of Colorado's May 31, 2017 submittal, which established RACT as a work practice for combustion equipment at major sources of nitrogen oxide (NO<sub>x</sub>) emissions. In our notice of proposed rulemaking, we proposed to approve all of Reg. 7, Section XVI, but explained that we would be acting on Colorado's RACT demonstration for major sources in a future rulemaking and identified provisions for which we were taking no action on at the time (*see* sections H and N of the proposed rulemaking). The State's desire to incorporate Section XVI.D into its anticipated combustion equipment RACT submission is reasonable, and because Colorado did not rely on any emission reductions from control requirements in Section XVI.D in its 2017 modeling analysis, we are able to act on this revision in a separate action. We, therefore, agree with the State's comment and will act on revisions to Reg. 7, XVI.D from the May 31, 2017 submittal at a later time.

*Comment from anonymous:*

The comment described the approval of the State's revised SIP as "a necessary step" that "will hold owners and operators more accountable for their actions," and cited several specific provisions as beneficial. The commenter urged future action on the changes made to Reg. 7, Sections X and section XIX, and also urged "every revision and action" to meet the ozone standard.

*Response:* The EPA agrees that the SIP provisions we are approving, which will be enforceable as a matter of federal law, are necessary steps to comply with the CAA and protect air quality. We are taking no action in this final rule on the State submissions concerning Reg. No. 7, Sections X.E. and XIX, but do intend to act on them in a later rulemaking. Further, we will continue our ongoing work to assist the State in its development of measures to improve air quality.

*Comments from the Center for Biological Diversity*

*Comment 1:*

The comment stated that the “EPA must disapprove the attainment designation [*sic*; rightly “demonstration”] because the N. Front Range nonattainment area did not attain by the attainment deadline” and that the “EPA must disapprove the attainment demonstration because it was demonstrable [*sic*] wrong.” The comment said that “EPA has used the excuse of ignoring ozone values if the comment period or decision is before the May 1 deadline for certifying data” and that the time the comment was submitted was after May 1. The comment also explained that “EPA uses the exceptional event provision as another excuse. However, in Table 1 [from the commenter], which is generated from data from EPA’s Air Quality System (AQS), we have excluded exceptional events even though Colorado’s claims of exceptional events are not valid.”

*Response:* We do not agree with the commenter’s argument that the EPA should disapprove the attainment demonstration because the area did not attain by the attainment deadline, or with the commenter’s assertions concerning exceptional events and the timing of the submission.

Colorado has satisfied the legal and regulatory criteria for approving attainment demonstration SIPs. An attainment demonstration uses photochemical grid modeling to show that SIP controls are sufficient to reduce predicted ambient ozone levels to a level at or below the standard, assuming identical meteorology in the baseline and future (modeled) years. As explained in section IV.D and E of the proposed rulemaking, to predict future ozone levels the modeled attainment demonstration uses a baseline design value derived from historical data (in this case 2009-2013), historical meteorological data from the baseline period, emission inventories representing the baseline design value period, and modeled reductions in emissions

based on SIP control measures. The attainment demonstration is not required to identically match actual monitored ozone levels for the future years described in the model.<sup>1</sup> Rather, it is intended to assess whether SIP controls are adequate to reduce ambient ozone to a level at or below the NAAQS by the attainment date, and such an assessment is based on modeling. The modeled attainment demonstration can be an approvable SIP element, even if actual monitored data do not show attainment.

Applying this standard, Colorado's attainment demonstration qualifies for EPA approval. As described in the 2008 Ozone Implementation Rule (80 FR 12292), "[t]o demonstrate attainment, the modeling results for the nonattainment area must predict that emissions reductions implemented by the beginning of the last full ozone season preceding the attainment date will result in ozone concentrations that meet the level of the standard" (80 FR 12270, March 6, 2015). We find the attainment demonstration submitted on May 31, 2017, adequate to meet this requirement.

The EPA acknowledges that 2014-2016 and 2015-2017 monitored design values in the Denver nonattainment area violate the 2008 ozone NAAQS, regardless of whether all data are used, or whether instead, potential exceptional event data (which have not been acted on by the EPA) are removed. But under the CAA, a determination of whether an area has failed to attain is a separate action entirely from the review of an attainment demonstration SIP. The EPA's SIP review occurs under CAA section 110(k), 42 U.S.C. 7410(k), while a determination of whether an area has failed to attain is governed by CAA section 181(b)(2), 42 U.S.C. 7511(b)(2). Under section 181(b)(2), the EPA must determine whether an ozone nonattainment area has attained the

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<sup>1</sup> As noted above, attainment demonstration modeling assumes that the future meteorology will be identical to that in the baseline period, but year-to-year variability in meteorology means that actual measurements of ozone in future modeled years cannot match that predicted by models. In addition, monitoring data may not always accurately reflect conditions in the area, such as during times of exceptional events.

applicable NAAQS “[w]ithin 6 months *following* the applicable attainment date (including any extension thereof).” (Emphasis added.) Here, the applicable attainment date is still in the future: July 20, 2018. After that date, the EPA will analyze the pertinent information and determine whether the DMNFR nonattainment area has attained the NAAQS by the applicable attainment date in accordance with section 181(b)(2). In the event that the EPA determines that the area failed to attain based on certified air quality data, the DMNFR nonattainment area may be reclassified to Serious by operation of law, and would then be subject to a number of Serious area attainment planning and control requirements, including developing and submitting a new attainment demonstration.

In addition, it is possible that Colorado will request and receive an extension of the attainment date if that is required, as is envisioned in section 181(b)(2). The CAA allows for up to two attainment date extensions, if the fourth maximum 8-hour average ozone concentration in the attainment year (2017 in this case) is below the level of the standard.<sup>2</sup> Thus, a nonattainment area may be able to attain the NAAQS by the extended attainment date, even if the measured design value for an area does not meet the NAAQS at the end of the original attainment year, if the area is eligible for and is granted an attainment date extension. The original attainment date has not yet passed, and it is possible that the attainment date will be extended per section 181(b)(2). As previously noted, the Colorado SIP submission satisfies the requirements for a modeled demonstration that the area will meet the standard in the attainment year.

*Comment 2:*

The commenter also criticized EPA’s approach to calculating design values for using figures that are “truncated rather than rounded.”

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<sup>2</sup> See CAA section 181(b)(2)(A), 42 U.S.C. 7511(b)(2)(A), the EPA’s implementing regulations at 40 CFR 51.1103, and 2008 Ozone Implementation Rule (80 FR 12292).

*Response:* Rules for calculating monitored ozone design values for the 2008 ozone NAAQS are in 40 CFR part 50, appendix P. Section 2.1 of appendix P requires that hourly average ozone be truncated to the third decimal place (0.001 ppm), as shall 8-hour averages compiled from the individual 1-hour averages. Section 2.2 of appendix P then requires that 3-year averages of annual fourth highest 8-hour averages also be truncated to the third decimal place. The truncation is thus in compliance with the procedure required by the regulations.

### **III. Final Action**

We are approving the SIP submittal from the State of Colorado for the DMNFR ozone nonattainment area submitted on May 31, 2017. Specifically, we are approving the following:

- Attainment demonstration with weight of evidence analysis for the 2008 ozone NAAQS;
- Base and future year emissions inventories;
- RFP demonstration;
- Demonstration of RACT for Volatile Organic Compounds (VOC) Control Technique Guidelines (CTG) sources (except for the following CTG source categories as to which we are not taking any action at this time: Metal Furniture Coatings, 2007; Miscellaneous Metal Products Coatings, 2008; Wood Furniture Manufacturing Operations, 1996; Industrial Cleaning Solvents, 2006; Aerospace, 1997; and Oil and Natural Gas Industry, 2016.);
- Demonstration of RACM implementation;
- Motor vehicle inspection and maintenance program revisions in Colorado's Reg. No. 11;
- NNSR program;
- Contingency measures plan;
- MVEBs; and

- Revisions to Colorado's Reg. No. 7 (except for revisions to Reg. No. 7, Section X pertaining to VOC controls of industrial cleaning solvents, Section XVI.D revisions pertaining to RACT standards for combustion equipment, and Section XIX revisions pertaining to RACT requirements for major sources as to which we are not taking any action).

We are also approving SIP revisions to Reg. No. 7 submitted by the State on May 13, 2013, except for provisions that have been superseded by later submissions, for which we are not taking any action. We are approving these actions in accordance with section 110, 42 U.S.C. 7410, and part D of the CAA.

#### **IV. Incorporation by Reference**

In this rule, 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 Reg. No. 11 pertaining to regulation of the State's motor vehicle emissions inspection program and Colorado Reg. No.7 pertaining to regulation of sources of VOC and NO<sub>x</sub> emissions as discussed in section IV., J. Motor Vehicle Inspection and Maintenance Program (I/M) Program and N. SIP Control Measures (except we are not acting on Reg. 7, Sections, X, XVI.D, and XIX in this action) of this preamble. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://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 SIP, 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.<sup>3</sup>

## V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action, because SIP approvals are exempted 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 (Public Law 104-4);

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<sup>3</sup> 62 FR 27968 (May 22, 1997).

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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 Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP does not 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. In those areas of Indian country, 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States

prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 CAA 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 20, 2018.

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Douglas Benevento,  
Regional Administrator,  
Region 8.

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 § 52.320:

a. The table in paragraph (c) is amended by:

i. Revising table entries “I,” “II,” “VI,” “VII,” “VIII,” “IX,” “XII,” and “XVI,” under the centered heading “5 CCR 1001-09, Regulation Number 7, Control of Ozone Via Ozone Precursors (Emissions of Volatile Organic Compounds and Nitrogen Oxides).”

ii. Revising table entry “II” and adding table entry “V” in numerical order under the centered heading “5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part A, General Provisions, Area of Applicability, Schedules for Obtaining Certification of Emissions Control, Definitions, Exemptions, and Clean Screening/Remote Sensing.”

b. The table in paragraph (e) is amended by adding the entry “2008 Ozone Moderate Area Attainment Plan” after the last entry under the heading “Denver Metropolitan Area.”

The revisions and additions read as follows:

**§52.320 Identification of plan.**

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(c) \* \* \*

Title	State effective date	EPA effective date	Final rule/citation date	Comments
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5 CCR 1001-09, Regulation Number 7, Control of Ozone Via Ozone Precursors (Emissions of Volatile Organic Compounds and Nitrogen Oxides)				
I. Applicability	1/14/2017	[Insert date 30 days after date of publication in the Federal Register].	[Insert Federal Register citation], [Insert Federal Register date of publication]	Previous SIP approval 08/05/11 except for I.A.1.b, I.B.1.b, I.B.2.b, and I.B.2.d; nonsubstantive changes to I.A.1.a and I.A.1.c. approved [Insert Federal Register date of publication]
II. General Provisions	1/14/2017	[Insert date 30 days after date of publication in the Federal Register].	[Insert Federal Register citation], [Insert Federal Register date of publication]	Previous SIP approval 08/05/11 except for II.A.12, II.C.1, and the repeal of previously approved II.D; nonsubstantive changes to II.D approved [Insert Federal Register date of publication]
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VI. Storage and Transfer of Petroleum Liquid	1/14/2017	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert Federal Register date of publication]	Previous SIP approval 08/05/11; nonsubstantive changes to VI.B.2.a.(iii)(B) approved [Insert Federal Register date of publication].
VII. Crude Oil	1/14/2017	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert Federal Register date of publication]	Previous SIP approval 08/05/11; nonsubstantive changes to VII.C [Insert Federal Register date of publication].
VIII. Petroleum Processing and Refining	1/14/2017	[Insert date 30 days after date of	[Insert Federal Register citation],	Previous SIP approval 08/05/11; nonsubstantive

		<b>publication in the Federal Register]</b>	[Insert <b>Federal Register</b> date of publication]	changes to VIII.C.4.a.(i)(A)(6) [Insert <b>Federal Register</b> date of publication].
IX. Surface Coating Operations	1/14/2017	[Insert date 30 days after date of publication in the Federal Register]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	Previous SIP approval 08/05/11; nonsubstantive changes to IX.A.3.c., IX.A.5.a.-d., and IX.A.12.a. [Insert <b>Federal Register</b> date of publication].
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XII. Volatile Organic Compound Emissions From Oil and Gas Operations	1/14/2017	[Insert date 30 days after date of publication in the Federal Register]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	Previous SIP approval 02/13/08; substantive changes to Section XII; state-only provisions excluded [Insert <b>Federal Register</b> date of publication].
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XVI. Control of Emissions from Stationary and Portable Engines in the 8-Hour Ozone Control Area	2/15/2013, 1/14/2017	[Insert date 30 days after date of publication in the Federal Register]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	Previous SIP approval 08/19/05; nonsubstantive changes to Sections XVI.A.-C. [Insert <b>Federal Register</b> date of publication].
* * * * *	* *			
5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part A, General Provisions, Area of Applicability, Schedules for Obtaining Certification of Emissions Control, Definitions, Exemptions, and Clean Screening/Remote Sensing				
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II. Definitions	1/14/2017	[Insert date 30 days from date of publication in the Federal Register].	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	

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V. Expansion of the Enhanced Emissions Program to the North Front Range Area	1/14/2017	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert Federal Register date of publication]	
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(e) \* \* \*

Title	State effective date	EPA effective date	Final rule/citation date	Comments
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<b>Maintenance Plans</b>				
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<b>Denver Metropolitan Area</b>				
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2008 Ozone Moderate Area Attainment Plan	1/14/2017	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert Federal Register date of publication]	Except RACT for Metal Furniture Coatings, Miscellaneous Metal Products Coatings, Wood Furniture Manufacturing Operations, Industrial Cleaning Solvents, Aerospace, Oil and Natural Gas Industry, and major source RACT.
* * * * *				