List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0713 to read as follows:

§ 165.T07–0713 Safety Zone; Apache Pier Labor Day Weekend Fireworks Display, Atlantic Ocean, Myrtle Beach, SC.

(a) *Regulated area.* The following regulated area is a safety zone: All waters of the Atlantic Ocean in the vicinity of Apache Pier within a 1000 foot radius from position 33°45′42″ N, 78°46′48″ W. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletin, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective date and enforcement period.* This rule is effective from 9 p.m. on September 3, 2011 through 10:15 p.m. on September 4, 2011. This rule will be enforced from 9 p.m. until 10:15 p.m. on September 3, 2011. If the event is postponed due to inclement weather, then this rule will be enforced from 9 p.m. until 10:15 p.m. on September 4, 2011.

Dated: July 22, 2011.

M.F. White,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2011–19857 Filed 8–4–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0285; FRL–9276–8]

Approval and Promulgation of State Implementation Plans; State of Colorado; Attainment Demonstration for the 1997 8-Hour Ozone Standard, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving revisions to Colorado's State Implementation Plan (SIP). On June 18, 2009, Colorado submitted proposed SIP revisions intended to ensure attainment of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in the Denver Metro Area/North Front Range (DMA/NFR) nonattainment area by November 20, 2010. The June 18, 2009 submittal consisted of an ozone attainment plan, which included emission inventories, a modeled attainment demonstration using photochemical grid modeling, a weight of evidence analysis, and 2010 motor vehicle emissions budgets for transportation conformity. The submittal also included revisions to Colorado Regulation Numbers 3 and 7 and to Colorado's Ambient Air Quality Standards Regulation. On October 7, 2010, Colorado submitted revised photochemical modeling results to us for the DMA/NFR ozone SIP. The revised modeling corrected the latitude/longitude locations of certain point sources but still projected attainment of the 1997 ozone NAAQS. EPA is approving the attainment demonstration, the rest of the ozone attainment plan, with limited exceptions, and the revisions to Colorado Regulation Number 3, parts A and B. EPA is approving portions of the revisions to Colorado Regulation Number 7 and disapproving other portions. EPA is not acting on Colorado Regulation Number 3, part C, and Colorado's Ambient Air Quality Standards Regulation as Colorado withdrew these submissions on September 10, 2010. EPA is taking these actions pursuant to section 110 and part D of the Clean Air Act (CAA) and EPA's regulations.

DATES: *Effective Date:* This final rule is effective September 6, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2010–0285. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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 either electronically through *http://www.regulations.gov,* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott Jackson, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6107, *jackson.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Colorado* mean the State of Colorado, unless the context indicates otherwise.

(v) The initials *OAP* mean or refer to Colorado's 8-Hour Ozone Attainment Plan, which Colorado submitted on June 18, 2009.

Table of Contents

I. Background

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm) (62 FR 38855). Ozone is formed from the photochemical reaction of nitrogen oxides (NO_X) with volatile organic compounds (VOCs). Under EPA regulations (40 CFR part 50, Appendix I), the 1997 0.08 ppm 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient ozone concentrations is less than or equal to 0.08 ppm. Forty CFR part 50, Appendix I, section 2.3, directs that the third decimal place of the computed 3-year average be rounded, with values equal to or greater than 0.005 rounding up. Thus, under our regulations, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is considered to be greater than 0.08 ppm and a violation of the standard.

On April 30, 2004, we designated areas as attaining or not attaining the 1997 8-hour ozone NAAQS. As part of that rule, we deferred the effective date of nonattainment designations for multiple areas of the country, including the DMA/NFR area. These areas, which were called Early Action Compact (EAC) areas, agreed to follow a program to achieve early reductions of emissions in order to attain the 1997 8-hour standard no later than December 31, 2007 (69 FR 23857). Because the DMA/NFR area violated the 1997 8-hour standard based on air quality data from 2005–2007, the nonattainment designation for the area became effective on November 20, 2007. The DMA/NFR nonattainment area includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties, and portions of Larimer and Weld Counties (40 CFR 81.306).

Our regulations addressing EAC areas that failed to attain the 1997 8-hour ozone standard by December 31, 2007 required that Colorado submit an attainment demonstration SIP for the 1997 8-hour standard (40 CFR 81.300(e)(3)(ii)(D)). Colorado submitted its attainment demonstration SIP for the DMA/NFR area on June 18, 2009 as part of a larger SIP submission. This submittal consisted of the following parts:

- 8-Hour Ozone Attainment Plan (OAP), which includes monitoring information, emission inventories, a modeled attainment demonstration using photochemical grid modeling, a weight of evidence analysis, and 2010 motor vehicle emissions budgets (MVEBs) for transportation conformity.
- Revisions to Regulation Number 3, Parts A, B, and C.
- Revisions to Regulation Number 7.[1]
- Revisions to Colorado's Ambient Air Quality Standards Regulation.

On July 21, 2010 (75 FR 42346), we published our proposed action regarding Colorado's revisions. We proposed to approve Colorado's 2010 attainment demonstration for the 1997 8-hour ozone NAAQS, the motor vehicle emissions budgets contained in the OAP, and all other aspects of the OAP except the last paragraph on page IV–1 and the first paragraph on page IV–2, the words ''federally enforceable'' in the second to last paragraph on page V–6, and the reference to Attachment A in the Table of Contents and on page IV–3.

We proposed to approve the revisions to Colorado Regulation Number 3, parts A and B. We proposed to disapprove the revisions to Colorado Regulation Number 3, part C.

We proposed to approve the following portions of the revisions to Colorado Regulation Number 7:

- Revisions to Sections I through XI, except for Colorado's repeal of Section II.D.
- Revisions to Sections XIII through XVI.

We proposed to disapprove the following portions of the revisions to Colorado Regulation Number 7:

- Colorado's proposed repeal of Section II.D.
- Revisions to Section XII.

We proposed to disapprove the revisions to Colorado's Ambient Air Quality Standards Regulation.

In our proposed action, we fully explained the bases for our proposed approvals and disapprovals. See 75 FR 42351 (July 21, 2010). We received one letter commenting on our proposed rule.

On September 10, 2010, Colorado withdrew from our consideration the proposed revisions to Regulation Number 3, Part C, and Colorado's Ambient Air Quality Standards Regulation. Consequently, we are not taking final action on the proposed disapproval of Regulation Number 3, Part C, and Colorado's Ambient Air Quality Standards Regulation.

In September 2010, Colorado discovered that its 2008 photochemical grid modeling for the OAP contained inaccurate coordinates for some point sources. Colorado re-ran the model with the correct coordinates and submitted the revised modeling results to us in October 2010.

On December 17, 2010 (75 FR 78950), we published a notice in the **Federal Register** in which we announced the availability of Colorado's revised modeling and provided an opportunity for public comment through January 18, 2011, including comment on how the revised modeling might affect our determinations in our July 21, 2010 proposed rulemaking. As we explained in our December 17, 2010 notice, the revised modeling predicted design values for 2010 that remained below the 85.0 ppb ozone NAAQS; for the SIP's 2010 base case, the maximum projected design values were found at the Rocky Flats North and Fort Collins West monitoring sites—84.7 ppb ozone at both locations. This is 0.2 ppb lower than Colorado's 2008 modeling projected using incorrect point source locations. We concluded that the revised modeling supported the conclusions that we proposed in July 2010 regarding the 2008 modeling. See 75 FR 78952. We received no comments in response to our December 17, 2010 notice.

II. Response to Comments

We received one letter from WildEarth Guardians (WEG) commenting on our July 2010 proposed action. In this section EPA responds to the significant adverse comments made by WEG. We have carefully considered the comments, and nothing in them has caused us to change our action from what we proposed.

Comment No. 1—WEG asserts that EPA gave Colorado a ''major break'' by deferring the nonattainment designation for the DMA/NFR area under EPA's EAC program. Instead of having to attain in 2007, Colorado got to defer the attainment date until 2010. According to WEG, EPA allowed the State to delay clearing the air and avoid more stringent clean up requirements.

EPA Response—WEG's comments regarding our past deferral of the nonattainment designation are not timely in the context of this rulemaking action because EPA took final action deferring the effective date of the nonattainment designation in 2006 (71 FR 69022 (November 29, 2006)). While WEG challenged EPA's 2006 deferral of

[1] As we indicated in our proposed rulemaking (75 FR 42353), we are treating provisions in Regulation No. 7 that Colorado designated as ''State Only'' as not having been submitted to us for approval, and we are not acting on those provisions.

the nonattainment designation for the DMA/NFR area, WEG agreed to settle that matter. One element of the settlement agreement, as modified, calls for EPA to act on Colorado's SIP submission by February 28, 2011, and we are meeting that obligation through this action. WEG may not challenge this action based on EPA's prior deferral of the nonattainment designation for the DMA/NFR area; this action solely concerns the adequacy of Colorado's SIP submission. We note, however, that we disagree with WEG's claim that the deferral of the effective date allowed the area to delay cleaning the air. Colorado previously submitted SIP control measures, under EPA's regulations for EAC areas, that achieved reductions of ozone precursors before such reductions were required under the CAA.

Comment No. 2—WEG indicates that it supports aspects of EPA's proposal, including EPA's proposed disapproval of certain revisions to Regulation Number 7.

EPA Response—We acknowledge WEG's support for aspects of our proposal.

Comment No. 3—WEG asserts that EPA's proposed approval of Colorado's attainment demonstration overlooked key modeling information. Specifically, WEG alleges that neither the baseline modeling nor the control strategy modeling demonstrate attainment. WEG's assertion centers on the baseline modeling for an area west of Fort Collins that models a violation of the NAAQS and Colorado's statement that such a violation ''does not seem implausible.'' WEG's position is that EPA cannot approve the attainment demonstration as it overlooked key information, or at least failed to explain why the modeled violations do not matter in the context of the proposed attainment demonstration.

EPA Response—EPA disagrees with the commenter's characterization of EPA's analysis and the commenter's interpretation of the modeling information.

Colorado's attainment demonstration is consistent with EPA's modeling guidance. (See ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ and Regional Haze,'' EPA–454/B–07–002, April 2007 (''2007 modeling guidance'').) The 2007 modeling guidance describes the modeled attainment test for the 8-hour ozone standard as an exercise in which an air quality model is used to simulate current and future air quality. The guidance recommends that model estimates be used in a ''relative'' rather than ''absolute'' sense. Specifically, the analysis focuses on the ratio of the model's future to current (baseline) predictions *near ambient air quality monitors.* EPA refers to these ratios as ''relative response factors.'' Future ozone concentrations are estimated at existing monitoring sites by multiplying the relative response factor for locations ''near'' each monitor by the observation-based, monitor-specific, ''baseline'' design value. The resulting predicted future ozone concentrations are then compared to the NAAQS. (See 2007 modeling guidance, section 2.1, page 15; section 3.0, pages 20–28; section 4.2, page 40.) Colorado followed this procedure in demonstrating that the DMA/NFR area will attain the ozone NAAQS.[2]

The use of observed concentrations as the base value in the attainment test reduces problems in interpreting model results. In the relative attainment test, observed data is used to define the target concentration. This has the effect of anchoring the future concentrations to a ''real'' ambient value. Although good model performance remains a prerequisite for use of a model in an attainment demonstration, problems posed by less than ideal model performance on individual days are reduced through the use of this procedure.

EPA guidance also recommends an unmonitored area analysis (UAA) in attainment demonstrations. (See 2007 modeling guidance, section 3.4, pages 29–30.) The UAA uses a combination of model output and ambient data to identify areas that might exceed the NAAQS if a monitor were placed in the given location. In general, the UAA review is intended to ensure that a control strategy leads to reductions in ozone at other locations which could have baseline (and future) design values exceeding the NAAQS if a monitor were deployed there. It was this analysis in Colorado's attainment demonstration that indicated potential future concentrations above the level of the NAAQS in the elevated terrain areas west of Fort Collins.

The 2007 modeling guidance indicates that NAAQS violations in the UAA should be handled on a case-by-case basis. However, the guidance stresses that due to the lack of observation-based, measured data, the examination of ozone concentrations as part of the UAA is more uncertain than the monitor-based attainment test. As a result, the guidance recommends that the UAA be treated as a separate test from the monitor-based attainment test. While it is expected that States will implement additional emission controls to eliminate predicted violations of the monitor-based test, the same requirements may not be appropriate in unmonitored areas. The guidance recommends that it may be appropriate to deploy additional monitors in an area where the UAA indicates a potential future year violation. (See 2007 modeling guidance, section 3.4.3, page 32.)

The UAA submitted by Colorado shows potential ozone concentrations above the NAAQS in the elevated terrain area west of Fort Collins.[3] Historical ambient ozone monitoring data are sparse in the foothill and mountain areas west of the Front Range. The complex terrain has a strong influence on wind and pollutant transport patterns in the area and contributes to uncertainty in the model predictions. We have carefully considered the model's predicted concentrations west of the Fort Collins West monitor (FTCW). Given the inherent uncertainty associated with UAA and the uncertainty associated with modeling in this specific location, we conclude that it is not appropriate to insist on additional control measures at this time to address the modeled ozone concentrations west of FTCW. (See 2007 modeling guidance, section 3.4.3, page 33.) Other factors also support our decision.

First, in accordance with our guidance, Colorado installed an additional ozone monitor in the area west of FTCW to determine whether the model-predicted ozone concentrations are, in fact, valid. The special purpose monitor, located in Rist Canyon, began operation on May 14, 2009. The Rist Canyon monitoring station has collected data for two ozone seasons (approximately 20 months) since it began operating. The Rist Canyon monitoring station uses a Federal Equivalent Method (FEM) and follows the quality assurance requirements of 40 CFR part 58, Appendix A.

Ozone data collected at this monitoring station is eligible for comparison to the ozone NAAQS after the monitor has operated for more than 24 months per 40 CFR 58.30(c). Design values, however, are based on the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration (see 40 CFR part 50,

[2] As indicated above, Colorado's October 2010 revised modeling confirmed design values for 2010 below the NAAQS at all monitoring sites.

[3] The original 2008 modeling and the October 2010 revised modeling both predict a value above the NAAQS in 2010 in one grid cell west of the Fort Collins West monitor.

Appendix D). While the monitor has not operated for these periods, the data is informative. An analysis of the data shows the fourth highest daily maximum 8-hour average ozone concentration reading is 69 ppb for May through December of 2009 and 71 ppb for January through December 2010. This data indicates that the area west of FTCW is not currently being exposed to ozone concentrations above the 1997 8-hour ozone standard. Also, these values are lower than the fourth highest daily maximums—73 ppb and 75 ppb—for FTCW for 2009 and 2010.

Second, Colorado's UAA explains that the high design value of 86 ppb at FTCW was based on only two years (2006–2007) of monitoring data, not the normal three years. (See Appendix I of Colorado's technical support document, titled ''Final 2010 Ozone Attainment Demonstration Modeling for the Denver 8-Hour Ozone State Implementation Plan.'') At the time the SIP was prepared, three full years of data were not available because the monitor did not start operating until 2006. This high design value drove the high 2010 projected design values at FTCW and the unmonitored area values west of the monitor. When a third year of monitoring data is included (2008), the 2010 projected design value at FTCW is reduced from 86 ppb to 82 ppb. If Colorado's UAA had used the 82 ppb design value at FTCW instead of 86 ppb, no grid cells would have exceeded the 8-hour ozone NAAQS in the UAA.

Given that Colorado followed our 2007 modeling guidance and the supporting evidence discussed above, Colorado properly modeled attainment.

Comment No. 4—WEG asserts that there is no analysis showing that Regulation Number 7 imposes RACM/RACT as required by CAA section 172(c)(1). Regulation Number 7 does not impose RACT requirements for all sources of ozone precursors in the DMA/NFR area and does not impose controls for NO_X. RACT cannot mean no air pollution controls for certain sources like refineries or sources of NO_X. Regulation Number 7 is contrary to the CAA.

EPA Response—Our longstanding interpretation of CAA section 172(c)(1) is that it only requires implementation of control measures that contribute to attainment as expeditiously as practicable; measures that would not advance the attainment date need not be considered RACM/RACT. See, *e.g.,* 57 FR 13498, 13560 (April 16, 1992); 70 FR 71612, 71617, 71653–71654 (November 29, 2005). This interpretation has been upheld by the courts. See, *e.g., NRDC* v. *EPA,* 571 F.3d 1245, 1253 (DC Cir. 2009); *Sierra Club* v. *EPA,* 294 F.3d 155, 162 (DC Cir. 2002); *Sierra Club* v. *EPA,* 314 F.3d 735, 743–745 (5th Cir. 2002). As we noted in our proposed action (75 FR 42351), Colorado's modeling demonstrates attainment in 2010 based on existing SIP-approved control measures, including the measures in Regulation Number 7. Because the submission demonstrates attainment by November 2010, and it is already 2011, these SIP-approved measures represent all measures necessary to demonstrate attainment as expeditiously as practicable. At this point in time, additional control measures, whether for VOCs or for NO_X, would not advance the attainment date and are not needed to satisfy the requirements of CAA section 172(c)(1).[4] WEG has not demonstrated that the attainment demonstration is flawed. Additional controls on NO_X and controls in other parts of the nonattainment area may be desirable from WEG's perspective, but WEG has not demonstrated that such controls are necessary to demonstrate attainment as expeditiously as practicable.

Comment No. 5—WEG asserts that the requirements in Regulation Number 7, Sections II.C.1.c and II.C.1.d, are unenforceable because these sections defer solely to the discretion of Division staff the establishment of RACT limits at a later date. The proposed SIP revisions do not specify what RACT emission limits will be for each VOC source. In addition, Sections II.C.1.c and II.C.1.d fail to provide for appropriate public notice and involvement in the development and adoption of RACT requirements. EPA must ensure that facility-specific RACT emission limits are adopted through the SIP to ensure the enforceability of any RACT requirements and to ensure that Regulation 7 represents RACT consistent with the CAA.

EPA Response—The State designated Sections II.C.1.c and II.C.1.d ''State Only.'' As we indicated in our proposed action, our interpretation is that provisions designated ''State Only'' have not been submitted to us for approval. Instead, we interpret these provisions to have been submitted for informational purposes. See 75 FR 42353. We are not acting on Sections II.C.1.c and II.C.1.d in this action, and, thus, we consider these comments irrelevant to our action. Because we are not acting on Sections II.C.1.c and II.C.1.d, we are not incorporating them by reference into the Code of Federal Regulations. WEG has not indicated any way in which these state-only provisions affect the federally enforceable aspects of Regulation Number 7. As noted above, we have determined that the State has fully met the applicable RACT requirement in section 172(c)(1) and thus this State-only provision is not a necessary component of the attainment demonstration on which we are acting through this rule.

Comment No. 6—WEG asserts that Section II.C.2 also imposes unenforceable RACT requirements. WEG does not agree with EPA that Colorado's revisions to Section II.C are minor clerical changes. WEG asserts that the new cross-reference to Regulation Numbers 3 and 7 in Section II.C.2 is unclear.

EPA Response—In the current EPA-approved SIP, Section II.C.2 reads, ''All new sources shall utilize controls representing Reasonably Available Control Technology (RACT.)'' The State's revised language reads, ''All new sources shall utilize controls representing RACT, pursuant to Regulation Number 7 and Regulation Number 3, Part B, Section III.D., upon commencement of operation.'' [5]

We view the language change to Section II.C.2 as a minor clarifying change. The new reference to Regulation Number 7 is intended to indicate that new sources need to comply with any applicable RACT requirements specified in Regulation Number 7. As we indicated in our proposed action, Regulation Number 7 specifies emission limits for various industries and generic requirements.[6] These limits and requirements already apply to new sources (in addition to existing sources) (see Regulation Number 7, Section I.B.1.a); the added reference to

[4] As evidenced by the following language, we did evaluate this issue in our proposed action: ''Because Colorado's modeling demonstrates attainment in 2010 based on existing SIP-approved measures, and it is now 2010, such SIP-approved measures represent all measures necessary to demonstrate attainment as expeditiously as practicable as per section 172 of the CAA. Additional control measures would not advance the attainment date.'' 75 FR 42351.

[5] WEG mistakenly cites the language as referring to Regulation Number 3, part B, Section II.D.2.

[6] We note that we previously approved Regulation Number 7 requirements as meeting VOC RACT requirements for the 1-hour ozone standard. 60 FR 28055, May 30, 1995. The revisions we approved in that action were intended to address a variety of deficiencies that EPA had identified in Regulation Number 7, including enforceability concerns. In other words, the requirements were established through the SIP revision process to ensure enforceability, and the public had a chance to comment on our rulemaking at that time. Regulation Number 7 contains requirements and limits for a wide range of sources and source categories, based on the Control Techniques Guidelines documents (CTGs) EPA had issued when Colorado adopted the various Regulation Number 7 requirements in 1989 and 1990.

Regulation Number 7 simply clarifies where (*i.e.,* in Regulation Number 7) RACT requirements are specified.

The reference to Regulation Number 3, part B, Section III.D, merely clarifies that new sources need to comply with the permitting requirements in Colorado's ''Construction Permit Review Requirements.'' [7] This revision does not alter the status quo; new sources are required to get permits under Reg. 3 irrespective of the language of Section II.C.2 of Regulation Number 7. Additionally, Colorado has historically used its permit process to establish VOC ''RACT'' limits for new sources covered by Section II.C.2 for those limited cases in which the other sections of Regulation Number 7 do not specify limits or requirements.[8] Thus, we continue to view the change to Section II.C.2 as a minor clerical change.

Finally, the revised rule specifies that the new source must comply with RACT from commencement of operation, as opposed to some later date. This merely reiterates the requirement that is already specified by existing Section I.B.1.a.

WEG's comments reflect a concern about Section II.C.2's alleged deferral of the establishment of RACT limits to the State's permitting process. Our view, however, is that Section II.C.2's requirements are actually surplus to necessary RACT requirements under CAA section 172(c)(1). This is because Regulation Number 7's various source-category-specific VOC limits and requirements apply to sources regardless of Section II.C.2's requirements. Thus, for sources subject to these source-category-specific limits and requirements, Section II.C.2 does not defer the establishment of controls to the State's permitting process. Additionally, as indicated above, we have determined that such limits and requirements, along with other SIP control measures, contribute to attainment as expeditiously as practicable, thus satisfying RACM/RACT under CAA section 172(c)(1). Accordingly, the imposition, pursuant to Section II.C.2, of VOC controls on new sources beyond those contained in the other sections of Regulation Number 7, while potentially beneficial, is not necessary to satisfy RACT requirements under CAA section 172(c)(1), the State's use of the term ''RACT'' in Section II.C.2 notwithstanding.[9]

Comment No. 7—WEG asserts that the SIP submission fails to comply with applicable Part D, Subpart 1 and 2 requirements under the CAA. In particular, section 172(c) requires states to enact RACM in their ozone nonattainment SIPs, to the extent more specific RACM requirements are not set forth under Subpart 2. Section 181 requires that marginal nonattainment SIPs meet the requirements of sections 181 and 182 as well as 172. It does not appear as if EPA made any assessment whether Colorado's submission complies with Subpart 1 and 2 requirements. WEG is particularly concerned that the SIP doesn't ensure RACT for NO_X emissions or that RACT corrections are made in areas of the DMA/NFR nonattainment area that were not originally part of the Denver Metro 1-hour ozone nonattainment area. Instead of requiring RACM/RACT, the proposed SIP only focuses on the less stringent requirements for ozone nonattainment areas. The proposed SIP admits that RACM is one of the core elements for an attainment plan but goes on to say that RACT is not required to be applied.

EPA Response—EPA's regulation placing certain areas only under the planning provisions of CAA title I, part D, subpart 1 was vacated by the DC Circuit in *South Coast Air Quality Management District, et al.* v . *EPA,* 472 F.3d 882 (DC Cir. 2006) on the basis that it was unreasonable. EPA has not yet finalized a rule in which it either places all of these areas in subpart 2 or in which it provides a reasonable explanation for placing all or some of the areas only under the planning provisions of subpart 1. However, unless and until EPA takes final action classifying the DMA/NFR area under subpart 2, it remains solely subject to the nonattainment planning provisions in subpart 1. Thus, the RACT requirement in subpart 2 does not currently apply to the DMA/NFR area. As explained above, because the State has demonstrated that it has adopted all controls necessary to attain as expeditiously as practicable (*i.e.,* it cannot advance the attainment date from November 2010), we have determined that the area has met the RACM requirement in section 172 (*i.e.,* ''subpart 1''). We note that for purposes of section 172(c) in subpart 1, RACT is a subset of RACM. Thus a determination that an area has met the RACM requirement of section 172(c) means that the area has also met the RACT requirement in that section. See, *e.g., NRDC* v. *EPA,* 571 F.3d 1245, 1253 (DC Cir. 2009).

We note that in response to the court's vacatur, EPA has proposed to place all areas under subpart 2. If EPA finalizes that proposal as proposed, Denver would be classified as marginal under subpart 2. See 74 FR 2936 (January 16, 2009). Even if EPA were to finalize a subpart 2 classification for the DMA/NFR area, we anticipate, as outlined in our proposal, that a SIP addressing subpart 2 requirements (including the RACT corrections applicable to marginal areas) would not be due until one year after a final rule classifying the DMA/NFR area under subpart 2. For these reasons, we did not evaluate the SIP submission against subpart 2 requirements in the proposed rule, nor are we doing so for this final rule.

Comment No. 8—WEG asserts that Colorado must update past RACT determinations made for the 1-hour ozone standard in light of the new 8-hour ozone NAAQS nonattainment designation.

EPA Response—Per our discussion above, the only RACM/RACT requirement that is applicable at this time is the requirement under CAA section 172(c)(1). That requirement is met if the State has adopted all controls necessary to attain as expeditiously as practicable and thus, that additional controls will not advance the attainment date. As explained above, we believe Colorado has met that requirement.

Comment No. 9— WEG asserts that 172(c)(1) coupled with 182(f) requires owners and operators of sources in ozone nonattainment areas to implement RACT requirements for sources that are subject to Control Technology Guidelines issued by EPA and for major sources of VOC and NO_X, which are ozone precursors. Significant sources of ozone precursors are to be controlled to a reasonable extent. The proposed SIP does not even contain the bare minimum with regard to RACT, implementing only limited controls to address emissions of VOCs from oil and

[7] There is currently a discrepancy between the numbering of the SIP-approved version of Regulation Number 3 and the State-approved version. In the SIP-approved version, Regulation Number 3, part B, Section III.D specifies exemptions from permitting requirements. But in the State-approved version, Section III.D specifies construction permit review requirements. We interpret the State's reference to Regulation Number 3, part B, Section III.D as referring to the State-approved version of Section III.D. Colorado previously submitted revisions to Regulation Number 3, Part B, that contain the renumbering of the provisions of Part B, Section III; we will be acting on those revisions separately.

[8] We explain below that we do not view these limits as being necessary to satisfy RACM/RACT requirements under CAA section 172(c)(1). This is the reason we have placed the word ''RACT'' in quotes in the text above.

[9] The State's reference to ''RACT'' may be confusing, but we think it merely reflects the State's intent to require that new sources use reasonable controls, even if not covered by the source-category-specific requirements in Regulation Number 7. We note that Colorado's permitting regulations provide for public notice and involvement so that WEG and others have the opportunity to participate in any control technology determinations Colorado makes in the permitting process.

gas production operations in the area and from a limited number of other stationary sources in the Front Range. RACT for emissions of VOCs from other industrial sources is woefully lacking. The SIP contains no RACT requirements for industrial sources of NO_X emissions anywhere in the nonattainment area.

EPA Response—As provided above, we have concluded that the SIP submission satisfies applicable RACM/RACT requirements. We note, however, that we disagree with WEG's characterization of the scope of VOC controls as being ''limited.''

Comment No. 10—WEG refers to legislative history to support its views regarding VOC and NO_X RACT requirements having to apply to all nonattainment areas. WEG quotes the following language from the Senate Environment and Public Works Committee: ''[s]tate and local agencies are not authorized to ignore [RACT] controls on NO_X and VOC sources for which no CTG has been issued. Sources of the size specified in the bill must be controlled to levels achievable through the use of measures that are technologically and economically feasible for a class or category of sources.''

EPA Response—The language WEG cites is from a Senate report discussing the anticipated provisions in section 182(b) of subpart 2, which was added by the 1990 Amendments to the CAA. Specifically, under section 182(b)(2)(C), which applies to areas classified under subpart 2 as moderate or higher, RACT applies to all major stationary sources of VOC that are not covered by subsections (A) and (B). Subsections (A) and (B) address RACT for sources for which a CTG has been issued. Section 182(f) extends the subpart 2 RACT requirements to major stationary sources of NO_X. As indicated above, we are not evaluating the SIP submission against subpart 2 requirements because those requirements are not currently applicable. Also as indicated above, courts have upheld our interpretation of RACM/RACT under CAA section 172(c)(1).

Comment No. 11—WEG asserts that a SIP that fails to contain RACT for major VOC and NO_Xcommercial sources will significantly increase the likelihood of continued nonattainment and jeopardize maintenance. It does not appear that EPA has assessed the adequacy of the SIP in this light.

EPA Response—As we have stated, the SIP demonstrates attainment of the 1997 ozone NAAQS as expeditiously as practicable. The State is not under a current obligation to submit a SIP that demonstrates long-term maintenance of the ozone standard and this SIP was not submitted for that purpose. Under *Union Electric* v. *EPA,* 427 U.S. 246 (1976), EPA's job in reviewing a SIP is to determine whether it meets the minimum requirements of the CAA. The SIP submission demonstrates attainment based on enforceable measures that we previously approved into the existing SIP. While additional controls might be desirable because they would provide additional emission reductions beyond those needed for attainment, we cannot disapprove the attainment demonstration SIP on that basis.

Comment No. 12—WEG asserts that if EPA is not assessing whether Colorado's SIP complies with subparts 1 and 2 of the CAA, EPA must make a finding of failure to submit for Colorado's failure to submit a required SIP under subparts 1 and 2.

EPA Response—Colorado submitted a SIP revision as required by 40 CFR 81.300(e)(3)(ii)(D), which requires EAC areas that failed to attain the 1997 8-hour ozone standard by December 31, 2007 to submit a revised attainment demonstration SIP. As explained above, EPA has assessed the Colorado SIP under the attainment demonstration and RACM/RACT requirements of section 172(c) in subpart 1. Also, as explained above, Denver is not currently classified under subpart 2 and thus, at this time, no SIP revision is required under subpart 2. Thus, there is no basis at this time for evaluating the SIP under the provisions of subpart 2 or for making a finding of failure to submit a SIP revision under subpart 2.

Comment No. 13—WEG asserts that EPA's proposed approval fails to comply with section 110(l) of the CAA. The SIP submission does not demonstrate that it will not interfere with the 2008 ozone NAAQS, which are currently applicable. Thus, EPA cannot approve the revision. It is contrary to section 110(l) for EPA to assume that its duties are limited to protecting the 1997 ozone NAAQS. Section 110(a)(1) provides that a State must submit a SIP for a new NAAQS within three years of promulgation. Where a statutory duty applies within that three year period, the State and EPA are compelled to meet that requirement given that it falls within the three year window provided by section 110(a)(1). WEG also asserts that the revision would significantly interfere with nonattainment of the NAAQS in downwind states.

EPA Response—We disagree that our approval does not comply with CAA section 110(l) or that section 110(l) requires disapproval of Colorado's attainment demonstration or other aspects of the SIP submission we are approving. CAA section 110(l) provides that EPA ''shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of'' the CAA. Contrary to WEG's assertion, we do not assume our duties under section 110(l) are limited to protecting the 1997 8-hour ozone NAAQS—we simply do not agree that our approval will interfere with attainment of the 2008 ozone NAAQS or any other requirement of the CAA. Through our action, no SIP-approved control measures for ozone precursors are being relaxed; in fact, we are approving changes to Regulation Number 3 that will strengthen the SIP and disapproving revisions to Regulation Number 7 that would weaken the SIP. WEG has not explained how Colorado's attainment demonstration and the other parts of the SIP we're approving would interfere with the 2008 ozone NAAQS.

At this time, no areas are designated nonattainment for the 2008 ozone NAAQS and no attainment demonstration SIPs are due for that NAAQS. EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration for all NAAQS before any changes to a SIP may be approved. See *Kentucky Resources Council, Inc.* v. *EPA,* 467 F.3d 986 (6th Cir. 2006); see also *e.g.,* 70 FR 53 (Jan. 3, 2005), 70 FR 28429 (May 18, 2005) (proposed and final rules, upheld in *Kentucky Resources,* which discuss EPA's interpretation of section 110(l)). EPA has concluded that preservation of the status quo air quality prior to the time new attainment or maintenance demonstrations are due will prevent interference with CAA requirements, including the States' obligations to develop timely demonstrations. Thus, areas do not have to produce a complete attainment demonstration to make any revisions to the SIP, provided the status quo air quality is preserved.

As noted above, as a result of today's action, the SIP will be strengthened and air quality maintained. This conclusion is sufficient to satisfy the requirements of section 110(l) with respect to the 2008 ozone standard. We have not and are not required to evaluate whether the current attainment demonstration also demonstrates attainment for the 2008 ozone standard or the SIP contains measures to attain that standard. The CAA and our regulations designate specific time frames for areas to submit SIPs and demonstrate attainment following a nonattainment designation for a new standard. See, *e.g.,* CAA sections 110(a)(1) and 172(b). Since this

action will not interfere with status quo air quality, and thus with Colorado's ability to develop a SIP to attain the 2008 ozone standard, it is appropriate under the CAA to approve this action and allow Colorado to address the 2008 ozone standard according to the statutory framework.

We do not understand WEG's comment about the deadline under CAA section 110(a)(1). It appears WEG may be asserting that the State had to submit a 110(a)(1) SIP for the 2008 standard at the same time it submitted its SIP for the 1997 standard simply because the deadline for the SIP for the 1997 standard fell within the three-year period specified by section 110(a)(1) for submission of a SIP for the 2008 standard. WEG cites no legal or policy support for this theory, and it is not supported by section 110(a)(1), section 110(l), or any other provision of the CAA. To the extent WEG is claiming that our approval action will interfere with the SIP required by CAA section 110(a)(1), we disagree. Section 110(a)(1) SIPs are merely infrastructure SIPs, not complete attainment demonstration SIPs, and, as noted by WEG, these infrastructure SIPs are not due until three years after designation. Approval of the 1997 ozone attainment demonstration will in no way interfere with the State's obligation or ability to submit an infrastructure SIP for the 2008 standard.

WEG provides no support for its assertion that the revision would significantly interfere with nonattainment of the NAAQS in downwind states. We are not required to respond to unsupported assertions. In any event, because our action will not result in an increase in emissions, we disagree with WEG that the revision will significantly interfere with attainment of the NAAQS in downwind states.

III. Final Action

A. Approval

For the reasons provided in our July 21, 2010 proposal (75 FR 42351), our December 17, 2010 notice of availability of revised modeling (75 FR 78950), and herein, we are approving the following elements of the 1997 8-hour ozone SIP revisions that Colorado submitted on June 18, 2009:

(1) Colorado's 2010 attainment demonstration for the 1997 8-hour ozone NAAQS.

(2) The MVEBs contained in the OAP, which are identified in the following table:

Area of applicability	2010 NO_X emissions (tons per day)	2010 VOC emissions (tons per day)
Northern Subarea	20.5	19.5
Southern Subarea	102.4	89.7
Total Nonattainment Area	122.9	109.2

The Northern Subarea is defined in the OAP as the area denoted by the ozone nonattainment area north of the Boulder County northern boundary and extended through southern Weld County to the Morgan County line. The Southern Subarea is defined in the OAP as the area denoted by the ozone nonattainment area south of the Boulder County northern boundary and extended through southern Weld County to the Morgan County line. Both subareas are further identified in Figure 2: ''8-hour Ozone Emission Budget Subareas'' at page VI–6 in the OAP.

In addition to approving the MVEBs, we are also approving the process described in the OAP for use of the Total Nonattainment Area MVEBs and the subarea MVEBs. Per the OAP, the initial conformity determination must use the Total Nonattainment Area MVEBs for NO_X and VOCs. After the initial conformity determination, the Denver Regional Council of Governments and North Front Range Transportation and Air Quality Planning Council may switch from using the Total Nonattainment Area MVEBs to using the subarea MVEBs for determining conformity. To switch to use of the subarea MVEBs (or to subsequently switch back to use of the Total Nonattainment Area MVEBs), the Denver Regional Council of Governments and the North Front Range Transportation and Air Quality Planning Council must use the process described in the OAP at pages VI–4 and VI–5.

(3) All other aspects of the OAP except the last paragraph on page IV–1 and the first paragraph on page IV–2, the words ''federally enforceable'' in the second to last paragraph on page V–6, and the reference to Attachment A in the Table of Contents and on page IV–3.

(4) The revisions to Parts A and B of Colorado Regulation Number 3.

(5) The revisions to Sections I through XI and XIII through XVI of Colorado Regulation Number 7, except for the repeal of Section II.D.

Regarding part B of Regulation Number 3, as we noted in our July 21, 2010 proposal, there is a discrepancy between the numbering of the submitted revisions and the EPA-approved SIP. Colorado added new Sections II.D.1.k, l, m, and n to Part B to specify the four types of emissions points that will continue to be exempt from minor source construction permitting requirements. However, in the current EPA-approved SIP, Section III.D.1 of part B lists the types of emissions points that are exempt from minor source construction permitting requirements.[10] These emissions points are listed in Sections III.D.1.a through j. For purposes of this action, we are interpreting Colorado's proposed revisions to Part B, in the form of Sections II.D.1.k through n, as being an addition to Section III.D.1, and following immediately after Section III.D.1.j of part B of the EPA-approved SIP.

B. Disapproval

For the reasons provided in our July 21, 2010 proposal, we are disapproving the following elements of the 1997 8-hour ozone SIP revisions that Colorado submitted on June 18, 2009:

(1) In the OAP: the last paragraph on page IV–1 and the first paragraph on page IV–2, the words ''federally enforceable'' in the second to last paragraph on page V–6, and the reference to Attachment A in the Table of Contents and on page IV–3.

(2) The repeal of Section II.D of Colorado Regulation Number 7.

(3) The revisions to Section XII of Colorado Regulation Number 7.

Our disapproval of these provisions does not trigger sanctions or a FIP obligation because our disapproval does not leave a deficiency in the SIP. The effect of our disapproval is to excise proposed SIP revisions that would

[10] Colorado previously submitted revisions to part B that contain changes to the numbering of part B provisions; we will be acting on those revisions separately.

weaken the SIP and potentially undermine the attainment demonstration. The provisions we are approving today and provisions that will remain in the SIP as a result of our action today fully support the attainment demonstration and meet all applicable requirements of the Clean Air Act. Thus, our action does not trigger sanctions or a FIP obligation.[11]

IV. Statutory and Executive Order Review

Under the Clean Air Act, 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet 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 Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not 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 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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. 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 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 October 4, 2011. 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 section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 18, 2011.

Carol Rushin,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52 [AMENDED]

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

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

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraphs (c)(72)(i)(G) and (c)(117) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(72) * * *

(i) * * *

(G) 1001–5, Colorado Regulation No. 3, Air Contaminant Emissions Notices, Part A, Concerning General Provisions Applicable to Reporting and Permitting, Sections II.D.1.m, II.D.1.ee, II.D.1.uu, II.D.1.ddd, and II.D.1.eeee, previously approved in paragraph (c)(72)(i)(D) of this section, were repealed by the State of Colorado effective January 30, 2009 and are removed without replacement.

* * * * *

(117) On June 18, 2009, the State of Colorado submitted an 8–Hour Ozone Attainment Plan for the Denver Metro Area/North Front Range area to meet the requirements of 40 CFR 81.300(e)(3)(ii)(D) for the 1997 8-hour ozone NAAQS. On the same date, the State of Colorado also submitted revisions to portions of Part A, ''Concerning General Provisions Applicable to Reporting and Permitting,'' and Part B, ''Concerning Construction Permits,'' of Colorado's Regulation No. 3, ''Air Contaminant Emissions Notices,'' and to Sections I through XVI of Colorado's Regulation No. 7, ''Control of Ozone Via Ozone Precursors (Emissions of Volatile Organic Compounds and Nitrogen Oxides).'' EPA is approving the Ozone Attainment Plan except for the last paragraph on page IV–1 and the first paragraph on page IV–2, the words ''federally enforceable'' in the second to last paragraph on page V–6, and the reference to Attachment A in the Table of Contents and on page IV–3. EPA is disapproving the excepted language from the Ozone Attainment Plan. EPA is approving the revisions to portions of Parts A and B of Colorado's Regulation No. 3. For purposes of this action, Colorado Regulation No. 3, Part B, Sections II.D.1.k, l, m, and n, as incorporated below, should be considered an addition to and as immediately following Colorado Regulation Number 3, Part B, Sections III.D.1.a through j, as previously approved by EPA. EPA is approving the revisions to Sections I through XI and

[11] See our July 21, 2010 proposal for further discussion on this issue (75 FR 42351).

XIII through XVI of Colorado's Regulation No. 7, except for Colorado's repeal of section II.D. EPA is disapproving Colorado's repeal of Section II.D and Colorado's revisions to Section XII of Regulation No. 7. EPA is not acting on the provisions in Regulation No. 7 that are designated ''State Only.''

(i) *Incorporation by reference.*

(A) 5 CCR 1001–5, Colorado Regulation No. 3, ''Air Contaminant Emissions Notices,'' Part A, ''Concerning General Provisions Applicable to Reporting and Permitting,'' Sections II.D.1.m, II.D.1.ee, II.D.1.uu, II.D.1.ccc, II.D.1.ddd, II.D.1.uuu, and II.D.1.eeee, effective January 30, 2009.

(B) 5 CCR 1001–5, Colorado Regulation No. 3, ''Air Contaminant Emissions Notices,'' Part B, ''Concerning Construction Permits,'' Sections II.D.1.k, l, m, and n, effective January 30, 2009.

(C) Letter dated November 18, 2009 from the Office of the Colorado Attorney General, signed by Jerry Goad, to Candy Herring, Office of the Colorado Secretary of State, regarding clerical errors in Regulation No. 7, and those portions of 5 CCR 1001–9, Colorado Regulation No. 7, ''Control of Ozone Via Ozone Precursors (Emissions of Volatile Organic Compounds and Nitrogen Oxides),'' Section II.C.1 that accompanied such letter, except for the following: the parenthetical phrase ''(State Only: Located in any Ozone Nonattainment Area or Attainment Maintenance Area)'' at II.C.1; Section II.C.1.a.(v); Section II.C.1.c; and Section II.C.1.d.

(D) 5 CCR 1001–9, Colorado Regulation No. 7, ''Control of Ozone Via Ozone Precursors (Emissions of Volatile Organic Compounds and Nitrogen Oxides),'' Sections I through XI and XIII through XVI, effective January 30, 2009, except for the following: Section I.A.1.b; Section I.B.1.b; Section I.B.2.b; Section I.B.2.d; Section II.A.12; Section II.C.1; and the repeal of Section II.D.

■ 3. Section 52.350 is amended by adding paragraph (c) to read as follows:

§ 52.350 Control strategy: ozone.

* * * * *

(c) Revisions to the Colorado State Implementation Plan for the 1997 8-hour ozone NAAQS entitled ''Denver Metro Area & North Front Range 8–Hour Ozone Attainment Plan,'' excluding the last paragraph on page IV–1, the first paragraph on page IV–2, the words ''federally enforceable'' in the second to last paragraph on page V–6, and the reference to Attachment A in the Table of Contents and on page IV–3, as adopted by the Colorado Air Quality Control Commission on December 12, 2008, and submitted by the Governor to EPA on June 18, 2009.

[FR Doc. 2011–19807 Filed 8–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2010–1040; FRL–9448–4]

RIN 2060–AQ82

Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is adjusting the allowance system controlling U.S. consumption and production of hydrochlorofluorocarbons (HCFCs) as a result of a recent court decision vacating a portion of the rule titled ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export; Final Rule.'' EPA interprets the court's vacatur as applying to the part of the rule that establishes the company-by-company baselines and calendar-year allowances for HCFC–22 and HCFC–142b. This action relieves the regulatory ban on production and consumption of these two chemicals following the court's vacatur by establishing new company-by-company HCFC–22 and HCFC–142b baselines and allocating production and consumption allowances for 2011.

DATES: This rule is effective August 5, 2011. While the urgent need for certainty regarding the consumption allowance allocations in the 2011 control period precludes the Agency from considering any adjustments to the consumption allowances allocated in this action, EPA will consider all written comments received by September 6, 2011 to determine whether to issue additional production allowances for the time period covered by this action. Commenters may also submit comments on the issues addressed in this action as they pertain to future control periods.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–1040, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Docket # EPA–HQ–OAR–2010–1040, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket #EPA–HQ–OAR–2010–1040 Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–1040. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Luke H. Hall-Jordan by telephone at (202) 343–9591, or by e-mail at *hall-jordan.luke@epa.gov,* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation