

should be commensurate with the extent of his/her ownership interest in that concern.

\* \* \* \* \*

■ 4. Amend § 74.4 by revising paragraph (c)(1) to read as follows:

**§ 74.4 Who does CVE consider to control a veteran-owned small business?**

\* \* \* \* \*

(c)(1) An applicant or participant must be controlled by one or more veterans or service-disabled veterans who possess requisite management capabilities. Owners need not work full-time but must show sustained and significant time invested in the business. An owner engaged in employment or management outside the applicant concern must submit a written statement supplemental to the application which demonstrates that such activities will not have a significant impact on the owner's ability to manage and control the applicant concern. Applications from joint-ventures are exempt from the requirement to submit a supplemental written statement.

\* \* \* \* \*

[FR Doc. 2011-983 Filed 1-18-11; 8:45 am]

BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2008-0780; FRL-9251-8]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to Existing Regulation Provisions Concerning Case-by-Case Reasonably Available Control Technology**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This SIP revision consists of amendments to the Commonwealth's existing regulations in order to clarify and recodify provisions covering case-by-case reasonably available control technology (RACT), as well as to add the 1997 8-hour ozone national ambient air quality standard (NAAQS) RACT requirements to the Commonwealth's regulations. This action is being taken under the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective on February 18, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID

Number EPA-R03-OAR-2008-0780. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, 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 for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:**

Gregory Becoat, (215) 814-2036, or by e-mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On November 3, 2009 (74 FR 56754), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The formal SIP revision was submitted by the Commonwealth of Virginia on September 8, 2008. The NPR proposed approval of the Virginia SIP revision that clarifies and recodifies provisions covering case-by-case RACT, as well as added the 1997 8-hour ozone standard RACT requirements to the Commonwealth's regulations. EPA received no comments on the proposal to approve Virginia's SIP revision. However, regulation 9VAC5-40-7420F, and G. incorrectly cross-referenced the Commonwealth's Volatile Organic Compounds (VOC) regulations at 9VAC5-40-7390, instead of its nitrogen oxides regulation at 9VAC5-40-7410. On September 27, 2010, Virginia submitted a correction to the regulation (Article 51 of 9VAC5-40, Existing Stationary Sources) that contains the requirements for making case-by-case RACT determinations. The SIP revision corrected the two typographic errors in order to correctly cross-reference regulation 9VAC5-40-7420F, and G. to the nitrogen oxides regulation at 9VAC5-40-7410.

**II. Summary of SIP Revision**

The Commonwealth's SIP revision consists of the following changes:

1. Addition of 9VAC5 Chapter 40, Article 51—Emission Standards for

Stationary Sources Subject to Case-by-Case RACT Determinations, in order to separate the RACT specific requirements from the general process requirements of Article 4 of 9VAC5 Chapter 40.

2. Administrative wording changes to regulations 9VAC5-40-250A. and 9VAC5-40-250B.

3. Deletion of definition of "Reasonably available control technology" in 9VAC5-40-250C. and addition of the other definitions in 9VAC5-40-250C. to 9VAC5-40-7380 in Article 51 of 9VAC5 Chapter 40.

4. Addition of the following definitions to regulation 9VAC5-40-7380C.—Terms defined: "Presumptive RACT," "Theoretical potential to emit" and "Tpy."

5. All the definitions in regulation 9VAC5-40-311B.3—Terms defined, are deleted and added to 9VAC5-40-7380C. in Article 51 of 9VAC5 Chapter 40.

6. Repealed regulations 9VAC5-40-300—Standard for volatile organic compounds, 9VAC5-40-310—Standard for nitrogen oxides, and 9VAC5-40-311—Reasonably available control technology guidelines for stationary sources of nitrogen oxides, in Article 4 of 9VAC5 Chapter 40 are replaced with 9VAC5-40-7390—Standard for volatile organic compounds (one-hour standard), 9VAC5-40-7410—Standard for nitrogen oxides (one-hour ozone standard), and 9VAC5-40-7430—Presumptive reasonably available control technology guidelines for stationary sources of nitrogen oxides, respectively, in Article 51 of 9VAC5 Chapter 40.

7. Addition of the 1997 8-hour ozone standard requirements for RACT in regulations 9VAC5-40-7400—Standard for volatile organic compounds (eight-hour ozone standard) and 9VAC5-40-7420—Standard for nitrogen oxides (eight-hour ozone standard).

**III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia**

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary

compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts \* \* \*." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the

Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, State audit privilege or immunity law.

#### IV. Final Action

EPA is approving the Virginia SIP revision that clarifies and recodifies provisions covering case-by-case RACT, as well as adds the 1997 8-hour ozone standard RACT requirements to the Commonwealth's regulations.

#### V. Statutory and Executive Order Reviews

##### A. General Requirements

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 State law as meeting Federal requirements and 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.

##### B. Submission to Congress and the Comptroller General

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).

##### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 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, pertaining to the Commonwealth of Virginia's RACT provisions under the 8-hour ozone NAAQS, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 17, 2010.  
**W.C. Early,**  
*Acting, Regional Administrator, Region III.*  
 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

**Subpart VV—Virginia**

■ 2. In § 52.2420, the table in paragraph (c) is amended by:

- a. Adding the heading “EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES” to the table.
- b. Revising the heading for Article 4 and the entry for regulation 5–40–250.
- c. Removing the entry for regulations 5–40–300, 5–40–310A.–E., and 5–40–311.
- d. Adding a category for Article 51 after entry 5–40–7360 under Article 50 and before the existing Title entry for Article 53.

The amendments read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*

**EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES**

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5, Chapter 40.	Existing Stationary Sources [Part IV]			
*	*	*	*	*
Part II .....	Emission Standards			
*	*	*	*	*
Article 4 .....	General Process Operations (Rule 4–4)			
*	*	*	*	*
5–40–250 .....	Definitions .....	12/15/06	1/19/11 [Insert page number where the document begins].	Removal of “Reasonably available control technology” from 5–40–250C.
*	*	*	*	*
Article 51 .....	Stationary Sources Subject to Case-by-Case Control Technology Determinations (Rule 4–51)			
5–40–7370 .....	Applicability and designation of affected facility.	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5–40–7380 .....	Definitions .....	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5–40–7390 .....	Standard for volatile organic compounds (1-hour ozone standard).	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5–40–7400 .....	Standard for volatile organic compounds (8-hour ozone standard).	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5–40–7410 .....	Standard for nitrogen oxides (1-hour ozone standard) Subsection F.	12/15/06 6/24/09	1/19/11 [Insert page number where the document begins].	Added Regulation.
5–40–7420 .....	Standard for nitrogen oxides (8-hour ozone standard).	12/15/06 6/24/09	1/19/11 [Insert page number where the document begins].	Added Regulation.

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5-40-7430 .....	Presumptive reasonably available control technology guidelines for stationary sources of nitrogen oxides.	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5-40-7440 .....	Standard for visible emissions .....	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5-40-7450 .....	Standard for fugitive dust/emissions .....	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5-40-7480 .....	Compliance .....	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5-40-7490 .....	Test methods and procedures .....	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5-40-7500 .....	Monitoring .....	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5-40-7510 .....	Notification .....	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5-40-7520 .....	Registration .....	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5-40-7530 .....	Facility and control equipment maintenance or malfunction.	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
5-40-7540 .....	Permits .....	12/15/06	1/19/11 [Insert page number where the document begins].	Added Regulation.
*	*	*	*	*

\* \* \* \* \*  
 [FR Doc. 2011-484 Filed 1-18-11; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2009-0032; FRL-8859-3]

**Fluazinam; Pesticide Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of fluazinam in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR-4) requested these

tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).  
**DATES:** This regulation is effective January 19, 2011. Objections and requests for hearings must be received on or before March 21, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).  
**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-0032. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.  
**FOR FURTHER INFORMATION CONTACT:** Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7390; e-mail address: [nollen.laura@epa.gov](mailto:nollen.laura@epa.gov).  
**SUPPLEMENTARY INFORMATION:**