

regulatory changes. Moreover, these regulatory changes do not impose substantial direct compliance costs on Indian tribal governments. Accordingly, the Department has determined that advance consultation with Tribes is not required for this rulemaking. In the future if the Department publishes additional directives or guidance on how to implement this regulation in the Forest Service Manual or Forest Service Handbook, the Department will consult with Tribes prior to its publication. At this time, the Department does not intend to publish additional guidance on how to implement this regulation.

#### Energy Effects

The Department has reviewed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Department has determined that this final rule does not constitute a significant energy action as defined in the E.O.

#### Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule will not compel the expenditure of \$100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

#### Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

#### Text of the Final Rule

##### List of Subjects in 36 CFR Part 261

Crime, Law enforcement, National forests.

For the reasons set forth in the preamble, part 261 of title 36 of the Code of Federal Regulations is amended as follows:

#### PART 261—PROHIBITIONS

■ 1. The authority citation for part 261 continues to read as follows:

**Authority:** 7 U.S.C. 1011(f), 16 U.S.C. 472, 551, 620(f), 1133(c), (d)(1), 1246(i).

#### Subpart A—General Prohibitions

■ 2. In § 261.2, add definitions for *Indian tribe* and *traditional and cultural purpose* in alphabetical order to read as follows:

##### § 261.2 Definitions.

\* \* \* \* \*

*Indian tribe* means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community that is included on a list published by the Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

\* \* \* \* \*

*Traditional and cultural purpose* means, with respect to a definable use, area, or practice, that it is identified by an Indian tribe as traditional or cultural because of its long-established significance or ceremonial nature for the Indian tribe.

\* \* \* \* \*

#### Subpart B—Prohibitions in Areas Designated by Order

■ 3. Amend § 261.53 by adding paragraph (g) to read as follows:

##### § 261.53 Special closures.

\* \* \* \* \*

(g) The privacy of tribal activities for traditional and cultural purposes. Closure to protect the privacy of tribal activities for traditional and cultural purposes must be requested by an Indian tribe; is subject to approval by the Forest Service; shall be temporary; and shall affect the smallest practicable area for the minimum period necessary for activities of the requesting Indian tribe.

Dated: January 11, 2011.

**Jay Jensen,**  
Deputy Under Secretary, NRE.

[FR Doc. 2011–937 Filed 1–18–11; 8:45 am]

**BILLING CODE 3410–11–P**

#### DEPARTMENT OF VETERANS AFFAIRS

##### 38 CFR Part 74

RIN 2900–AM78

#### VA Veteran-Owned Small Business Verification Guidelines

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document affirms as final, with changes, a final rule with

request for comments that implemented portions of the Veterans Benefits, Health Care, and Information Technology Act of 2006. This law requires the Department of Veterans Affairs (VA) to verify ownership and control of veteran-owned small businesses, including service-disabled veteran-owned small businesses. This final rule rescinds the requirement that eligible owners work full-time in the business for which they have applied for acceptance in the Verification Program and that limits participants to a single business. It formally changes the time period for issuance of reconsideration decisions from 30 to 60 days and changes the distribution of profits for limited liability companies and employee stock ownership plans.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Gail Wegner, Deputy Director, Center for Veterans Enterprise (OOVE), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, phone (202) 303–3260 x5239.

**SUPPLEMENTARY INFORMATION:** In a final rule with request for comments published in the **Federal Register** on February 8, 2010, (75 FR 6098), we revised 38 CFR part 74 setting forth a mechanism for verifying ownership and control of veteran-owned small businesses (VOSBs), including service-disabled veteran-owned small businesses (SDVOSBs). We solicited comments on the following new interim final requirements: Requiring eligible owners work full-time in the business for which they have applied for acceptance in the VOSB or SDVOSB Verification Program, changing the time period for issuance of reconsideration decisions from 30 to 60 days, and changing the distribution of profits for limited liability companies and employee stock ownership plans. We provided a 30-day comment period which ended on March 10, 2010. We received more than 100 comments on the interim final requirements. The issues raised in the comments are discussed below. Based upon the rationale set forth in this document, we are rescinding the interim final provisions that require owners to work full-time in the business for which they have applied for acceptance in the Verification Program and which limit participants to a single business. We are also formally changing the time period for issuance of reconsideration decisions from 30 to 60 days and changing the distribution of profits for limited liability companies (LLC) and

employee stock ownership plans (ESOP).

Comments were solicited on the following aspects of the rule:

#### **Section 74.3(d), Profits and Distributions**

We received several comments on the additional requirement that an eligible individual's ability to share in the profits of a concern should be commensurate with the extent of his/her ownership interest in that concern and on the revised requirement for the evaluation of profits and distributions to determine ownership interest in ESOPs and LLCs. We are making a minor clarifying edit in § 74.3(d)(1) to change the word "concern" to "or participant" resulting in "applicant or participant" to be consistent with prior terminology in § 74.3.

1. Numerous commenters suggested adding text to state that the VOSB venture of any VOSB joint venture must receive 51 percent of the profits of the joint venture. We agree with this suggestion and have modified the rule accordingly. This change aligns VA's rule with the provisions of 13 CFR part 125 which governs, in part, the profit requirements of joint ventures in the government-wide SDVOSB program. The subparagraphs have been renumbered and this text, "[a]t least 51 percent of the net profits earned by a joint venture in which the applicant or participant is the lead concern," is added to § 74.3(d)(2).

2. Numerous commenters strongly recommended deleting 38 CFR 74.3(d)(4) stating that the subsection was "badly drafted" and "meaningless." We disagree and no changes will be made based on these comments. This text reads "[a]n eligible individual's ability to share in the profits of the concern should be commensurate with the extent of his/her ownership interest in that concern." VA maintains that real evidence of ownership is demonstrated where the owner has the right to receive a share of profits equivalent to his/her ownership interest in the concern; otherwise, that ownership interest lacks materiality. For example, if an owner had a 51 percent ownership interest but was only entitled to 1 percent of the profits, the owner's ownership interest is rendered meaningless. However, in the renumbered text, this language appears in § 74.3(d)(5).

3. One commenter opposed the text that "[a]n eligible individual's ability to share in the profits of the concern should be commensurate with the extent of his/her ownership interest in that concern," saying it is not envisioned by the law and the

requirement that the owner be the highest compensated creates an unfair management burden in recruiting the best talent. We will not make any changes based upon this comment. The commenter's concerns are unfounded because this text deals solely with the issue of ownership of the concern and the rule already allows for exceptions to the requirement that the owner be the highest compensated employee. Currently, § 74.4(g)(3) establishes that "[t]he highest ranking officer may elect to take a lower salary than a non-veteran only upon demonstrating that it helps the applicant or participant." Therefore, if taking a lower salary is necessary for maintaining competitiveness, the owner can do so without risking verified status.

4. One commenter replied "[t]his is a welcome change for veteran-owned ESOP's. However, the language appears to exclude 100 percent veteran-owned ESOP's; *i.e.*, there must be some quantity of 'outstanding' non-ESOP stock that is owned by veterans. What if veterans owned only their portion of the ESOP stock? Could the business qualify as VOSB or SDVOSB in that event?" We will not make any changes based upon this comment because § 74.3(a) addresses this matter. If 100 percent of the stock is veteran-owned in an ESOP, then there is no issue, as the business is still owned by a veteran.

#### **Section 74.4(c)(1), Single Business; Full-Time Control**

VA received several comments concerning the single business and full-time control requirements. A few commenters opposed the requirement to have a single business participating in the program at one time, with the exception of joint-ventures. Commenters also opposed the requirement for the eligible owner to work full-time in the business. We agree and have reinstated the text of the Interim Final Rule published in the **Federal Register** on May 19, 2008 (73 FR 29024), that "[a]n 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" with the addition of a requirement for an owner to submit a written statement demonstrating that outside employment activities will not have a significant impact on the owner's ability to manage and control the applicant concern. We include an exception for applications from joint-ventures from this written statement requirement because joint ventures as defined by 38 CFR 74.1 are

business entities created for single, specific business ventures for joint profit and not created for conducting business on a permanent basis. Accordingly, the regulation permits a veteran to maintain its primary business operation for general business and still create a joint venture for a specific project without losing its veteran-owned small business status. Therefore, in these circumstances, VA acknowledges that the veteran owner can have its regular business operation and a joint venture without affecting its ability to manage both at the same time. To maintain the requirement that owners must work full-time in the business ignores some factors that greatly affect today's business climate and put an unnecessary burden on certain business owners who need to spread their time between several different projects or occupations. The additional requirement of a written statement demonstrating that the outside employment activities will not have a significant impact on the owner's ability to manage and control the applicant concern will allow VA to ensure that the business seeking verification is still truly under the control of the veteran owner. In addition, VA has deleted the definition of "full-time" from § 74.1.

#### **Single Business Requirement Related Comments**

1. Numerous commenters opposed the text that "an eligible owner may only have one business participating in the Verification Program at one time" because they interpreted it as limiting joint ventures. One commenter explained that such arrangements are "necessary due to the tight economy, procurement changes and lower government spending." Several commenters supported a clarification for the regulation to state that eligible owners of businesses enrolled in the Verification Program may also have additional joint venture agreements that participate in the program. We will not make any changes based upon these comments because the current rule already permits joint ventures in addition to a participant's primary business.

2. Numerous commenters opposed participation by a single business as more stringent than and inconsistent with other Federal small business programs. An additional commenter noted that the text limiting eligible owners to only one business in the Verification Program "appears to run contrary to White House policy statements in support of small business" and "would stifle job creation and economic development." We agree that

restriction of only one business participant may have the unintended effect suggested by the commenters. Accordingly, the rule has been modified to allow more than one VOSB participant so long as the veteran can demonstrate the requisite requirements of ownership and control.

3. Numerous commenters expressed that limiting eligibility to a single business is harmful to start-up businesses. We agree with the commenters. The rule has been modified to return to the original text that “[a]n 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.” This will allow owners of start up businesses to maintain previous businesses while the new venture solidifies itself in the business world.

4. Numerous commenters noted that for tax and other considerations establishing multiple businesses is beneficial. Other commenters noted that many businesses set up separate entities to manage liability by spreading risk among other businesses. The commenters requested the rule be changed to reflect this. We agree with the commenters’ suggestions, and the rule has been modified to return to the original text that “[a]n 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.” This will allow owners to maintain multiple businesses in the database and eliminate any unnecessary burdens on these owners with regard to taxes, liability and other similar considerations.

5. Numerous commenters observed that the text limiting participants in the Verification Program to one business has no foundation in law and that there is no compelling reason to limit participation to a single concern. The rule has been modified to return to the original text that “[a]n 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.” The original text does not include the limitation to one business participant. Our concern in proposing to limit participants to one business in the Verification Program was for the integrity of the program as

it was viewed as difficult for an owner to comply with the control requirements of § 74.4 if the veteran had multiple businesses. However, we realize that this restriction would have unintended effects and may be harmful to start-up businesses where the veteran may need to control an ongoing concern while creating and growing a start-up concern.

6. Numerous commenters noted that single business participation restricts business growth and limits participation in global markets. We agree with these commenters. The rule has been modified to return to the original text that “[a]n 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.” This eliminates the single business restriction and allows more flexibility for the owners to continue to grow their business and participate in the global marketplace.

7. Several commenters expressed that the single business restriction is discriminatory in that it is based on the belief that a veteran lacks the capability and intelligence to manage more than one business at a time. We disagree with this comment as the proposed rule was not based on this belief. Due to other comments, however, the rule has been modified to return to the original text that “[a]n 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.” This addresses the concern of the commenter by allowing for veteran owners to maintain more than one business in the Verification Program. Our intention was not to criticize the management capabilities of veterans. In processing verification applications, we have observed that it has been difficult for an applicant to demonstrate how it can control, as addressed in § 74.4, two or more businesses at the same time. However, we find that it was unfair, not discriminatory, to preclude every applicant from attempting to demonstrate that it can control more than one business.

8. One commenter suggested that the text be revised to require that “an eligible owner have no more than two businesses in the program at one time and must work full-time in the businesses.” This comment is not accepted as, based upon the majority of comments received, the rule has been revised to eliminate the single business

requirement and return to the original text that “[a]n 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.”

9. One commenter expressed no opposition to the single business requirement, stating a belief that there is widespread abuse in the set-aside program. This commenter suggested that the wording is not specific to oversight agency responsibilities for enforcement. We disagree with this comment. VA has the responsibility for verifying the applicants in accordance with this rule. The rule will require that applicants submitting more than one business for verification must submit a written statement demonstrating that the outside employment activities will not have a significant impact on the owner’s ability to manage and control the applicant concern. This will assist VA in ensuring that applicants fully comply with the control requirements of § 74.4 and avoid abuse and fraud in the set-aside program referenced by the commenter.

10. One commenter proposed that all veteran-owned businesses be eligible for the VOSB Verification Program. We disagree with this comment as the statute which governs the verification process is specific to the Department of Veterans Affairs and to veteran-owned small businesses, not all veteran-owned business, which would include large veteran-owned businesses not covered by the statute.

11. One commenter offered alternative language, “With the exception of joint-venture agreements, an eligible owner may have only one business participating in the Veterans First Contracting Program at one time and must work full-time in the business as defined in 38 CFR Part 74.1.” We disagree with this comment, as it could be misconstrued to restrict an owner from performing work under more than one set-aside award at a single time. In addition, the single business requirement has been deleted and VA has returned to the original text that “[a]n 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.”

12. Several commenters suggested that the rule be revised to acknowledge that owners may operate from multiple locations using electronic tools to

effectively control remote operations and other businesses. We agree with this comment. The single business and full-time requirements were overly restrictive as they failed to take into account the ability of certain veteran owners in certain situations using modern, electronic tools, to effectively run one or multiple businesses without dedicating the amount of time prescribed by the full-time requirement. The rule has been revised to eliminate the single business and full-time requirements and return to the original text that “[a]n 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.”

13. One commenter stated that certain professions require teaming, expressing the opinion that the rule prohibits such arrangements. We disagree with this comment. The current rule already permits joint ventures in addition to a participant’s primary business.

14. One commenter noted that some state programs use the Verification Program and that limiting joint-ventures would be harmful to owners in those programs. We disagree with this comment, as § 74.4(c)(1) permits participants to enter into joint-venture agreements.

15. A few commenters opposed the single business requirement but suggested that additional businesses must be in different business lines (industries). We do not agree with this comment. The single business requirement has been removed and the original text that “[a]n 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” has been restored. The single business requirement placed an unfair burden on veteran owners by restricting them to just one business. VA will consider the merits of each application on an individual basis without regard for the industry in which a veteran’s other business may be.

16. One commenter opposed the single business requirement but suggested that additional businesses “must be in the same or closely related industries.” Another commenter suggested that multiple businesses in the same or similar industry should be considered a single entity, and cited the SBA 8(a) program as precedent. That program does not allow an owner to

have more than one business in the same or similar industry. We disagree with this comment. The single business requirement placed an unfair burden on veteran owners by restricting them to just one business. Similarly, it would be an undue burden to limit these owners to just one industry. VA will consider the merits of each application, on an individual basis, without regard for the industry in which a veteran’s other business is involved. The single business requirement has been removed and the original text that “[a]n 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” has been added back into § 74.4(c)(1) to allow applicants to potentially have more than a single business in the Verification Program.

17. Some commenters opposed the single business requirement saying that “[t]here is nothing illegal about owning more than one company” and “many successful owners have more than one business at a time.” We agree with these commenters. The requirement put an unnecessary burden on veteran small business owners by restricting them to just one business. The rule has been modified to eliminate the single business requirement and returned to the original text that “[a]n 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.”

18. Some commenters expressed the opinion that the single business requirement would stifle entrepreneurship at a time when we need to create jobs and the concept is “contrary to the American spirit and established precedent that owners sometimes need to start multiple businesses before one is successful.” We agree with these commenters. The single business requirement was removed because it was determined that it created an unnecessary burden on veteran-owned small businesses. The rule has been modified to eliminate the single business requirement and return to the original text that “[a]n 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.”

19. One commenter noted that the restriction is contrary to mentorship of new businesses and suggested that established owners join start-ups to offer support, funding and other assistance to the new owner(s). We agree with this comment. The single business requirement placed an undue burden on veteran owners by limiting their ability to participate in other businesses for purposes such as mentoring. Therefore, the rule has been modified to eliminate the single business requirement and return to the original text that “[a]n 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.”

20. Several commenters stated that if a veteran owns a small business and then organizes a joint venture, the veteran violates the second business rule. We disagree with these comments. The regulation provides that business owners can still form joint-ventures without violating the rule. In addition, the single business requirement has been removed. Therefore, no further change is necessary to address these commenters’ concerns.

21. Several commenters noted that there should be no restrictions on the number of businesses a veteran can own as the drafted regulation does nothing to ensure the viability of VOSBs or SDVOSBs or curtail fraudulent VOSBs or SDVOSBs. We agree with these comments. The single business requirement put an undue burden on veteran business owners and did not serve to eliminate potential fraud within the program. Therefore, the requirement was removed and the section of regulation was restored to the original text that “[a]n 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.”

22. A few commenters questioned what will happen to business owners who already have 2 or more VOSBs or SDVOSBs approved. They asked whether those businesses would be grandfathered into existing ownership. The single business requirement has been removed, and therefore, the concerns expressed by these commenters have been rendered moot.

#### **Full-Time Control Comments**

23. Numerous commenters suggested returning to the original text that “[a]n

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.” We agree with the commenters’ suggestions. The full-time requirement placed an undue burden on veteran owners. We believe that a veteran owner can still maintain control and ownership of a business without meeting the full-time requirement. Therefore, the requirement has been removed and the rule has been modified to return to that original text.

24. One commenter stated that the text assigns no value to the concepts of chain of command or span of control. We agree with the commenter. The full-time requirement did not take into account the fact that some business owners are forced to delegate in order to keep up with other commitments and burdens. The rule has been modified to return to the original text that “[a]n 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” in order to alleviate the commenter’s concerns.

25. One respondent suggested that the rule acknowledge that new owners work multiple jobs to support their families and thus should recognize that full-time requirement is restrictive. The respondent suggested replacement text to read “an eligible owner may only have one business participating in the Verification Program at one time and must devote sufficient time to the business to maintain control as defined in § 74.1.” We agree with this comment, but it has been rendered moot as the rule has been revised to eliminate the full-time requirement and return to the original text that “[a]n 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.”

26. One commenter noted that IRS regulations precluded limited liability company members from being employees in their firm, and therefore, VA would have no way of verifying their working hours. This problem has been alleviated because the full-time requirement has been removed and the rule has been restored to its original text that “[a]n 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.”

27. One commenter stated that the full-time requirement does not take into account other work shifts performed by a veteran and recommended rewording to “[f]ull-time means working no less than 40 hours per week involved in the Day to Day management and/or Operations of the Business.” Several other commenters noted that small business owners do not have normal business hours and recommended the term “normal business hours for the industry.” The recommended rewording will not be necessary as the full-time requirement, as well as the stated definition of “full-time” has been removed and the rule has been restored to its original text that “[a]n 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.”

28. One commenter offered that he “strongly support(s) the government’s efforts to ensure: (1) That veteran-owned small businesses are actually owned by veterans, and; (2) that the veteran owner must be actively involved in day-to-day operation of the firm.” By removing the full-time requirement, but adding the additional requirement of a written statement demonstrating that the outside employment activities will not have a significant impact on the owner’s ability to manage and control the applicant concern, VA will be able to ensure that the business seeking verification is still truly under the control of the veteran owner.

29. Several commenters noted that the full-time requirement is discriminatory because it hinders organizations who do not operate between 9 a.m. and 5 p.m. Commenters also stated that the full-time requirement hinders a veteran’s ability to attend to medical needs such as post traumatic stress disorder sessions. We agree with this comment. The full-time requirement has been removed and the rule has been restored to its original text that “[a]n 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.” This should alleviate any unnecessary burdens placed on veteran owners by the full-time requirement.

30. One commenter stated that the provision would preclude home-based businesses and prevent active duty service members from starting their business prior to leaving for active military service. We agree with this comment. The full-time requirement placed an undue burden on veteran small business owners. By removing the requirement and restoring the rule to its original text that “[a]n 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,” the concerns of the commenter have been addressed.

31. One commenter noted that VA failed to consider the impact of the full-time rule in the context of multiple business entities. The commenter pointed out that many veterans buy stock or shares as investments in other veteran-owned businesses thereby making them owners in those entities. The regulation seems to prohibit such stock ownership in more than one verified business. The commenter also noted that the full-time requirement is contrary to the intent of 38 U.S.C. 8127(l) which defines small business concern owned and controlled by veterans as “not less than 51 percent of which is owned by one or more veterans” and “the management and daily business operations of which are controlled by one or more veterans.” The commenter noted that Congress’ intent was that control of an eligible VOSB be shared with two or more veterans each contributing part of the time and effort necessary to manage and operate the business. We agree with these comments. The full-time requirement, coupled with the single business requirement placed an undue burden on veteran business owners who may have part ownership in several legitimate VOSBs or SDVOSBs. By removing the requirements and restoring the rule to its original text that “[a]n 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,” these concerns have been addressed.

32. One commenter suggested that the regulation be amended to state “that when full-time work is not required due to lack of government business, then the owner/manager is not required to participate in the business full-time.” The full-time requirement has been removed and the rule restored to its

original text that “[a]n 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.” Therefore, the suggested amendment is unnecessary.

**Section 74.13(b), Can an applicant ask CVE to reconsider its initial decision to deny an application?**

VA sought comments on the merits of establishing a 60-day period for the Director, Center for Veterans Enterprise to issue a written decision on a request for reconsideration. We did not receive any comments within the scope of the request. Therefore, we have made no change to this rule.

A number of additional comments were received which were beyond the scope of the request for comments, and, therefore, we will not make any changes based on those comments.

**Regulatory Flexibility Act**

This final rule would generally be small business neutral as it applies only to applying for verified status in the VetBiz.gov Vendor Information Pages (VIP) database. The overall impact of the final rule will be of benefit to small businesses owned by veterans or service-disabled veterans. VA estimates the cost to an individual business to be less than \$100.00 for 70–75 percent of the businesses seeking verification, and the average cost to the entire population of veterans seeking to become verified is less than \$325.00 on average. A related rule describes the effect that verified businesses will have in the Department’s acquisition regulation. This impact is discussed in the proposed rule modifying the VA Acquisition Regulation which was published in the **Federal Register** at 73 FR 49141 on August 20, 2008. On this basis, the Secretary hereby certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this regulation is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health

and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined to be a significant regulatory action under the Executive Order.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Paperwork Reduction Act**

This final rule contains provisions that constitute collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). OMB has approved these collections and has assigned control number 2900–0675. VA displays this control number under the applicable sections of the regulations in this final rule. OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Catalog of Federal Domestic Assistance**

This final rule affects the verification guidelines of veteran-owned small businesses, for which there is no Catalog

of Federal Domestic Assistance program number.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 16, 2010, for publication.

**List of Subjects in 38 CFR Part 74**

Administrative practice and procedures, Privacy, Reporting and recordkeeping requirements, Small business, Veteran, Veteran-owned small business, Verification.

Dated: January 13, 2011.

**Robert C. McFetridge,**  
*Director, Regulations Policy and Management.*

Accordingly, VA amends 38 CFR part 74 as follows:

**PART 74—VETERANS SMALL BUSINESS REGULATIONS**

■ 1. The authority citation for part 74 continues to read as follows:

**Authority:** 38 U.S.C. 501, 513, unless otherwise noted.

**§ 74.1 [Amended]**

- 2. Amend § 74.1 by removing the definition of “Full-time”.
- 3. Amend § 74.3 by revising paragraphs (d)(1), (2), (3) and (4) and by adding paragraph (d)(5) to read as follows:

**§ 74.3 Who does the Center for Veterans Enterprise (CVE) consider to own a Veteran-owned small business?**

\* \* \* \* \*

(d) \* \* \*

(1) At least 51 percent of the annual distribution of profits paid to the owners of a corporate, partnership, or LLC applicant or participant;

(2) At least 51 percent of the net profits earned by a joint venture in which the applicant or participant is the lead concern;

(3) 100 percent of the value of each share of stock owned by them in the event that the stock is sold; and

(4) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock owned in the event of dissolution of the corporation, partnership, or LLC.

(5) An eligible individual’s ability to share in the profits of the concern

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]

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**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