Authority: 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 13101 *et seq.*; Public Law 104–134, 110 Stat. 1321, 1321–299 (1996); Public Law 105–65, 111 Stat. 1344, 1373 (1997); 5. 105–276, 112 Stat. 2461, 2499 (1988).

Subpart A—[Amended]

■ 2. Amend § 35.101 by adding paragraph (a)(20) to read as follows:

§ 35.101 Environmental programs covered by the subpart.

(a) * * *

(20) State Response Program Grants (section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

* * * * *

■ 3. Section 35.133 is amended by revising paragraph (a) to read as follows:

§ 35.133 Programs eligible for inclusion.

(a) *Eligible programs.* Except as provided in paragraph (b) of this section, the environmental programs eligible, in accordance with appropriation acts, for inclusion in a Performance Partnership Grant are listed in § 35.101(a)(2) through (17) and (20). (Funds available from the section 205(g) State Administration Grants program (§ 35.100(b)(18)) and the Water Quality Management Planning Grant program (§ 35.100(b)(19)) and funds awarded to states under State Response Program Grants (§ 35.100(b)(20)) to capitalize a revolving loan fund for Brownfield remediation or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions may not be included in Performance Partnership Grants.)

* * * * *

■ 4. Subpart A is amended by adding an undesignated center heading and §§ 35.419, 35.420 and 35.421 to read as follows:

Subpart A—[Amended]

State Response Program Grants (CERCLA Section 128(A))

§ 35.419 Purpose.

(a) Purpose of section. Sections 35.419 through 35.421 govern State Response Program Grants (as defined in section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

(b) Purpose of program. State Response Program Grants are awarded to States to establish or enhance the response program of the State; capitalize a revolving loan fund for Brownfield remediation under section 104(k)(3) of CERCLA; or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program.

§ 35.420 Basis for allotment.

The Administrator allots response program funds to each EPA regional office. Regional Administrators award funds to States based on their programmatic needs and applicable EPA guidance.

§ 35.421 Maximum federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs with the exception of the cost shares required by CERCLA 104(k)(9)(B)(iii) for capitalization of revolving loan funds under CERCLA 104(k)(3).

■ 5. Amend § 35.501 by adding paragraph (a)(10) to read as follows:

§ 35.501 Environmental programs covered by the subpart.

(a) * * *

(10) Tribal Response Program Grants (section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

* * * * *

■ 6. Section 35.533 is amended by revising paragraph (a) to read as follows:

§ 35.533 Programs eligible for inclusion.

(a) *Eligible programs.* Except as provided in paragraph (b) of this section, the environmental programs eligible for inclusion in a Performance Partnership Grant are listed in § 35.101(a)(2) through (10) of this subpart. Funds awarded to tribes under Tribal Response Program Grants (§ 35.101(a)(10)) to capitalize a revolving loan fund for Brownfield remediation or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions may not be included in Performance Partnership Grants.

* * * * *

■ 7. Subpart B is amended by adding a new undesignated center heading and §§ 35.736, 35.737 and 35.738 to read as follows:

Subpart B—[Amended]

Tribal Response Program Grants (CERCLA Section 128(A))

§ 35.736 Purpose.

(a) Purpose of section. Sections 35.736 through 35.738 govern Tribal Response Program Grants (as defined in section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)).

(b) Purpose of program. Tribal Response Program Grants are awarded to Tribes to establish or enhance the response program of the Tribe; capitalize a revolving loan fund for brownfield remediation under section 104(k)(3) of CERCLA; or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a Tribal response program.

§ 35.737 Basis for allotment.

The Administrator allots response program funds to each EPA regional office. Regional Administrators award funds to Tribes based on their programmatic needs and applicable EPA guidance.

§ 35.738 Maximum federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs with the exception of the cost shares required by CERCLA 104(k)(9)(B)(iii) for capitalization of revolving loan funds under CERCLA 104(k)(3).

[FR Doc. E9–14114 Filed 6–15–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0287; FRL–8918–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Northern Virginia Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard

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 a demonstration that the Virginia portion (Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park;

Counties of Arlington, Fairfax, Loudon, and Prince William) of the Washington, DC-MD-VA 8-Hour Ozone Nonattainment Area meets the requirements of reasonably available control technology (RACT) for oxides of nitrogen (NO_X) and volatile organic compounds (VOCs) set forth by the Clean Air Act (CAA). These requirements are based on: Certification that previously adopted RACT controls in Virginia's SIP that were approved by EPA under the 1-hour ozone national ambient air quality standard (NAAQS) are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour implementation purposes; a negative declaration demonstrating that no facilities exist in the Virginia portion of the Washington, DC-MD-VA area for certain control technology guideline (CTG) categories; and a new RACT determination for a specific source. This action is being taken under the CAA.

DATES: *Effective Date:* This final rule is effective on July 16, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0287. 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*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 19, 2009 (74 FR 11702), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of the requirements of RACT under the 8-hour ozone NAAQS. EPA received no comments on the proposal to approve Virginia's SIP revision. The formal SIP revision was submitted by the Commonwealth of Virginia on October 23, 2006.

II. Summary of SIP Revision

Virginia's SIP revision contains the requirements of RACT set forth by the CAA under the 8-hour ozone NAAQS. Virginia's SIP revision is consistent with the process in the Phase 2 Rule preamble, and satisfies the requirements of RACT set forth by the CAA under the 8-hour ozone NAAQS. Virginia's SIP revision satisfies the 8-hour RACT requirements through (1) certification that previously adopted RACT controls in Virginia's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continues to represent RACT for the 8-hour implementation purposes; (2) a negative declaration demonstrating that no facilities exist in the Virginia portion of the Washington, DC-MD-VA area for the applicable CTG categories; and (3) a new RACT determination for a single source. Other requirements of Virginia's 8-hour RACT and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

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 CAA is likewise unaffected by this, or

any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the 8-hour RACT as a revision to the Commonwealth of Virginia's SIP. Virginia's SIP revision contains the requirements of RACT set forth by the CAA under the 8-hour ozone NAAQS. This SIP revision was submitted on October 23, 2006.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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 CAA; 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 17, 2009. 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: June 5, 2009.

William 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 (e) is amended by adding the entry for "RACT under the 8-hour ozone NAAQS"—Virginia portion of the Washington, DC-MD-VA area at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
RACT under the 8-Hour ozone NAAQS.	Virginia portion of the Washington, DC-MD-VA area.	10/23/06	06/16/09, [Insert page number where the document begins].	

[FR Doc. E9–14018 Filed 6–15–09; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0595; FRL–8918–1]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia. This SIP revision consists of a demonstration that the District of Columbia meets the requirements of reasonably available control technology (RACT) for nitrogen oxides (NO_X) and volatile organic compounds (VOCs) set forth by the Clean Air Act (CAA). This SIP revision demonstrates that all requirements for RACT are met either through: Certification that previously adopted RACT controls in the District of Columbia's SIP that were approved by EPA under the 1-hour ozone National Ambient Air Quality Standard (NAAQS) are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour implementation purposes; and a negative declaration demonstrating that no facilities exist in the District of Columbia for the applicable control technology guideline (CTG) categories. This action is being taken under the CAA.

DATES: *Effective Date:* The final rule is effective on July 16, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0595. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, 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 in *http://www.regulations.gov* or in hard copy 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 District of Columbia Department of the Environment, 51 N Street, NE., 6th Floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Patrick J. Egan, (215) 814–3167, or by e-mail at *egan.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 2009 (75 FR 12778), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia. The NPR proposed approval of the requirements of RACT under the 8-hour Ozone NAAQS. EPA received no comments on the proposal to approve the District of Columbia SIP revision. The formal SIP revision was submitted by the District of Columbia on September 22, 2008.

II. Summary of SIP Revision

On September 22, 2008, the District of Columbia Department of Environment (DDOE) submitted a revision to its SIP that addresses the requirements of RACT under the 8-hour ozone NAAQS set forth by the CAA. The District of Columbia's SIP revision is consistent with the process in the Phase 2 Rule preamble, and satisfies the requirements of RACT set forth by the CAA under the 8-hour ozone NAAQS. The District of Columbia's SIP revision satisfies the 8-hour RACT requirements through a certification that previously adopted RACT controls in the District of Columbia's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continues to represent RACT for the 8-hour implementation purposes and a negative declaration demonstrating that facilities exist in the District of Columbia for the applicable control technology guideline (CTG) categories.

III. Final Action

EPA is approving the District of Columbia SIP revision that addresses the requirements of RACT under the 8-hour ozone NAAQS. The District of Columbia's SIP revision was submitted on September 22, 2008.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 proposes to approve 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 CAA; 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