would be to seek comment on the TTD's request, together with other related issues, so that we could have the benefit of a full briefing on all the issues before making proposals in favor of the change.

I also dissent because the Majority's proposed rule does not request comment on several related issues that have been raised by our constituents in connection with the TTD's request. I believe firmly that the Board should not consider the TTD petition in a vacuum. Several parties have requested that we consider a decertification procedure, noting that a minority voting rule necessitates some sort of decertification mechanism or else it deprives employees of the right to be unrepresented. We have also received a request to consider providing *Excelsior* lists to unions. And there are also other areas of our representation policy and procedures that would be implicated by a change in voting rules. For example, we currently require a union seeking to challenge an incumbent union to submit authorization cards from more than 50% of eligible voters. If we were to change our voting rules to permit fewer than 50% of eligible voters to select a representative, we must contemporaneously consider whether we should still require a greater than 50% showing of authorization cards to challenge an incumbent union. In order to be fair to all interested parties, I believe that Board must consider all of these issues together, and I am surprised that my colleagues have ignored these other requests and are addressing only the TDD's request. I believe the Board should have requested comment on all relevant issues before making any proposals and I encourage interested parties to submit comments addressing these other issues.

Chairman Elizabeth Dougherty.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The NMB certifies that this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

National Environmental Policy Act

This proposal will not have any significant impact on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

List of Subjects in 29 CFR Parts 1202 and 1206

Air carriers, Labor management relations, Labor unions, Railroads.

Accordingly, as set forth in the preamble, the NMB proposes to amend 29 CFR chapter X as follows:

PART 1202—RULES OF PROCEDURE

1. The authority citation for 29 CFR Part 1202 continues to read as follows:

Authority: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

2. Section 1202.4 is revised to read as follows:

§ 1202.4 Secret ballot.

In conducting such investigation, the Board is authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. Except in unusual or extraordinary circumstances, in a secret ballot the Board shall determine the choice of representative based on the majority of valid ballots cast.

PART 1206—HANDLING REPRESENTATION DISPUTES UNDER THE RAILWAY LABOR ACT

3. The authority citation for 29 CFR Part 1206 continues to read as follows:

Authority: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

§ 1206.4 [Amended]

4. Amend § 1206.4(b)(1) by removing the phrase ''less than a majority of eligible voters participated in the election'' and by adding in its place the phrase ''less than a majority of valid ballots cast were for representation.''

Dated: October 28, 2009.

Mary Johnson,

General Counsel, National Mediation Board.

[FR Doc. E9–26437 Filed 11–2–09; 8:45 am]

BILLING CODE 7550–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0780; FRL–8976–5]

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: Proposed rule.

SUMMARY: EPA is proposing to approve 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 standard RACT requirements to the Commonwealth's regulations. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 3, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0780 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0780, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2008–0780. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise

protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 *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 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 September 8, 2008, the Commonwealth of Virginia submitted a regulation revision for case-by-case RACT determinations, which consists of amendments to the existing regulations in order to implement the non-control techniques guidelines RACT specific 8-hour ozone nonattainment area requirements of subpart X of 40 CFR Part 51, and to restructure and recodify the regulations for clarity. In addition to clarifying and recodifying the existing provisions covering case-by-case RACT determinations, the regulation amendments create a new Rule 4–51 (Article 51 of 9 VAC 5 Chapter 40)—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 9 VAC 5 Chapter 40. These amendments consisted only of changes in style or form.

The regulation amendments also add the 1997 8-hour ozone standard requirements set forth by the CAA. Subpart X of 40 CFR Part 51 specifically defines the provisions for implementation of the 8-hour ozone national ambient air quality standard (NAAQS). The rule specifies dates by when states must submit their RACT SIPs, and when RACT must be implemented. The rule also requires that nonattainment areas meet the requirements of 40 CFR 51.900(f), which includes RACT and major source applicability cut-offs for purposes of RACT.

II. Summary of SIP Revision

Further details of the Commonwealth of Virginia's regulation revisions can be found in a Technical Support Document prepared for this rulemaking. This SIP revision consists of the following changes:

1. Addition of Rule 4–51—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 9 VAC 5 Chapter 40.

2. Administrative wording changes to regulations 9 VAC 5–40–250A. and 9 VAC 5–40–250B.

3. Deletion of definition of ''Reasonably available control technology'' in 9 VAC 5–40–250C. and addition of the definition to 9 VAC 5–40–7380 in Article 51 of 9 VAC 5 Chapter 40.

4. Addition of the following definitions to regulation 9 VAC 5–40–7380C.—Terms defined: ''Presumptive RACT,'' ''Theoretical potential to emit'' and ''Tpy.''

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

6. Repealed regulations 9 VAC 5–40–300—Standard for volatile organic compounds, 9 VAC 5–40–310—Standard for nitrogen oxides, and 9 VAC 5–40–311—Reasonably available control technology guidelines for stationary sources of nitrogen oxides, in Article 4 of 9 VAC 5 Chapter 40 and replaced them with 9 VAC 5–40–7390—Standard for volatile organic compounds (one-hour standard), 9 VAC 5–40–7410—Standard for nitrogen oxides (one-hour ozone standard), and 9 VAC 5–40–7430—Presumptive reasonably available control technology guidelines for stationary sources of nitrogen oxides, respectively, in Article 51 of 9 VAC 5 Chapter 40.

7. Addition of the 1997 8-hour ozone standard requirements for RACT in regulations 9 VAC 5–40–7400—Standard for volatile organic compounds (eight-hour ozone standard) and 9 VAC 5–40–7420—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 CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve the Virginia SIP revision that clarifies and recodifies provisions covering case-by-case RACT, as well as adds the 1997 8-hour ozone standard requirements to the Commonwealth's regulations. EPA views the administrative changes and re-codifications as non-substantive, as they do not affect the scope of the currently approved Virginia SIP, and consequently, cannot interfere with timely attainment or progress towards attainment of a NAAQS, nor interfere with any other provision of the CAA. However, regulation 9 VAC 5–40–7420F. and G. incorrectly cross-references the Commonwealth's VOC regulations at 9 VAC 5–40–7390, instead of its nitrogen oxides regulation at 9 VAC 5–40–7410. The Commonwealth is in the process of correcting the cross-references in this regulation and will submit the correction to EPA. EPA does not intend to finalize this action until after the Commonwealth formally submits the corrected versions of 9 VAC 5–40–7420F. and G. to EPA as part of this SIP revision. EPA does not intend to reopen the comment period before taking final action on this SIP revision. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 proposed 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 proposed rule, pertaining to amendments to Virginia's case-by-case RACT determinations, 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 22, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9–26340 Filed 11–2–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 02–15]

Passenger Vessel Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Termination of proposed rulemaking.

SUMMARY: The Commission has determined to terminate the Proposed Rulemaking published on October 31, 2002, in FMC Docket No. 02–15. The Proposed Rule would have amended the Commission's passenger vessel regulations at 46 CFR Part 540, which implement the statutory requirement to provide proof of passenger vessel financial responsibility.

ADDRESSES: Address all comments and inquiries concerning this termination to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North