EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5–91–700	Calibration of exhaust gas analyzers	10/1/02	4/22/08 [Insert page number where the document begins].	
5–91–710	Upgrade of analyzer system	10/1/02	4/22/08 [Insert page number where the document begins].	
Part XI Manufacturer Recall				
5–91–720	Vehicle manufacturers recall	10/1/02	4/22/08 [Insert page number where the document begins].	
*	*	*	*	*
Part XII On-road Testing				
5–91–740	General requirements	6/29/05	4/22/08 [Insert page number where the document begins].	
5–91–750	Operating procedures; violation of standards	6/29/05	4/22/08 [Insert page number where the document begins].	
5–91–760	Schedule of civil charges	6/29/05	4/22/08 [Insert page number where the document begins].	
Part XIV ASM Exhaust Emission Standards				
5–91–790	ASM start-up standards	10/1/02	4/22/08 [Insert page number where the document begins].	
5–91–800	ASM final standards	10/1/02	4/22/08 [Insert page number where the document begins].	
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[FR Doc. E8–8394 Filed 4–21–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2008–0011, FRL–8554–8]

Approval and Promulgation of Implementation Plans; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating an amendment to its rulemaking action taken on November 27, 1998, which removed Part 211.2 of Title 6 of the New York Code of Rules and Regulations (NYCRR) from the State Implementation Plan (SIP) for the State of New York. Part 211.2 is a general prohibition against air pollution. As stated in the November 27, 1998 notice, EPA intended to remove all such general duty provisions from the New York SIP, which do not reasonably relate to the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), and other air quality goals of the Clean Air Act. General duty provisions in Title 6 of the NYCRR include those pertaining to nuisance odors. In this action, EPA is amending its previous rulemaking to include a mistakenly omitted citation to Part 200.1(d) of Title 6 of the NYCRR. Part 200.1(d) provides the definition of ''air contaminant or air pollutant,'' which includes the word ''odor.'' It has recently been brought to EPA's attention that the word ''odor'' in the definition of ''air contaminant or air pollutant'' was erroneously retained in the SIP. By amending the previous rulemaking, EPA is removing the word ''odor'' from the federally-approved definition of ''air contaminant or air pollutant,'' because the definition as currently written, in part, does not have a reasonable connection to the NAAQS and related air quality goals of the Clean Air Act. The intended effect of this amendment is to make the previous rulemaking on New York SIP submittals for national primary and secondary ambient air quality standards consistent with the requirements of the Clean Air Act.

DATES: This correction is effective on April 22, 2008.

FOR FURTHER INFORMATION CONTACT: Steven Riva, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4074.

SUPPLEMENTARY INFORMATION:

I. Amendment to SIP Correction Action

On November 27, 1998 (63 FR 65557), EPA published notice of a direct final rulemaking action under section 110(k)(6) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* (the Act), to correct the federally-approved New York State Implementation Plan (SIP). This notice took effect on January 26, 1999, after a 60 day public comment period in which EPA received no

comments on the rule. The intended effect of that rulemaking was to remove all general duty provisions from the SIP, which EPA determined were erroneously approved because those provisions do not have a reasonable connection to the national ambient air quality standards (NAAQS) such that EPA could rely on them as NAAQS attainment and maintenance strategies. Accordingly, the November 27, 1998 rulemaking removed Part 211.2 of Title 6 of the New York Code of Rules and Regulations (NYCRR) from the SIP. Part 211.2 is a general prohibition against air pollution. General duty provisions in Title 6 of the NYCRR include those pertaining to nuisance odors. It has recently been brought to EPA's attention that Part 200.1(d) of Title 6 of the NYCRR contains an odor provision that was erroneously omitted from EPA's prior action to remove such provisions from the SIP. Moreover, EPA has determined that the Act does not provide EPA with any specific authority to regulate odor. Therefore, EPA's prior SIP correction notice is now being amended to include the omitted odor provision, so that all odor provisions are effectively removed from the SIP, consistent with the purpose of the Act and as originally intended by EPA.

EPA has determined that today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are ''impracticable, unnecessary or contrary to the public interest.'' EPA has determined that public notice and comment for today's action is unnecessary because the intended result of EPA's November 27, 1998 rulemaking, which is encompassed by today's action, has previously been subject to a 60-day public notice and comment period, during which EPA did not receive any comments. Today's action merely amends the prior rulemaking to include a mistakenly omitted citation, ensuring that EPA's publicly noticed intention to remove all general duty provisions from the SIP is realized. In addition, EPA has determined that public notice and comment is unnecessary because, in light of the fact that EPA lacks any specific authority to regulate odor under the Act, no comments EPA might receive would result in any change in the outcome of today's action.

EPA also finds that there is good cause under APA section 553(d)(3) for this amendment to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is, among other things, to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule merely corrects an error. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

II. New York SIP Correction

On November 27, 1998 (63 FR 65557), EPA published a direct final rulemaking to remove all general duty provisions from the federally-approved New York SIP that do not reasonably relate to attainment and maintenance of the NAAQS, including those pertaining to nuisance odors. Specifically, EPA removed part 211.2 of Title 6 of the New York Code Rules and Regulations (NYCRR), entitled ''Air Pollution Prohibited,'' from the federally-approved New York SIP. Part 211.2 prohibits, among other things, odors that ''unreasonably interfere with the comfortable enjoyment of life or property.'' It has recently been brought to EPA's attention that 6 NYCRR Part 200.1(d) contains an odor provision that EPA erroneously did not remove from the New York SIP. EPA has determined that the definition of ''air contaminant or air pollutant'' at 6 NYCRR 200.1(d), as it relates to ''odor,'' does not have a reasonable connection to the NAAQS and related air quality goals of the Clean Air Act (Act) and is not properly part of the SIP.

EPA last approved 6 NYCRR 200.1(d) as part of the New York SIP on May 22, 2001. Part 200.1(d) provides the definition of ''air contaminant or air pollutant,'' which is defined as ''A chemical, dust, compound, fume, gas, mist, odor, smoke, vapor, pollen, or any combination thereof.'' Such a definition, as it specifically relates to ''odor,'' is not designed to control or impact NAAQS pollutants such that EPA could rely on it as a NAAQS attainment and maintenance strategy. After it came to the attention of EPA that the definition of ''air contaminant or air pollutant'' contained in Part 200.1(d) was not properly removed from the federally-approved New York SIP, EPA in turn brought the matter to the attention of the New York State Department of Environmental Conservation (NYSDEC). In a February 6, 2008 e-mail from NYSDEC to EPA, NYSDEC confirmed EPA's understanding that the definition as it relates to odor was not properly removed from the federally-approved New York SIP in the November 27, 1998 EPA rulemaking action.

EPA is now amending the November 27, 1998 SIP action. That action was done pursuant to section 110(k)(6) of the Act, to correct the New York SIP by removing general duty provision part 211.2 from the SIP, which includes a provision pertaining to odor. In today's action, EPA is reaffirming that such general duty provisions are not reasonably related to the NAAQS or other air quality goals of the Act, and were erroneously approved into the SIP. In addition, EPA has determined that it lacks any specific authority to regulate odor under the Act. Section 110(k)(6) of the amended Act provides: ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise any such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public.'' It should be noted that section 110(k)(6) has also been used by EPA to delete an improperly approved odor provision from the Wyoming SIP. 61 FR 47058 (1996).

Since the State of New York's Part 200.1(d) definition of ''air contaminant or air pollutant'' has no reasonable connection to the NAAQS-related air quality goals of the Act as it specifically relates to ''odor,'' EPA is amending its original action to include the removal of the word ''odor'' from the federally-approved definition. This amendment's effect is to complete the intended removal of all general duty provisions from the New York SIP, specifically those pertaining to odor.

Nothing in this action should be construed as establishing a precedent for any future action related to corrections or revisions of SIPs. Each SIP correction or revision shall be considered separately in light of specific technical, economic and environmental factors, and in relation to relevant statutory and regulatory requirements.

III. Summary of EPA's Action

EPA is taking action to amend its November 27, 1998 (63 FR 65557)

rulemaking action to correct the federally-approved New York SIP. Specifically, this action has the effect of removing the word ''odor'' from the definition of ''air contaminant or air pollutant'' at 6 NYCRR Part 200.1(d), so that ''odor'' is no longer part of the federally-approved New York SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely corrects an error, it does not impose any new requirements on sources or allow a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 4, 2008.

Alan J. Steinberg,

Regional Administrator, Region 2.

PART 52—[AMENDED]

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

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

Subpart HH—New York

■ 2. Section 52.1679, is amended by revising the entry for part 200 to read as follows:

§ 52.1679 EPA-approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
* * *	*	* *	* *
Part 200, General Provisions Sections 200.1, 200.6, 200.7 and 200.9.	2/25/00	4/22/08. [FR page citation].	The word odor is removed from the Subpart 200.1(d) definition of ''air contaminant or air pollutant''. Redesignation of non-attainment areas to attainment areas (200.1(av)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC. Changes in definitions are acceptable to EPA unless a previously approved definition is necessary for implementation of an existing SIP regulation.

New York State regulation	State effective date	Latest EPA approval date	Comments
			EPA is including the definition of ''federally enforceable'' with the understanding that (1) the definition applies to provisions of a Title V permit that are correctly identified as federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to ''avoid'' applicable requirements. EPA is approving incorporation by reference of those documents that are not already federally enforceable.
*	*	*	*	*	*	*

[FR Doc. E8–8657 Filed 4–21–08; 8:45 am]
BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 615

RIN 3145–AA49

Testimony and Production of Records

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: The National Science Foundation (NSF) is amending part 615 on testimony and the production of records in title 45 of the Code of Federal Regulations (CFR). This technical amendment clarifies that, in connection with a legal proceeding between private litigants, NSF's Inspector General has the same discretion to permit an Office of Inspector General (OIG) employee to testify or produce official records and information in response to a request as NSF's General Counsel has when such a request is made to any other NSF employee. This final rule is an administrative simplification that makes no substantive change in NSF policy or procedures for providing testimony or producing official records and information in connection with a legal proceeding.

DATES: *Effective Date:* April 22, 2008.

FOR FURTHER INFORMATION CONTACT: Eric S. Gold, Assistant General Counsel, Office of the General Counsel, National Science Foundation, telephone (703) 292–8060 and e-mail *egold@nsf.gov*.

SUPPLEMENTARY INFORMATION: NSF promulgated part 615 of title 45 of the Code of Federal Regulations, entitled, ''Testimony and Production of Records,'' to establish policies and procedures to be followed when a request is made of an NSF employee to provide testimony or produce official records and information in connection with a legal proceeding. The provisions of this part are intended to: (1) Promote economy and efficiency in NSF's operations; (2) minimize the possibility of involving NSF in controversial issues not related to its functions; (3) maintain the impartiality of NSF among private litigants; and (4) protect sensitive, confidential information and the deliberative process.

To this end, in any legal proceeding between private litigants, an NSF employee (other than an OIG employee) is precluded from giving testimony or producing official records or information in response to a formal demand or informal request unless NSF's General Counsel authorizes him or her to do so. The current regulation is silent on what authority, if any, the Inspector General has when information or testimony is sought from an OIG employee via a request. To dispel any confusion, NSF is amending its regulation to clarify that the Inspector General has the discretion to approve the production of official information, as well as the giving of testimony, in response to both a formal demand and an informal request made to an OIG employee.

Executive Order 12866

OMB has determined this rule to be nonsignificant.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This proposed regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This proposed regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This proposed regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 45 CFR Part 615

Testimony and production of records.

■ Accordingly, under the authority of 42 U.S.C. 1870, NSF amends the Code of Federal Regulations, Title 45, Chapter VI, as follows:

Title 45—Public Welfare—Chapter VI—National Science Foundation

PART 615—[AMENDED]

■ 1. The authority citation for part 615 continues to read as follows:

Authority: 42 U.S.C. 1870(a).

■ 2. Section 615.7 is revised to read as follows:

§ 615.7 Legal proceedings between private litigants: Office of Inspector General employees.

Notwithstanding the requirements set forth in §§ 615.1 through 615.6, when an employee of the Office of Inspector General is issued a demand or receives a request to provide testimony or produce official records and information, the Inspector General or his or her designee shall be responsible for performing the functions assigned to the General Counsel with respect to such demand or request pursuant to the provisions of this part.