

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 9, 2008.

Donald S. Welsh,
Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by adding an entry for Regulation 1132 after the existing Regulation 31 to read as follows:

§ 52.420 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * *	Regulation 1132—Transportation Conformity			
Section 1	Purpose	11/11/2007	5/22/2008	Added Section.
Section 2	Definitions	11/11/2007	5/22/2008	Added Section.
Section 3	Consultation	11/11/2007	5/22/2008	Added Section.
Section 4	Written Commitments for Control and Mitigation Measures.	11/11/2007	5/22/2008	Added Section.
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[FR Doc. E8-8395 Filed 4-21-08; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2007-0185; FRL-8555-5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Incorporation of On-Board Diagnostic Testing and Other Amendments to the Motor Vehicle Emission Inspection Program for the Northern Virginia Program Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving three State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions pertain to the Commonwealth's motor vehicle inspection and maintenance (I/M) program for the Northern Virginia area that was previously SIP-approved by EPA. These three SIP revisions incorporate changes made by the Commonwealth to the I/M program since EPA last approved the I/M program as part of the SIP in 2002. The most significant change to the program is the incorporation of on-board diagnostic computer checks of 1996-and-newer model year vehicles as an element of the emission inspection

process for the Northern Virginia program area. In addition, Virginia made numerous minor changes to the program, including several changes to test procedures and standards, as well as changes to its roadside testing regimen. The I/M program helps to ensure that highway motor vehicles operate as cleanly as possible, by requiring vehicles to be periodically tested and by identifying vehicles having high emissions due to malfunctioning emission control systems. Such vehicles must then be repaired and retested by their owners, to the standards set by the Commonwealth's program. Vehicle I/M programs address nitrogen oxide and volatile organic compound emissions, both of which are precursors to formation of ground level ozone pollution, as well as the pollutant carbon monoxide. This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on May 22, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-0185. 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: Brian Rehn, (215) 814-2176, or by e-mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 12, 2008 (73 FR 8018), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of three separate revisions made by Virginia to its prior, SIP-approved motor vehicle inspection and maintenance program. These three formal SIP revisions were submitted by Virginia on December 18, 2002, April 2, 2003, and June 18, 2007, respectively.

The Northern Virginia I/M program area is comprised of the following localities: The counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. It is designated by EPA as a moderate 8-hour ozone nonattainment area. The Commonwealth's revised I/M program satisfies federal requirements under sections 182 and 184 of the Clean Air

Act applicable to enhanced I/M programs.

II. Summary of SIP Revision

The Commonwealth's December 2002, April 2003, and June 2007 I/M SIP revisions latest revisions serve to amend the Commonwealth's prior, EPA-approved enhanced I/M SIP, which was published as a final rulemaking action in the September 1, 1999 edition of the **Federal Register** (64 FR 47670).

The Commonwealth SIP revisions are comprised of amended versions of Virginia's regulations governing the emissions inspection program. The purpose of these changes to Virginia regulation was to make changes that the Virginia Department of Environmental Quality (VA DEQ) deemed necessary for continued operation of the enhanced I/M program. Some of these regulatory amendments were made by Virginia to reflect changing federal requirements and policies that apply to enhanced emission inspection programs, and some updates were to address changes made to relevant Virginia law since the inception of the enhanced I/M program.

The most significant of the changes comprised within the December 18, 2002 SIP revision is the incorporation of on-board diagnostic checks of 1996 and newer vehicles subject to emissions testing. Virginia also updated its testing procedures to stay abreast of changes needed based upon past operation of the program. Virginia also modified applicability requirements for the I/M program to address the changing dynamic of the vehicle fleet operating in the program area. Virginia also amended its regulation to enhance the Commonwealth's ability to effectively enforce the emission inspection program. Below is a summary of the most significant changes to the Commonwealth's vehicle emission inspection program regulations submitted as part of the December 18, 2002 SIP revision:

1. Incorporation of on-board diagnostic testing of vehicles equipped with second generation on-board diagnostics (OBD-II), as well as checks of OBD-II equipped 1997 and newer diesel-powered vehicles.

2. Revision of program model year coverage to exempt vehicles 25-years old and older at the time of testing, in lieu of the previous exemption of 1968 and older model vehicles.

3. Revision of acceleration-simulation mode (ASM) emission standards and removal of ASM test procedure pre-screening requirements.

4. Tightening of two-speed idle emission test standards, to reflect advanced technology and lower

emission levels of 1990 and newer vehicles.

5. Relaxation of roadside remote sensing standards, and greater flexibility for VA DEQ in use of various pollutants as roadside screening criteria.

6. Repeal of requirement for evaporative system purge testing.

7. Revision of requirements for federal and private fleet testing and reporting, and add "sensitive mission vehicle" fleet emission inspection station permit category.

8. Revision of visible emissions standard to include a standard for diesel-powered vehicles now subject to OBD testing.

9. Elimination of deadlines for waiver limit increases that have already passed; and required vehicles that received a waiver in another state to be tested if subject to Virginia's I/M program.

10. Repeal of requirements limiting warranty eligibility for certain emissions short tests.

11. Modification of penalty schedule for major violations related to emissions inspections.

12. Revision of a number of definitions to reflect related regulatory changes, and the repeal of others that are no longer needed to support the Commonwealth's regulations.

Virginia's April 2, 2003 SIP revision serves to make a technical correction to the June 2002 version of the emission inspection program regulation that was submitted as part of the December 2002 SIP revision. This later amendment corrects a technical error in Virginia's prior emission inspection program regulation concerning emission inspector identification numbers.

Virginia's June 18, 2007 SIP revision contains a more recent version of the Commonwealth's I/M regulation since the June 2002 version of the regulation submitted as part of the December 18, 2002 SIP revision. This June 2007 SIP revision contains revised provisions related to on-road testing of vehicles (i.e., remote sensing) operated (primarily) in Northern Virginia. The purpose of this SIP revision is to help Virginia ensure motorist compliance with the I/M program and to supplement state enforcement activities.

EPA is taking a single rulemaking action today upon the December 18, 2002, the April 2, 2003, and the June 18, 2007 SIP revisions.

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

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for

voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

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

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998

opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

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

Other specific requirements for an enhanced I/M program, 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. Final Action

EPA is approving three SIP revisions formally submitted to EPA by the Commonwealth on December 18, 2002, April 2, 2003, and June 18, 2007 as revisions to the Virginia SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2008. 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 approving Virginia’s enhanced I/M program 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, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 9, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended under Chapter 91 as follows:

- a. Revising Part I, section 5–91–20.
- b. Revising Part II, sections 5–91–30, 5–91–50, 5–91–70, and 5–91–120.
- c. Revising Part III, sections 5–91–160 through 5–91–210.
- d. Revising Part IV, sections 5–91–220, 5–91–230, 5–91–260, 5–91–270, 5–91–290 through 5–91–340, 5–91–360 and 5–91–370.
- e. Revising Part V, section 5–91–380.
- f. Removing Part VI, sections 5–91–460 and 5–91–470.
- g. Revising Part VI, sections 5–91–410 through 5–91–450, 5–91–480, and 5–91–490.
- h. Revising Part VII, sections 5–91–500 through 5–91–540.
- i. Revising Part VIII, sections 5–91–550 through 5–91–580.
- j. Revising Part IX, sections 5–91–590 through 5–91–620.
- k. Revising Part X, sections 5–91–650 through 5–91–710.
- l. Revising Part XI, section 5–91–720.
- m. Revising Part XII, sections 5–91–740 through 5–91–760.

■ n. Removing Part XIII in its entirety.
 ■ o. Revising Part XIV, sections 5-91-790 and 5-91-800.

§ 52.2420 Identification of plan.

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * *	* * *	* * *	* * *	* * *
Chapter 91 Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area				
Part I Definitions				
5-91-20	Terms defined	6/29/05	4/22/08 [Insert page number where the document begins].	*
Part II General Provisions				
5-91-30	Applicability and authority of the department	10/1/02	4/22/08 [Insert page number where the document begins].	*
5-91-50	Documents incorporated by reference	10/1/02	4/22/08 [Insert page number where the document begins].	*
5-91-70	Appeal of case decisions	10/1/02	4/22/08 [Insert page number where the document begins].	*
5-91-120	Export and import of motor vehicles	10/1/02	4/22/08 [Insert page number where the document begins].	*
Part III Emission Standards for Motor Vehicle Air Pollution				
5-91-160	Exhaust emission standards for two-speed idle testing in enhanced emissions inspection programs.	6/29/05	4/22/08 [Insert page number where the document begins].	
5-91-170	Exhaust emission standards for ASM testing in enhanced emissions inspection programs.	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-180	Exhaust emission standards for on-road testing through remote sensing.	6/29/05	4/22/08 [Insert page number where the document begins].	
5-91-190	Emissions control system standards	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-200	Evaporative emissions standards	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-210	Visible emissions standards	10/1/02	4/22/08 [Insert page number where the document begins].	
Part IV Permitting and Operation of Emissions Inspection Stations				
5-91-220	General provisions	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-230	Applications	10/1/02	4/22/08 [Insert page number where the document begins].	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5-91-260	Emissions inspection station permits, categories ...	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-270	Permit renewals	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-290	Emissions inspection station operations	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-300	Emissions inspection station records	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-310	Sign and permit posting	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-320	Equipment and facility requirements	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-330	Analyzer system operation	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-340	Motor vehicle inspection report; certificate of emissions inspection.	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-360	Inspector identification number and access code usage.	10/1/02	4/22/08 [Insert page number where the document begins].	Retitled and amended.
5-91-370	Fleet emissions inspection stations; mobile fleet inspection stations.	10/1/02	4/22/08 [Insert page number where the document begins].	

Part V Emissions Inspector Testing and Licensing

5-91-380	Emissions inspector licenses and renewals	10/21/02	4/22/08 [Insert page number where the document begins].	
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Part VI Inspection Procedures

5-91-410	General	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-420	Inspection procedure; rejection, pass, fail, waiver	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-430	ASM test procedure	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-440	Two-speed idle test procedure	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-450	Evaporative system pressure test and gas cap pressure test procedure.	10/1/02	4/22/08 [Insert page number where the document begins].	Retitled and amended.
5-91-480	Emissions related repairs	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-490	Engine and fuel changes	10/1/02	4/22/08 [Insert page number where the document begins].	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
Part VII Vehicle Emissions Repair Facility Certification				
5-91-500	Applicability and authority	10/1/02	4/22/08 [Insert page number where the document begins].	
5-90-510	Certification qualifications	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-520	Expiration, reinstatement, renewal, and requalifica- tion.	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-530	Emissions and repair facility operations	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-540	Sign and certificate posting	10/1/02	4/22/08 [Insert page number where the document begins].	Retitled and amended.
Part VIII Emissions Repair Technician Certification and Responsibilities				
5-91-550	Applicability and authority	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-560	Certification qualifications for emissions repair technicians.	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-570	Expiration, reinstatement, renewal and requalifica- tion.	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-580	Certified emissions repair technician responsibil- ities.	10/1/02	4/22/08 [Insert page number where the document begins].	
Part IX Enforcement Procedures				
5-91-590	Enforcement of regulations, permits, licenses, cer- tifications and orders.	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-600	General enforcement process	10/1/02	04/22/08 [Insert page number where the document begins].	
5-91-610	Consent orders and penalties for violations	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-620	Major violations	10/1/02	4/22/08 [Insert page number where the document begins].	
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Part X Analyzer System Certification and Specifications for Enhanced Emissions Inspection Programs				
*	*	*	*	*
5-91-650	Design goals	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-660	Warranty; service contract	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-670	Owner-provided services	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-680	Certification of analyzer systems	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-690	Span gases; gases for calibration purposes	10/1/02	4/22/08 [Insert page number where the document begins].	

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].	
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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