

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.
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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.

Dated: April 16, 2008.

Lawrence Rudolph,

General Counsel.

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