



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Air Quality TITLE-SERIES: 45-01
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Alternative Emission Limitations During Startup
and Shutdown Operations
CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/06/2023 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual

DATE WRITTEN COMMENT PERIOD ENDS: 07/06/2023 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The rule sets forth the criteria and permit application requirements for establishing an alternative emission limitation during periods of startup or shutdown.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Summary of changes in the rule:

Revisions include removing malfunction from the rule title, clarifying the scope, removing maintenance activities from rule applicability, removing 45CSR40 from applicability because the affirmative defense provisions identified in the SSM SIP Call were previously addressed, aligning several definitions with the definitions in the SSM SIP Call, removing maintenance definitions and requirements, making the requirements mandatory if a source cannot comply with applicable emission limits contained in the underlying rules during startup or shutdown, requiring the Secretary to submit any new AEL to the Administrator for inclusion into the SIP, allowing the Secretary to develop an AEL for a narrowly defined source category, and miscellaneous other clarifications. Rule numbering and text formats were revised to comport with 153CSR1.

Statement of circumstances requiring the rule:

DAQ rules 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10, and 45CSR21 are being revised to remove the SSM SIP Call provisions which potentially allow excess emissions during startup, shutdown or malfunction (SSM) events in response to the Finding of Failure to Submit action issued by the US. EPA [88 Fed. Reg. 23353, April 17, 2023]. The purpose of 45CSR1 is to provide a mechanism for sources subject to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10, and 45CSR21 that may be unable to comply with applicable emission limits during startup or shutdown to apply for an alternative emission limitation (AEL). The rule is being revised to address deficiencies identified by the U.S. EPA in its final action disapproving the previous version of the rule from being added into the State Implementation Plan [88 Fed. Reg. 23356, April 17, 2023].

This rule is exempt from the Regulatory Moratorium of Executive Order 2-18 under condition 3(o), reducing the regulatory impact of existing rules.

Determination of Stringency:

A federal counterpart to this proposed rule exists. The proposed rule adopts the federal counterpart language; therefore, it is no more stringent than the federal counterpart.

Consultation with the Environmental Protection Advisory Council:

The Environmental Protection Advisory Council received a copy of this proposed rule in advance of the scheduled June 29, 2023 meeting.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed revisions to this rule should not impact revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed revisions to this rule should not impact special revenue accounts.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

The proposed revisions to this rule should not impact costs of state government beyond that resulting from currently applicable federal requirements, nor should it have an economic impact on the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

In accordance with W. Va. Code §22-1A 3(c), the Secretary has determined that this rule will not result in a taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jason E Wandling -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 1
ALTERNATIVE EMISSION LIMITATIONS DURING STARTUP, AND SHUTDOWN, AND
MAINTENANCE OPERATIONS

§45-1-1. General.

1.1. Scope. -- This rule sets forth the criteria and permit application requirements for establishing an alternative emission limitation during periods of startup, or shutdown, or maintenance. This rule was developed in ~~response to~~ accordance with “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Finding of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” 80 Fed. Reg. 33840 (June 12, 2015). ~~The “SSM SIP Call” from the United States Environmental Protection Agency (U.S. EPA) for West Virginia and 35 other states finds that certain SIP provisions are substantially inadequate to meet federal Clean Air Act requirements concerning periods of startup, shutdown, or malfunction. The “SSM SIP Call” identified provisions in 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10 and 45CSR21 that potentially allowed for excess emissions during SSM events. The purpose of this rule is to provide a mechanism for sources that may be unable to comply with the applicable emission limits in these rules during startup or shutdown events to request and apply for an alternative emission limitation in accordance with the requirements of this rule.~~

1.2. Authority. -- W.Va. Code § 22-5-4.

1.3. Filing Date. -- ~~May 15, 2017.~~

1.4. Effective Date. -- ~~June 1, 2017.~~

1.5. Sunset Provision. -- Does not apply.

1.6. Applicability.

~~1.5.a. Person(s) The owner or operator of a source subject to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10, or 45CSR21 or 45CSR40 who may have excess emissions which cannot comply with the established emission limitations during periods of startup, or shutdown, or maintenance and cannot meet an allowable emission limit indicative of normal operations may request an alternative emission limitation in accordance with Section 3 of this Rule. The alternative emission limitation would be a component of the continuous allowable emission limitation.~~

~~1.5.b. Person(s) subject to 45CSR16 or 45CSR34 shall meet the applicable startup and shutdown provisions of the applicable federal rule and are not eligible for an alternative emission limit under this rule for affected sources.~~

§45-1-2. Definitions.

2.1. “Administrator” means the Administrator of the United States Environmental Protection Agency

(U.S. EPA) or the Administrator's duly authorized representative.

2.2. "Alternative Emission Limitation" or "AEL" means an emission limitation that applies to a source during some but not all periods of normal operation (e.g., applies only during a specifically defined mode of operation such as startup, ~~or shutdown, or maintenance~~). An alternative emission limitation is a component of a continuously ~~allowable~~ applicable emission limitation, and it may take the form of a control measure such as a design, equipment, work practice or operational standard (whether or not ~~a numerical emission limitation exists~~).

2.3. "Clean Air Act" "(CAA)" means the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended.

2.4. ~~"Continuous Allowable Emission Limitation" means a legally binding restriction (for example, as contained in a permit issued pursuant to 45CSR13, 45CSR14 or 45CSR19, in a consent order, in a federal regulation, in a State Legislative rule or in another State or federally enforceable document) on emissions from a source or source category such as a numerical emission limitation, a numerical emission limitation with higher or lower levels allowable during specific modes of operation, a specific technological control measure requirement, a work practice standard, or a combination of components as a comprehensive, continuous, and practical emission limitation.~~ "Emission Limitation" for the purpose of this rule means a legally binding restriction on emissions from a source or source category, such as a numerical emission limitation, a numerical emission limitation with higher or lower levels applicable during specific modes of source operation, a specific technological control measure requirement, a work practice standard, or a combination of these things as components of a comprehensive and continuous emission limitation.

~~2.62.5.~~ "Excess Emissions" means the emissions of air pollutants from a source that exceed any ~~allowable~~ applicable emission limitation. ~~In particular, †~~This term includes those emissions above the otherwise ~~allowable~~ applicable emission limitation that occur during ~~periods of startup, or shutdown, malfunction~~ or other modes of source operation.

~~2.72.6.~~ "Maintenance Operation" means ~~scheduled maintenance activities that have zero process weight rate and are not defined as a manufacturing process.~~ "Malfunction" means a sudden and unavoidable breakdown of process or control equipment.

~~2.82.7.~~ "Practically Enforceable" ~~also means State and federally enforceable,~~ means for the purpose of this rule and in the context of an emission limitation, that the limitation is enforceable as a practical matter (e.g., within a federally enforceable permit such as one issued pursuant to 45CSR13 and contains appropriate averaging times, compliance verification procedures, compliance monitoring, and recordkeeping requirements). The term uses "practically" as it means "in a practical manner" and not as it means "almost" or "nearly".

2.9. "Process Weight Rate" means a rate established as follows:

—2.9.a. ~~For continuous or long run steady state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.~~

—2.9.b. ~~For cyclical or batch unit operations, or unit processes, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period.~~

—2.9.c. ~~Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for~~

~~allowable emission shall apply.~~

~~2.102.8.~~ “Secretary” means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W. Va. Code §§ 22-1-6 or 22-1-8.

~~2.112.9.~~ “Shutdown” means the cessation of operation, ~~for any purpose,~~ of a source ~~subject to this rule for any purpose,~~ unless otherwise defined in a permit issued to create an alternative emission limitation.

2.10. “SIP” means or refers to a State Implementation Plan. Generally, the SIP is the collection of state statutes and rules approved by the EPA pursuant to CAA section 110 that together provide for implementation, maintenance and enforcement of a national ambient air quality standard (or any revision thereof) promulgated under CAA section 109 for any air pollutant in each air quality control region (or portion thereof) within a state.

2.11. “SSM” refers to startup, shutdown or malfunction at a source. It does not include periods of maintenance. An SSM event is a period of startup, shutdown or malfunction during which there may be exceedances of the applicable emission limitations and thus excess emissions.

2.12. “Startup” means the setting in operation, for any purpose, of a source subject to this rule for any purpose, unless otherwise defined in a permit issued to create an alternative emission limitation.

2.13. Other words and phrases used in this rule, unless otherwise indicated, have the meaning ascribed to them in W. Va. Code § 22-5-2 and 40CFR § 52.01.

§45-1-3. Alternative Emission Limitation.

3.1. Any owner or operator that meets the applicability criteria set forth in subsection 1.6 shall request an alternative emission limitation by submitting a permit application to the Secretary in accordance with section 4 of this rule and 45CSR13, 45CSR14, and 45CSR19 as applicable.

3.2. The Secretary ~~may~~ shall:

3.2.1. ~~Establish~~ an alternative emission limitation as a practically enforceable permit condition for any ~~person(e)~~ owner or operator of a source subject to this rule, ~~which has requested an AEL in accordance with subsection 4.1 of this rule and in accordance with the requirements of 45CSR13, 45CSR14, and 45CSR19 as applicable.~~

3.2.2. Develop an alternative emission limitation in accordance with the criteria established under section 5 of this rule; and

3.2.3. Submit any new alternative emission limitation established under this rule to the Administrator as a revision to the SIP for approval by the Administrator. The justification shall include the potential worst-case emissions that could occur during periods of startup or shutdown as set forth in paragraph 5.1.4 of this rule.

~~3.2-3.3.~~ 3.3. An alternative emission limitation may be a numerical limitation, a technological control requirement, or a work practice requirement that would apply during periods of startups, or shutdowns, or maintenance as a component of the continuously allowable applicable emission limitation.

~~3.3~~ 3.4. An alternative emission limitation may be composed of a combination of numerical limitations,

specific technological control requirements or work practice requirements with each component of the emission limitation applicable during a defined mode of source operation. The alternative emission limitation in conjunction with ~~the other~~ permit limitations that apply during normal modes of operation must provide for continuous compliance and must meet the applicable stringency requirements.

~~3.4~~ 3.5. An alternative emission limitation ~~that is~~ expressed as a numerical limitation does not require the same numerical level of emissions as ~~in all other~~ normal modes of operation. ~~However,~~

~~3.6.~~ An alternative emission limitation ~~during periods of startup, shutdown, or maintenance~~ shall not be effectively unlimited or an uncontrolled level of emissions, ~~as such as~~ would constitute impermissible *de facto* exemptions for emissions during startup, ~~or shutdown, or maintenance.~~

~~3.5.~~ The Secretary shall use ~~the criteria in Section 5 of this Rule to develop an alternative emission limitation during periods of startup, shutdown, or maintenance.~~

~~3.6~~ 3.7. ~~A person(s)~~ The owner or operator shall not receive an alternative emission limitation without first obtaining a permit in accordance with the provisions of W. Va. Code § 22-5-1 et seq., and 45CSR13, 45CSR14, and 45CSR19 as applicable.

~~3.7~~ 3.8. The Secretary may adopt an established alternative emission limitation for other similar narrowly defined sources with similar design, operating and control characteristics as a means to establish a consistent alternative emission limitation for any identified specific narrowly defined category of sources using specific pollution control strategies.

§45-1-4. Application Requirements.

4.1. ~~A source that cannot meet~~ Any owner or operator that cannot comply with the applicable emission limitations as required by 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10, or 45CSR21 or 45CSR40 on a continuous basis, including during periods of start-up, or shutdown, and maintenance may shall apply for a permit in accordance with 45CSR13, 45CSR14 or 45CSR19, as applicable and request an alternative emission limitation for periods of startup or shutdown.

4.2. The permit application shall be specific to the emissions unit at the source and shall consist of the following:

~~4.2.a~~ 4.2.1. ~~The source owner or operator shall narrowly define the startup, and shutdown, or maintenance operations at the emissions unit including as appropriate the parameters that define startup, and shutdown, or maintenance; the estimated duration of the startup and shutdown events; and the estimated frequency of startup and shutdown events for each requested alternative emission limitation.~~

~~4.2.b~~ 4.2.2. ~~The source owner or operator shall describe why the use of the control strategy used during normal operations is not achievable technically infeasible during periods of startup, or shutdown, or maintenance.~~

~~4.2.c~~ 4.2.3. ~~The source owner or operator shall describe any alternate control strategies considered, or employed and why the selected alternative control strategy requested is appropriate and why other alternative control strategies were not employed proposed.~~

~~4.2.d~~ 4.2.4. ~~The source owner or operator shall propose alternative emission limitation(s) and monitoring parameter(s) during startup, or shutdown, or maintenance with reasonable specificity to ensure practical enforceability of the alternative emission limitation.~~

~~4.2.e~~ 4.2.5. The ~~source~~ owner or operator shall provide an estimate of the worst-case emissions that may occur during periods of startup, or shutdown, ~~or maintenance~~ for which the proposed alternative emission limitation will apply. For instance, if the proposed AEL is based on a reduced efficiency of the control device during startup, ~~shutdown, or maintenance,~~ then the emissions estimate would be based on the efficiency during ~~these periods of~~ startup.

~~4.2.f~~ 4.2.6. If the ~~source~~ owner or operator is proposing a work practice standard as an alternative emission limitation, it may be based on equipment manufacturer's recommendations or procedures, industry standards, or best management practices based on their unique operating requirements and current condition, usage and configuration of the unit.

4.3. The Secretary has the authority to approve a reasonable definition of startup, or shutdown, ~~or maintenance~~ events, the duration of events, and the maximum frequency of events and ~~may~~ incorporate them as permit requirements.

§45-1-5. Criteria.

5.1. The Secretary shall use the following criteria to evaluate any proposed alternative emission limitation(s) ~~in accordance with Section 3 and 4 of this Rule; to develop alternative emission limitation(s) as permit requirements; and to include in the permit the recordkeeping and reporting requirements set forth in Section 6 below~~ requested by the owner or operator in the permit application submitted in accordance with subsection 3.1 of this rule and 45CSR13, 45CSR14 or 45CSR19, as applicable.

~~5.1.a~~ 5.1.1. An alternative emission limitation shall be limited to a specific emission unit using a specific control strategy (e.g., cogeneration facilities burning natural gas and using selective catalytic reduction);;

~~5.1.b~~ 5.1.2. ~~Verify that the~~ The Secretary shall verify that the applicable emission limit that applies during normal operation of the emission unit is not achievable during periods of startup, or shutdown, ~~or maintenance;~~;

~~5.1.e~~ 5.1.3. An alternative emission limitation requires ~~that~~ the frequency and duration of operation during periods of startup, or shutdown, ~~or maintenance~~ are minimized to the greatest extent practicable;;

~~5.1.d~~ 5.1.4. ~~The Secretary shall~~ Evaluate the potential worst-case emissions that could occur during periods of startup, or shutdown, ~~or maintenance~~ based on the alternative emission limitation(s);;

~~5.1.e~~ 5.1.5. An alternative emission limitation requires ~~that~~ all practical steps are taken to minimize the impact of emissions on ambient air quality during periods of startup, or shutdown, ~~or maintenance;~~;

~~5.1.f~~ 5.1.6. ~~Require~~ Practically enforceable monitoring parameters and records are required to ensure compliance with the alternative emission limitation(s).

5.2. An alternative emission limitation requires that, at all times, the ~~source~~ emission unit is operated in a manner consistent with good practice for minimizing emissions and ~~that sources use~~ the owner or operator uses best efforts regarding planning, design, and operating procedures. An alternative emission limitation shall not be established as a generic requirement, such as a "general duty to minimize emissions" provision or an "exercise good engineering judgement" provision. While such provisions may serve an overarching purpose of encouraging sources to design, maintain, and operate their sources correctly, such generic clauses are not a valid substitute for more specific emission limitations. A general duty clause may

be part of a work practice standard; but may not be a stand-alone as the work practice standard.

5.3. If the Secretary determines there are multiple owners or operators with emission units within a narrowly defined specific source category that meet the applicability requirements under subsection 1.6, the Secretary shall consider adopting the same consistent alternative emission limitation for all applicable owners or operators within the same narrowly defined source category. A narrowly defined source category would include multiple emission units with similar design, operating characteristics and pollution control strategies.

§45-1-6. Monitoring, Recordkeeping and Reporting.

6.1. The owner or operator shall maintain records during periods of startup, ~~and~~ shutdown, ~~and~~ maintenance. Acceptable records may include, but are not limited to, operator logs (may be electronic), Continuous Emissions Monitoring System (CEMS) data, or other relevant evidence such as operator notes that document the date, time, duration, and estimated emissions during ~~the a~~ SSM event. The records shall demonstrate that the alternative emission limitation requirements were met and document the steps taken to minimize emissions to the extent practicable during the event, including, but not limited to, any monitored parameter established in the permit issued pursuant to 45CSR13, 45CSR14 or 45CSR19, as applicable.

6.2. The owner or operator ~~of any source subject to this rule~~ shall maintain records of ~~alternative emission limitation~~ SSM events for a period of at least five (5) years following the date of each occurrence. At a minimum, the most recent two (2) years of data shall be maintained on-site. The remaining three (3) years of data may be maintained off-site, but shall be made available to the Secretary upon request. The Secretary may request reports of such data in a reasonable manner and detail as the Secretary may specify. If requested, such reports shall be filed within thirty (30) days of the end of the established reporting period. Where appropriate, the owner or operator may maintain records electronically.

6.3. Any permit application form, report, or compliance certification submitted to the Secretary shall contain a certification by the responsible official which states that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

6.4. The Secretary may require the submission of reports as a condition of any ~~applicable~~ permit issued pursuant to 45CSR13, 45CSR14 or 45CSR19, as applicable.

§45-1-7. Inconsistency Between Rules.

7.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method, or rule.