

C. What Amendments Did Massachusetts Submit to Their Visible Emissions Rule?

On August 9, 2001, the MA DEP submitted to EPA amendments to the Massachusetts Regulations for the Control of Air Pollution. This submittal included revisions to several regulatory sections. However, today's action only applies to the revisions made to section 310 CMR 7.06, entitled "Visible Emissions." The revisions of this section will allow a facility subject to a Title V operating permit to operate under alternative opacity emission standards for certain boilers, provided the facility develops a plan outlining the practices it will utilize during certain operating conditions (e.g., start up, shut down, etc.).

Specifically, a new section 310 CMR 7.06(1)(c) allows facilities subject to Title V operating permits to comply with a visible emissions limitation not to exceed 15 percent opacity for boilers rated less than 500 BTU input capacity. To operate in accordance with the exception, a facility must notify the MA DEP and submit a plan describing practices for operating and maintaining the equipment to minimize emissions during soot blowing, startup, shut down, burner change, and malfunction. In addition, the plan must also include corrective action procedures. An exceedance of the visible emission limitation would not be deemed a violation provided the facility could demonstrate that it was operating in accordance with the plan at the time of the exceedance. In addition, MA DEP can disallow a facility from operating pursuant to this exception if the plan is inadequate or a condition of air pollution exists. Finally, any facility operating pursuant to this exception must notify the MA DEP within 24 hours or the next business day of any malfunction which causes an exceedance of the allowed visible emissions requirements for greater than a 12 minute period.

D. What Concerns Does EPA Have With the Existing Amendments?

EPA has concluded that 310 CMR 7.06 (1)(c) contains several deficiencies that must be addressed by the MA DEP. First, there is no apparent cap on opacity during start up and shut down operations. In addition, the revised rule does not explicitly provide an averaging period by over which opacity should be measured. Furthermore, there is no explicit criteria in the regulation stating how the MA DEP will judge the plan of good operating practices required to be submitted by facilities taking advantage

of the exception in 310 CMR 7.06(c). Lastly, there are no provisions to make the good operating practices outlined in a facility's plan enforceable. If the operating practices are not made enforceable, then neither EPA nor citizens will be able to enforce against a facility violating its opacity limitation.

E. What Changes Has Massachusetts Committed To Make to the Rule?

In a letter from the MA DEP dated September 12, 2002, MA DEP has committed to submit, within one year from today, revisions to section 7.06 (1)(c). In its September 12, 2002 letter, MA DEP included to specific regulatory language that it intends to adopt to address EPA concerns. The amendments the MA DEP has committed to make to the rule include adding a 27% opacity limitation to apply during startup, shut down, soot blowing and other limited periods as specified in the plan of good operating practices approved by the MA DEP. MA DEP has also committed to explicitly include a six minute averaging period in the rule.

Massachusetts has also committed to add explicit criteria in the regulation stating how the MA DEP will judge the plan of good operating practices required to be submitted by facilities taking advantage of the alternative opacity limitation. Lastly, Massachusetts has also committed to add provisions to the rule specifying how the good operating practices and visible emission limitations outlined in a facility's plan will be made enforceable. These will address all of the concerns raised by EPA.

II. Final Action

EPA is conditionally approving 310 CMR 7.06(1)(c) of the SIP revision submitted by the Massachusetts Department of Environmental Protection on August 9, 2001 as a revision to the SIP. The State must submit to EPA by one year from today a revised regulation addressing the concerns outlined in this action. If the State fails to do so, this approval will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this regulation will no longer be a part of the approved Massachusetts SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment within the applicable time frame, the conditionally approved regulation will remain a part of the SIP until EPA takes final action approving or disapproving the new regulation. If

EPA disapproves the new submittal, the conditional approval will also be disapproved at that time. If EPA approves the submittal, the regulation will be fully approved in its entirety and replace the conditionally approved regulation in the SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective June 9, 2003 without further notice unless the Agency receives relevant adverse comments by May 8, 2003.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 9, 2003 and no further action will be taken on the proposed rule.

III. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the