

dated March 19, 2003, WVDEP clarified that WVDEP enforcement staff evaluate excursions where parametric monitoring is an element of or the primary component of a monitoring plan, on a case-specific basis. In some instances, deviations in an operating parameter would very strongly indicate a probable violation of sulfur dioxide limits or of 45CSR10-3, 4, or 5. The letter also affirms that in a situation involving a likely emission exceedance, the burden of proof would be placed on the source to demonstrate that the parametric excursion did not cause an exceedance of the sulfur dioxide limit. West Virginia has clarified that in such an instance, emissions testing under conditions identical to or very similar to the excursion situation and subsequent analysis would be required to conclude whether a violation actually occurred. It should also be noted that larger sources of sulfur dioxide are now required to use CEMs or ASTM-based fuel monitoring and analysis or periodic emissions tests (EPA Method 6), as the primary compliance determination method.

(I) A section has been added to the SIP for recordkeeping and reporting, requiring the owners or operators of fuel burning unit(s), manufacturing process source(s) or combustion source(s) subject to the regulation requirements for those sources to maintain on-site records of all required monitoring data, pursuant to monitoring plans established in the monitoring provisions of this regulation (subsection 8.2c). These records are required to be available to the Director or his duly authorized representative and are to be retained on-site for a minimum of five years. Periodic exception reports are due to the Director, and are required to detail any excursions outside the range of measured emissions or monitored parameters established in the source's approved monitoring plan. In addition, operators of fuel burning unit(s) or combustion(s) source(s) are required to maintain records of the operating schedule and the quantity and quality of fuel consumed in each unit. Fuel burning sources utilizing CEMs are exempt from this requirement.

(J) An exemption has been revised for any fuel burning unit having a design heat input under 10 million BTUs per hour to include an exemption from the registration, permitting, testing, monitoring, recordkeeping and reporting requirements for such sources (sections 6-8), as well as from the sulfur dioxide emission standards for fuel burning units (section 3). An exemption has been added for fuel burning unit(s) which combust natural gas, wood, or

distillate oil, alone or in combination, exempting these units from the testing, monitoring, recordkeeping and reporting requirements for fuel burning units, manufacturing process sources or combustion sources (section 8).

(K) A section entitled, "Circumvention" has been added to this regulation which prohibits any owner or operator subject to the provisions of this regulation to build, erect, install, modify or use any article, machine, equipment or process which purposely conceals an emission which would constitute a violation of an applicable standard.

(L) A section entitled, "Inconsistency Between Rules" has been added to this regulation which provides that any inconsistencies between 45CSR10 and any other WVDEP regulation be resolved by the application of the more stringent requirement.

Additional details pertaining to these revisions are included in the Technical Support Document for this rulemaking.

These revisions strengthen the SIP by clarifying and updating definitions, and revising and streamlining monitoring, recordkeeping and reporting requirements for sulfur dioxide fuel burning units, manufacturing process source operations, and combustion sources. The revision also adds requirements for the registration of alternative emission limits for multiple stacks at a single source.

III. Final Action

EPA is approving the revisions to 45CSR10, "To Prevent and Control Air Pollution from the Emission of Sulphur Oxides," submitted by West Virginia on April 29, 1996, and September 21, 2000. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 4, 2003, without further notice unless EPA receives adverse comment by July 3, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General 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 Unfunded Mandates Reform Act of 1995 (Public Law 104-4). 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 approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air 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.

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