

West Virginia and the United States, and (4) Definitions for "ASTM", "Control Equipment", "Discharge Point", "Heat Input", "Laboratory Official", "Malfunction", "Normal Operation", "Owner or Operator", "Prefilter", "Primary Filter", "Probe", "Sampling Plane", "Shutdown", "Start-up", "Test Team Supervisor", "Distillate Oil", "Indirect Heat Exchanger", "Natural Gas", "Opacity", "Process Heater", "Residual Oil", "Shipment", "Wet Scrubber System" and "Wood" were added.

(B) In general, West Virginia made revisions to the visible emissions standard that substantially strengthened and clarified opacity limitations. Visible emissions from fuel burning units must be no greater than ten percent opacity on a six minute block average. An exemption from this standard is provided during soot blowing operations and fire box cleaning where a source can demonstrate that compliance cannot be practically achieved. In no event, however, may the opacity be greater than 30 percent for a total of six, six minute time periods in a calendar day. EPA interprets these exemption provisions to place the burden on the source to document that the exemption applies. Absent a formal determination from the Director that is based on information provided by the source, the exemption cannot be applied.

West Virginia's regulation 45CSR2 also provides a process for sources to request alternative visible emission standards where it is technologically or economically infeasible for the source to comply with the presumptive standard. In no event, however, may a fuel burning unit exceed 20 percent opacity. Section 110(a)(2)(A) of the Clean Air Act (CAA) requires SIPs to include federally enforceable emission limitations. West Virginia's provisions for alternative visible emission standards meets this requirement only to the extent that the regulation sets an upper limit on all alternative standards. However, the West Virginia Department of Environmental Protection (WVDEP) submitted a letter to EPA on March 19, 2003, clarifying that all alternative visible emission standards will be established as specific conditions of permits issued in accordance with federally enforceable permitting programs. The letter states that prior to issuing such permits, the WVDEP shall submit them to EPA for review. This letter has been included in the administrative record for this action and provides certainty of EPA review of alternative emission standards.

(C) The SIP revision substantially revises and enhances the testing, monitoring, recordkeeping and reporting requirements of 45CSR2. The regulation now requires that testing be conducted using EPA-approved methods and requires sources to submit monitoring plans for each emission unit that includes how emissions are to be measured, monitoring of pollution control equipment and parametric monitoring as appropriate. Sources using continuous opacity monitoring systems (COMS) presumptively meet the requirement for a monitoring plan.

The revised regulation also provides that excursions outside of the operating parameters associated with control equipment and established in a monitoring plan will not necessarily constitute a violation. On March 19, 2003, the WVDEP submitted a letter to EPA outlining the manner in which the State will implement 45CSR2, including this provision. It states that "WVDEP interprets this provision to mean that the source has the burden of proof in demonstrating that an excursion of an operating parameter is not a violation of the visible emission standards under section 3 of 45CSR2. Visible emissions monitoring plans involving primarily the recording of parametric data require visible emissions observations to be made and recorded when an excursion of any operating parameter exceeds one hour as detailed in interpretative rule 45CSR2A * * * Such opacity tests may be used to show that the parametric excursion did not result in opacity violations or may serve to verify that opacity violations actually occurred. WVDEP or EPA could enforce against the observed opacity violations in conjunction with the parametric excursion." This letter is included in the administrative record for this rulemaking action.

(D) The revisions to West Virginia's regulation 45CSR2 include revised exemptions to the presumptive visible emissions standard during periods of start-up, shutdown, and malfunction. In order to qualify for an exemption during these periods, the source must demonstrate that the fuel burning unit and associated air pollution control equipment have been maintained and operated in a manner consistent with good air pollution control practices for minimizing emissions.

Generally, EPA requires that sources meet, without interruption, applicable limitations and control requirements. Where exemptions are allowed, the source must prove that an exemption applies and that the violation could not have been prevented. The Director may determine whether or not the exemption

should be applied based on "information available to the Director", which includes, but is not limited to monitoring results, visible emissions observations, review of operating and maintenance procedures and inspection of the source. Failure of a source to provide documentation that it has conducted maintenance operations in a manner consistent with good air pollution control practices should not prevent either the State or EPA from exercising its enforcement authority.

Specifically with respect to the malfunction exemption, EPA interprets West Virginia's regulation to mean that the source has the burden to prove that the malfunction was caused by circumstances beyond the control of the source and that it could not have been prevented through the installation of proper control equipment or proper operation and maintenance. Furthermore, the source must be able to demonstrate that the malfunction was not the result of an activity that could have been foreseen and avoided. With respect to high opacity measurements during start-up and shutdown operations, the source has the same burden to prove that the violation could not have been avoided through installation of the proper control equipment or proper operation and maintenance. For all exemptions claimed by a source, the WVDEP and EPA each have the authority to determine whether or not an exemption applies under a SIP approved regulation.

West Virginia's regulation 45CSR2 also states that a malfunction constitutes an affirmative defense for any action brought for noncompliance with the weight emissions standard (particulate matter standard) if the owner/operator can demonstrate that it has met the requirement to maintain and operate the fuel burning unit(s), including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. Although this provision does not exempt fuel burning units from the particulate matter standard during a malfunction, it does attempt to define the State's enforcement discretion when a malfunction occurs. EPA agrees that enforcement discretion may be appropriate for events such as a malfunction, where EPA concurs that a malfunction has occurred. However, EPA's approval of this rule as a SIP revision does not constitute advance approval of any exemptions, including malfunctions, or advance enforcement discretion which may be claimed under West Virginia's regulations. EPA may