

**TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY**

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

§45-1-1. General.

1.1. Scope. – This rule sets forth the criteria for establishing an alternative emission limitation during periods of startup, shutdown, or maintenance. This rule was developed in response to “*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.

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Applicability. -- Person(s) subject to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10, 45CSR21 or 45CSR40 that have excess emissions during periods of startup, 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.

§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” 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, shutdown, or maintenance). An alternative emission limitation is a component of a continuous allowable 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,

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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.

2.6. “Excess Emissions” means the emissions of air pollutants from a source that exceed any allowable emission limitation. In particular, this term includes those emissions above the otherwise allowable emission limitation that occur during periods of startup or shutdown or other modes of source operation.

2.7. “Maintenance Operation” means maintenance activities that have zero process weight rate and are not defined as a manufacturing process.

2.8. “Practically Enforceable” also means State and federally enforceable, in the context of an allowable 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. “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.

2.10. “Shutdown” means the cessation of operation, for any purpose, of a source subject to this rule.

2.11. “Startup” means the setting in operation, for any purpose, of a source subject to this rule.

2.12. 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. The Secretary may establish an alternative emission limitation as a practically enforceable permit condition for any person(s) subject to this rule, in accordance with the requirements of 45CSR13, 45CSR14, and 45CSR19 as applicable.

3.2. 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, shutdowns, or maintenance as a component of the continuous allowable emission limitation.

3.3. All components of the resulting alternative emission limitation shall meet the applicable level of stringency for that type of allowable emission limitation, for example if reasonably available control technology (RACT) level of control is required by 45CSR21.

3.4. An alternative emission limitation that is expressed as a numerical limitation does not require the same numerical level of emissions as in all normal modes of operation. However, an alternative emission limitation during periods of startup, shutdown, or maintenance shall not be effectively unlimited or an uncontrolled level of emissions, as such would constitute impermissible *de facto* exemptions for

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emissions during startup, 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. A person(s) 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.

§45-1-4. Application Requirements.

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

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

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

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

4.2.c. The source shall describe any alternate control strategies considered and why or why not the alternative control strategy requested is appropriate and why other alternative control strategies were not employed.

4.2.d. The source shall propose alternative emission limitation(s) and monitoring parameter(s) during startup, shutdown, or maintenance with reasonable specificity that ensures practical enforceability and propose the duration and the maximum frequency of events.

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

§45-1-5. Criteria.

5.1. The Secretary shall use the following criteria to evaluate proposed alternative emission limitation(s) in accordance with Section 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.

5.1.a. 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. Verify that the control strategy for the emission unit is not achievable during periods of

startup, shutdown, or maintenance;

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

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

5.1.e. 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, shutdown, or maintenance;

5.1.f. Require practically enforceable monitoring parameters and records to ensure compliance with the alternative emission limitation(s).

5.2. An alternative emission limitation requires that, at all times, the source is operated in a manner consistent with good practice for minimizing emissions and that sources use 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.

§45-1-6. Recordkeeping and Reporting.

6.1. The owner or operators shall maintain records during periods of startup, shutdown, and maintenance. Acceptable records include continuous operating logs or other relevant evidence to document the date, time, duration, emissions during the event, and the frequency of events. The records shall also demonstrate that the alternative emission limitation requirements were met and the steps that were taken to minimize emissions to the extent practicable during the event, including but not limited to any monitoring parameter established in the permit.

6.2. The owner or operator of any source subject to this rule shall maintain records of alternative emission limitation 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.

§45-1-7. Inconsistency Between Rules.

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.