



**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

*State Capitol - Room MB-49  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0610  
(304) 347-4840  
(304) 347-4919 FAX*

*email: tanders@mail.wvnet.edu*

*Senator Mike Ross, Co-Chairman  
Delegate Mark Hunt, Co-Chairman  
Debra A. Graham, Counsel*

*Joseph A. Altizer, Associate Counsel  
Rita Pauley, Associate Counsel  
Teri Anderson, Administrative Assistant*

November 28, 2000

**NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

TO: Ken Hechler, Secretary of State, State Register

TO: Carrie Chambers  
DEP-Air Quality, Office of  
10 McJunkin Road  
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60, 45CSR16**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
  - (a) as originally filed
  - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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**SCANNED**

OFFICE OF THE SECRETARY OF STATE  
NOV 28 6 23 PM '00

FILED



FILED

Nov 16 6 50 AM '00

**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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November 13, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Carrie Chambers  
DEP-Air Quality, Office of  
10 McJunkin Road  
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FROM: Legislative Rule-Making Review Committee

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ANALYSIS OF PROPOSED LEGISLATIVE RULE

**Agency:** Office of Air Quality

**Subject:** Standards of Performance for New Stationary Sources  
Pursuant to 40 CFR Part 60.

**CSR Cite:** 45CSR16

**Counsel:** JAA

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PERTINENT DATES

Filed for public comment: July 12, 2000  
Public comment period ended: August 14, 2000  
Filed following public comment period: September 1, 2000  
Filed LRMRC: September 1, 2000  
Filed as emergency: n/a

**Fiscal Impact:** None.

ABSTRACT

Summary

This rule adopts by reference, federal performances standards for new stationary pollution sources. The amendments to the rule adopt updated Code of Federal Regulation cites and inserts definitions for "Administrator," "Clean Air Act" and "Director."

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OFFICE OF THE  
SECRETARY OF STATE

NOV 1 2 16 PM '00

FILED

### AUTHORITY

Statutory authority: W.Va. Code, §22-5-4 provides:

(a) The director is authorized...

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof....

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### ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.