



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

6/5/2018 4:29:29 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Air Quality TITLE-SERIES: 45-34  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: Emission Standards for Hazardous Air Pollutants  
CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4  
COMMENTS LIMITED TO:  
Oral and Written

DATE OF PUBLIC HEARING: 07/10/2018 6:00 PM

LOCATION OF PUBLIC HEARING:

Department of Environmental Protection, Dolly Sod's Conference Room #1125 601 57th Street, SE,  
Charleston, WV 25304

DATE WRITTEN COMMENT PERIOD ENDS: 07/10/2018 6:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Public Information Office, Department of Environmental Protection  
ADDRESS: 601 57th Street, SE  
Charleston, WV 25304  
EMAIL: dep.comments@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

**PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:**

This rule incorporates by reference the national emission standards for hazardous air pollutants (NESHAPs) and other regulatory requirements promulgated by the United States Environmental Protection Agency (EPA) pursuant to § 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in § 112 (b) of the CAA, or one or more of the eight substances listed as hazardous air pollutants in 40 C.F.R. § 61.01(a). The rule incorporates by reference the NESHAPs provided in 40 C.F.R. Parts 61, 63 and 40 C.F.R. Part 65, to the extent referenced in 40 C.F.R. Parts 61 and 63, promulgated as of June 1, 2018.

The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. Parts 61 and 63.

**SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:**

**Summary of changes in the rule:**

Revisions to the rule incorporate by reference amendments to the NESHAPs promulgated by the EPA under 40 C.F.R. Part 61 and 63 as of June 1, 2018.

Subsection 1.5 was revised from "Incorporation by Reference" to "Sunset Provision - Does not apply". The "Incorporation by Reference" subsection was renumbered from 1.5 to 1.6 and the effective date of the standards being incorporated was changed from June 1, 2017 to June 1, 2018. The "Adoption of standards" subsection 4.1 was revised to change the date the standards are being incorporated from June 1, 2017 to June 1, 2018.

**Statement of circumstances requiring the rule:**

This rule is exempt from the Regulatory Moratorium of Executive Order 2-18 under condition 3(g), updating state rules to comply with federal law requirements.

As provided in 40 C.F.R. §§ 61.04(b) and 63.12(b)(1), section 112 of the CAA directs the Administrator of the EPA to delegate to each State, when appropriate, the authority to implement and enforce standards and other requirements pursuant to section 112 for stationary sources located in that State. Revisions to this rule are necessary to maintain consistency with current federal regulations and for West Virginia to fulfill its responsibilities under the CAA and continue to be the primary enforcement authority for the national emission standards for hazardous air pollutants promulgated by the EPA under 40 C.F.R. Parts 61 and 63. Revisions to this rule include the annual incorporation by reference updates. Upon authorization and promulgation, 45 C.S.R. 34 will be submitted to the EPA to fulfill federal obligations under the CAA, including delegations and authorizations.

**SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:**

**A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:**

The proposed revisions to this rule should not impact revenues of state government.

**B. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:**

The proposed revisions to this rule should not impact costs of state government, nor should it have an economic impact on the state or its residents. The proposed revisions to this rule should have no additional impact on the cost of state government beyond that resulting from currently applicable federal requirements.

**C. FISCAL NOTE DETAIL:**

<b>Effect of Proposal</b>	<b>Fiscal Year</b>		
	<b>2018 Increase/Decrease (use "-")</b>	<b>2019 Increase/Decrease (use "-")</b>	<b>Fiscal Year (Upon Full Implementation)</b>
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>	0	0	0
<b>Current Expenses</b>	0	0	0
<b>Repairs and Alterations</b>	0	0	0
<b>Assets</b>	0	0	0
<b>Other</b>	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

**D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):**

Costs anticipated to be incurred for the implementation of federal rules promulgated under 40 C.F.R. Part 61 and 63 as of June 1, 2018 are included in prior cost estimates prepared for state

implementation of Title V of the Clean Air Act, as amended, under 45 C.S.R. 30

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Tammy L Mowrer -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 45  
LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AIR QUALITY

SERIES 34  
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

**§45-34-1. General.**

1.1. Scope. -- This rule establishes and adopts a program of national emission standards for hazardous air pollutants and other regulatory requirements promulgated by the United States Environmental Protection Agency pursuant to 40 CFR Parts 61, 63 and section 112 of the federal Clean Air Act, as amended. This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in 40 CFR § 61.01(a), or one or more of the substances listed as hazardous air pollutants in section 112(b) of the CAA. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

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

1.3. Filing Date. -- ~~March 22, 2018.~~

1.4. Effective Date. -- ~~June 1, 2018.~~

1.5. Sunset Provision. -- Does not apply.

1.6. Incorporation by Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 CFR Parts 61, 63 and 65, to the extent referenced in 40 CFR Parts 61 and 63, effective June 1, ~~2017~~ 2018.

**§45-34-2. Definitions.**

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

2.2. "Clean Air Act" ("CAA") means the federal Clean Air Act, found at 42 U.S.C. § 7401 et seq., as amended.

2.3. "Hazardous air pollutant" means any air pollutant listed pursuant to 40 CFR § 61.01(a) or § 112(b) of the CAA.

2.4. "Secretary" means the Secretary of the Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§ 22-1-6 or 22-1-8.

2.5. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 CFR Parts 61 and 63. Words and phrases not defined therein shall have the meaning given to them in federal Clean Air Act.

**§45-34-3. Requirements.**

3.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed,

reconstructed, modified, or operated any source subject to the provisions of 40 CFR Parts 61 and 63 which results or will result in a violation of this rule.

3.2. No person may construct or reconstruct any major source of hazardous air pollutants, unless the Secretary determines that the maximum achievable control technology emission limitation under 40 CFR Part 63 and this rule for new sources will be met.

3.3. The Secretary shall determine and apply case-by-case maximum achievable control technology standards to existing sources categorized by the Administrator pursuant to § 112(e)(1) of the CAA for which the Administrator has not promulgated emission standards in accordance with §§ 112(d) and 112(e) of the CAA.

3.4. Prior to constructing, reconstructing or modifying any facility subject to this rule, the owner or operator shall obtain a permit in accordance with the applicable requirements of 45CSR13, 45CSR14, 45CSR19, 45CSR30 and this rule.

**§45-34-4. Adoption of standards.**

4.1. The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Parts 61, 63 and 65, to the extent referenced in 40 CFR Parts 61 and 63, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61, 63 and 65, effective June 1, ~~2017~~ 2018, for the purposes of implementing a program for emission standards for hazardous air pollutants, except as follows:

4.1.a. 40 CFR §§ 61.16 and 63.15 are amended to provide that information shall be available to the public in accordance with W.Va. Code §§ 22-5-1 et seq., 29B-1-1 et seq., and 45CSR31;

4.1.b. Subpart E of 40 CFR Part 63 and any provision related to § 112(r) of the CAA, notwithstanding any requirements of 45CSR30 shall be excluded;

4.1.c. Subparts DDDDDD, LLLLLL, OOOOOO, PPPPPP, QQQQQQ, TTTTTT, WWWW, ZZZZZ, HHHHHH, BBBB, CCCCC, WWWWWW, XXXXXX, YYYYYY, ZZZZZZ, BBBB, CCCCCC, and DDDDDDD of 40 CFR Part 63 shall be excluded; and

4.1.d. Subparts B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of 40 CFR Part 61 shall be excluded.

**§45-34-5. Secretary.**

5.1. Any and all references in 40 CFR Parts 63 and 65 to the “Administrator” are amended to be the “Secretary” except as follows:

5.1.a. where the federal regulations specifically provide that the Administrator shall retain authority and not transfer authority to the Secretary;

5.1.b. where provisions occur which refer to:

5.1.b.1. alternate means of emission limitations;

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

45CSR34

- 5.1.b.5. alternate monitoring methods;
- 5.1.b.6. waivers/adjustments to recordkeeping and reporting;
- 5.1.b.7. emissions averaging; or
- 5.1.b.8. applicability determinations; or

5.1.c. where the context of the regulation clearly requires otherwise.

**§45-34-6. Permits.**

6.1. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall in any way be limited or inapplicable.

**§45-34-7. Inconsistency between rules.**

7.1. 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.