



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

7/24/2018 12:56:57 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Air Quality TITLE-SERIES: 45-16  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 45-16 Standards of Performance for New Stationary Sources

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §22-5-4(a)(4) authorizes the director to promulgate legislative rules relating to the control of air pollution. W. Va. Code §22-1-3(c) authorizes the director to incorporate by reference the federal counterpart regulation.

This rule incorporates by reference the national standards of performance for new stationary sources (NSPS) and other regulatory requirements promulgated by the United States Environmental Protection Agency (EPA) pursuant to §111(b) of the federal Clean Air Act, as amended (CAA).

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/5/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/10/2018

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: Yes

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Legal advertisement of public notice published 6/8/18 in the Charleston Newspapers  
Public notice published 6/8/18 in the WV State Register  
Public notice posted on the Department of Environmental Protection website  
Public notice posted on the Division of Air Quality website  
Public notice sent to the DEP mailing list

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule incorporates by reference the federal new source performance standards (NSPS) for stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (EPA) pursuant to §111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 C.F.R. Part 60. The rule also adopts associated reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs, or operates an affected facility after the effective date of any NSPS under 40 C.F.R. Part 60 must comply with the applicable NSPS and this rule.

The purpose of to this rule is to maintain consistency with current federal regulations and to fulfill West Virginia's obligations under the CAA and continue to be the primary enforcement authority for NSPS promulgated by the EPA under 40 C.F.R. Parts 60.

Revisions to the rule incorporate by reference the amendments to the NSPS promulgated by the EPA under 40 C.F.R. Part 60 as of June 1, 2018. Additional revisions include: (1) subsection 1.5 was revised from "Incorporation by Reference" to "Sunset Provision - Does not apply"; (2) 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; (3) 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 WHICH REQUIRE 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 set forth in 40 C.F.R. § 60.4(b), section 111(c) of the CAA directs the EPA Administrator to delegate to each State the authority to implement and enforce standards of performance for new stationary sources. Promulgation of this rule will enable West Virginia to continue to be the primary enforcement authority for the NSPS promulgated by the EPA. Revisions to this rule are necessary to maintain consistency with current federal regulations, and to fulfill West Virginia's responsibilities under the CAA. Upon authorization and promulgation, 45 C.S.R. 16 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 LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

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

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

The proposed revisions to this rule should not impact the cost of state government beyond that resulting from currently applicable federal requirements, nor should it have an economic impact on the state or its residents.

**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
	0	0	0

**2. Estimated Total Revenues**

**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 60 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 45CSR30.

**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.**

45CSR16

TITLE 45  
LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AIR QUALITY

SERIES 16  
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

**§45-16-1. General.**

1.1. Scope. -- This rule establishes and adopts standards of performance for new stationary sources promulgated by the United States Environmental Protection Agency pursuant to section 111(b) of the federal Clean Air Act, as amended. This rule codifies general procedures and criteria to implement the standards of performance for new stationary sources set forth in 40 C.F.R. Part 60. 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 rule exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 C.F.R. Parts 60 and 65, to the extent referenced in 40 C.F.R. Part 60, effective June 1, ~~2017~~ 2018.

**§45-16-2. 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.

2.3. "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.

2.4. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 C.F.R. Part 60. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

**§45-16-3. 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 C.F.R. Part 60 which results or will result in a violation of this rule.

**§45-16-4. Adoption of standards.**

4.1. Standards. -- The Secretary hereby adopts and incorporates by reference the provisions of 40 C.F.R. Parts 60 and 65, to the extent referenced in 40 C.F.R. Part 60, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. Parts 60 and 65, effective June 1, ~~2017~~ 2018, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

4.1.a. 40 C.F.R. § 60.9 is 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; and

4.1.b. Subparts B, C, Ca, Cb, Cc, Cd, Ce, Cf, Ea, Eb, Ec, WWW, XXX, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM of 40 C.F.R. Part 60 shall be excluded.

4.1.c. The following subparts of 40 C.F.R. Part 60 relating to wood-burning heaters and appliances are expressly excluded and are not adopted or incorporated by reference in this rule:

4.1.c.1. The 2015 amendments to subpart AAA; and

4.1.c.2. Subpart QQQQ.

**§45-16-5. Secretary.**

5.1. Any and all references in 40 C.F.R. Parts 60 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;

5.1.b.5. Alternate monitoring methods;

5.1.b.6. Waivers/adjustments to recordkeeping and reporting;

5.1.b.7. Emissions averaging;

5.1.b.8. Applicability determinations; or

5.1.b.9. The authority to require testing under Section 114 of the Clean Air Act, as amended;

or

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

**§45-16-6. Permits.**

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

**§45-16-7. 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.