

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Department of Environmental Protection-Division of Air Quality TITLE NUMBER: 45

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: "Standards of Performance for New Stationary Sources
Pursuant to 40 CFR Part 60"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB2663

SECTION 64-3-1(b), PASSED ON April 14, 2001

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2001


Authorized Signature

\$2.60

TITLE 45
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

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SERIES 16
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
PURSUANT TO 40 CFR PART 60

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§45-16-1. General.**

1.1. Scope. -- This rule 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 (CAA). It is the intent of the Director to adopt these standards by reference. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to such standards.

1.2. Authority. -- W. Va. Code §22-5-1 et seq.

1.3. Filing Date. -- June 8, 2001.

1.4. Effective Date. -- July 1, 2001.

1.5. Incorporation By Reference. -- Federal Counterpart Regulation. The Director has determined that a federal counterpart rule exists, in accordance with the Director's recommendation, and with limited exception, this rule incorporates by reference 40 CFR Part 60, effective July 1, 1999, as amended by the Federal Register through July 10, 2000.

1.6. Former Rules. -- This legislative rule amends 45CSR16 "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60" which was filed May 19, 2000, and which became effective June 1, 2000.

§45-16-2. Requirements.

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

modified, or operated a New Source Performance Standard (NSPS) source which results or will result in violations of this rule.

§45-16-3. Definitions

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

3.2. "Clean Air Act" ("CAA") means 42 U.S.C. §§7401 et seq.

3.3. "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

§45-16-4. Adoption of Standards.

4.1. Standards. -- The Director hereby adopts and incorporates by reference the provisions of 40 CFR Part 60 including any reference methods, performance specifications and other test methods which are appended to such standards and contained in 40 CFR Part 60, effective July 1, 1999, as amended by the Federal Register through July 10, 2000, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

4.1.a. Part 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.

4.1.b. Subparts B, C, Ca, Cb, Cc, Ce, Ea, Ec, and WWW of 40 CFR Part 60 shall be

excluded.

§45-16-5. Director.

5.1. Any and all references in said 40 CFR Part 60 to the "Administrator" of the United States Environmental Protection Agency are amended to be the "Director" of the West Virginia Division of Environmental Protection except as follows:

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

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 existing rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.