

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

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SECRETARY OF STATE

Form #6

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

AGENCY: WV Dept. of Environmental Protection, Div. of Air Quality TITLE NUMBER: 45

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 34

TITLE OF RULE BEING AMENDED: Emission Standards for Hazardous Air Pollutants for  
Source Categories Pursuant to 40 CFR Part 63

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

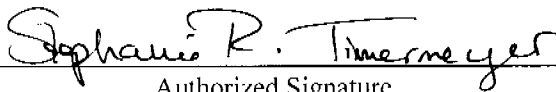
TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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

AUTHORIZATION IS CITED IN (house or senate bill number) HB 4135

SECTION § 64-3-1(c), PASSED ON March 11, 2006

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: June 1, 2006

  
Authorized Signature

Stephanie R. Timmermeyer, Secretary

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

2005  
MAY 20 3:50  
STATE

**SERIES 34  
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR  
SOURCE CATEGORIES PURSUANT TO 40 CFR PART 63**

**§45-34-1. General.**

1.1. Scope. -- This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAPS) and other regulatory requirements promulgated by the United States Environmental Protection Agency pursuant to 40 CFR Part 63 and section 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 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. -- April 28, 2006.

1.4. Effective Date. -- June 1, 2006.

1.5. 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 63 and 65, to the extent referenced in 40 CFR Part 63, effective June 1, 2005.

1.6. Former Rules. -- This legislative rule amends 45CSR34 "Emission Standards for Hazardous Air Pollutants for Source Categories

Pursuant to 40 CFR Part 63" which was filed May 20, 2005, and which became effective June 1, 2005.

**§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 42 U.S.C. §7401 et seq.

2.3. "Hazardous air pollutant" means any air pollutant listed pursuant to section 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, will have the meaning ascribed to them in 40 CFR Part 63. Words and phrases not defined therein will 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 Part 63 which results or will result in a violation of this rule.

3.2. After the effective date of the state permit program under Title V of the CAA, 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 this rule for new sources will be met.

3.3. After the effective date of the state permit program under Title V of the CAA, the Secretary will determine and apply case-by-case maximum achievable control technology standards to existing sources categorized by the Administrator pursuant to section 112(c)(1) of the CAA for which the Administrator has not promulgated emission standards in accordance with sections 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 must obtain a permit in accordance with the applicable requirements of 45CSR13, 45CSR14, 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 63 and 65, to the extent referenced in 40 CFR Part 63, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 63 and 65, effective June 1, 2005, for the purposes of implementing a program for emission standards for hazardous air pollutants for source categories, except as follows:

4.1.a. 40 CFR §63.15 is amended to provide that information will 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. Subpart E of 40 CFR Part 63 and any provision related to section 112(r) of the CAA, notwithstanding any requirements of 45CSR30 will 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 will 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 record-keeping 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 must be construed or inferred to mean that permit requirements in accordance with applicable rules will 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 West Virginia Department of Environmental Protection, the inconsistency will be resolved by the determination of the Secretary and the determination will be

based upon the application of the more stringent provision, term, condition, method or rule.