

Authorized Signature
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Cabinet Secretary

FILED

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

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OFFICE WEST VIRGINIA
SECRETARY OF 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 30, 2004.

1.4. Effective Date. -- June 1, 2004.

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 July 1, 2002, as amended by the Federal Register through June 1, 2003.

1.6. Former Rules. -- This legislative rule amends 45CSR34 "Emission Standards for Haz-

ardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63" which was filed April 21, 2003, and which became effective June 1, 2003.

§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 such 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 Part 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

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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 shall 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 shall 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 July 1, 2002, as amended by the Federal Register through June 1, 2003, 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 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. Subpart E of 40 CFR Part 63 and any

provision related to section 112(r) of the CAA, notwithstanding any requirements of 45CSR30 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 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 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 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 West Virginia Department of Environmental Protection, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.