

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #1

DO NOT WRITE IN THIS BOX

FILED

JUN 21 4 17 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection TITLE NUMBER: 45  
RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §§22-5-1 et seq.  
AMENDMENT TO AN EXISTING RULE: YES\_\_\_ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 34

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

DATE OF PUBLIC HEARING: July 29, 1994 TIME: 9:00 am

LOCATION OF PUBLIC HEARING: WVDEP - Office of Air Quality  
1558 Washington Street East  
Charleston WV 25311

COMMENTS LIMITED TO: ORAL\_\_\_, WRITTEN\_\_\_, BOTH x

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Office of Air Quality

1558 Washington Street E  
Charleston WV 25311

The Department requests that persons wishing to make  
comments at the hearing make an effort to submit written  
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



Authorized Signature

14.00

45CSR34

EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS  
PURSUANT TO 40 CFR PART 63

STATEMENT OF CIRCUMSTANCE

This rule in conjunction with existing rule 45CSR15, establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by USEPA as of June 1, 1994, pursuant to section 112 of the federal Clean Air Act, as amended. This rule codifies general procedures and emission standards for certain 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 Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by USEPA under 40 CFR Part 63 whereas the earlier existing rule for hazardous air pollutants, 45CSR15, primarily incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61 prior to amendment of the Clean Air Act. The Director intends to incorporate the federal counterpart rules by reference. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act, as amended.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR34 - Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency:  Office of Air Quality

Address:  1558 Washington Street, East   
 Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates: Costs incurred are covered under the budget estimates for implementing the Clean Air Act, as amended, under 45CSR30, promulgated by the Legislature during the 1994 Session.
3. Objectives of these rules: This rule establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements pursuant to section 112 of the Clean Air Act, as amended. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act, as amended.
4. Explanation of overall economic impact of proposed rule.
  - A. Economic impact on state government.

See Section 2.

Appendix B  
Fiscal Note For Proposed Rules  
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- B. Economic impact on political subdivisions; specific industries; specific groups of citizens.

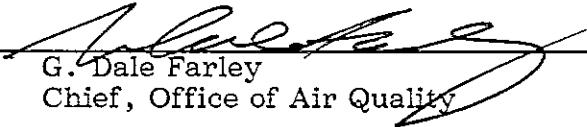
No impact above that resulting from the currently applicable federal emission standards. It should be particularly noted, however, that the new federal regulation for coke oven batteries incorporated into this rule by reference, requires special fees to be paid by the regulated facility for dedicated seven-day-per week independent compliance inspections of coke ovens. This rule provides for payment of such inspection costs by the regulated facility.

- C. Economic impact on citizens/public at large.

No impact above that resulting from the currently applicable federal emission standards.

Date: June 21, 1994

Signature of agency head or authorized representative:

  
\_\_\_\_\_  
G. Dale Farley  
Chief, Office of Air Quality

## 45CSR34

### EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63

#### SUMMARY

Title 45, Series 34 provides authority for the Director to determine and enforce case-by-case MACT standards for major hazardous air pollutant sources in the absence of a federal standard under certain circumstances as required for permit program approval under Title V of the Clean Air Act.

The proposed rule also establishes general provisions for emission standards for hazardous air pollutants (NESHAPS) and other regulatory requirements pursuant to section 112 of the federal Clean Air Act (CAA). The 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 (HAP) in or pursuant to section 112(b) of the CAA. This rule incorporates by reference provisions relating to perchloroethylene dry cleaners, coke ovens, and synthetic organic chemical manufacturing (HON).

FILED

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

JUN 21 4 17 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

§45-34-1. General.

1.1. Scope. - This rule establishes general provisions for national emission standards for hazardous air pollutants (NESHAPS) and other regulatory requirements pursuant to section 112 of the federal Clean Air Act as amended in 1990 (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 (HAP) in or pursuant to section 112(b) of the 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 these standards.

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

1.3. Filing Date. -

1.4. Effective Date. -

1.5. Incorporation by Reference - Federal Counterpart Regulation. This rule is necessary for the State to fulfill its responsibilities under the Clean Air Act, as amended, and with the exceptions noted, incorporates, by reference, the federal counterpart regulations under 40 CFR Part 63. The Director recommends incorporation by reference.

1.6. Determination of Stringency - Federal counterpart Regulation. - This rule is no more or no less stringent than the federal counterpart regulation.

1.7. Constitutional Takings Determination - The Director has determined that this rule will not result in the constitutional taking of real property.

§45-34-2. Requirements.

2.1. After the effective date of the state permit program under title V of the CAA, no person may modify a major source of hazardous air pollutants, unless the Director determines that the maximum achievable control technology emission limitation under this rule for existing sources will be met.

2.2. 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 Director determines that the maximum achievable control technology emission limitation under this rule for new sources will be met.

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2.3. After the effective date of the state permit program under title V of the CAA, the Director 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 Section 112(d) and 112(e) of the CAA.

2.4. 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.

**§45-34-3. Definitions.**

3.1. "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.

3.2. "Director" shall mean the Director of the West Virginia Division of Environmental Protection.

3.3. "Hazardous air pollutant" shall mean any air pollutant listed pursuant to §112(b) of the CAA as June 1, 1994.

**§45-34-4. Adoption of Standards.**

4.1. The Director hereby adopts and incorporates by reference the provisions of 40 CFR Part 63 including any reference methods, performance specifications and other test methods which are appended to such standards and contained in 40 CFR Part 63 as in effect on June 1, 1994, for the purposes of implementing a program for national emission standards for hazardous air pollutants for source categories, except as follows:

4.1.a. Part 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. and 29B-1-1 et seq.

4.1.b. Any provision related to section 112(r) of the CAA.

4.1.c. Part 63.150 is excluded from adoption.

**§45-34-5. Director.**

5.1. Any and all references in 40 CFR Part 63 to the "Administrator" is amended to be the "Director" except in the following references which shall remain "Administrator."

5.1.a. Part 63.1(a)(2)

5.1.b. Part 63.1(a)(3)

5.1.c. Part 63.1(b)(2)

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- 5.1.d. Part 63.1(c)(2)(ii)
- 5.1.e. Part 63.2 pertaining to the definition of:
  - Administrator
  - Alternative Emission Limitation
  - Alternative Emission Standard
  - Alternative Test Method
  - Approved Permit Program
  - Equivalent Emission Limitation
  - Federally Enforceable
  - Lesser Quantities
  - Major Source
  - Performance Audit
  - Permitting Authority
  - Regulation Promulgation Schedule
  - Responsible Official
- 5.1.f. Part 63.5(b)(4)
- 5.1.g. Part 63.5(b)(5)
- 5.1.h. Part 63.6(g)(i)
- 5.1.i. Part 63.6(g)(9)(i)
- 5.1.j. Part 63.6(g)(9)(ii)
- 5.1.k. Part 63.6(h)(9)
- 5.1.l. Part 63.7(c)(4)(iii)
- 5.1.m. Part 63.9(a)(3)
- 5.1.n. Part 63.9(a)(3)
- 5.1.o. Part 63.10(3)



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- 5.1.p. Part 63.12(b)(1)
- 5.1.q. Part 63.12(c)
- 5.1.r. Part 63.13(a)
- 5.1.s. Part 63.13(b)
- 5.1.t. Part 63.52(a)
- 5.1.u. Part 63.56
- 5.1.v. Part 63.100 (1)(1)(iii)
- 5.1.w. Part 63.101(a)
- 5.1.x. Part 63.102(a)(2)(b)
- 5.1.y. Part 63.102(b)(3)
- 5.1.z. Part 63.103(b)(3)(d), pertaining to the second occurrence of the definition of Administrator.
- 5.1.aa. Part 63.106(a)
- 5.1.ab. Part 63.111(4) pertaining to the definition of Administrator
- 5.1.ac. Part 63.150(c)(3)
- 5.1.ad. Part 63.150(c)(5)(ii)
- 5.1.ae. Part 63.191(a)
- 5.1.af. Part 63.192(d)(2)(e)
- 5.1.ag. Part 63.192(g)(2)(h)
- 5.1.ah. Part 63.193
- 5.1.ai. Part 63.301
- 5.1.aj. Part 63.302(a)(2)
- 5.1.ak. Part 63.304(b)(3)
- 5.1.al. Part 63.304(d)
- 5.1.am. Part 63.307(e)(1)
- 5.1.an. Part 63.311(g)(2)

- 5.1.ao. Part 63.313
- 5.1.ap. Part 63.321
- 5.1.aq. Part 63.325(a)
- 5.1.ar. Part 63.325(b)
- 5.1.as. Part 63.325(c)

**§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 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, rule or regulation.