

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #6

Do Not Mark In This Box

FILED

MAY 19 9 34 AM '00

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

AMENDMENT TO AN EXISTING RULE: YES X, NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 34

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

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

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

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

AUTHORIZATION IS CITED IN (house or senate bill number) HB 4223

SECTION 64-3-1(n), PASSED ON March 11, 2000

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: June 1, 2000

Carrie J. Chambers

Authorized Signature



Executive Office  
#10 McJunkin Road  
Nitro, WV 25143-2506  
Telephone No: (304)759-0575  
Fax No: (304)759-0526



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## West Virginia Bureau of Environment

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Cecil H. Underwood  
Governor

Michael C. Castle  
Commissioner

May 17, 2000

Ms. Judy Cooper  
Director, Administrative Law  
Division  
Secretary of State's Office  
Capitol Complex  
Charleston, WV 25305

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

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of Final Filing and Adoption of a Legislative Rule."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely,

Michael C. Castle  
Commissioner

MCC:cc

cc: Karen Watson  
Carrie Chambers

# LEGISLATIVE HISTORY ABSTRACT

## 45CSR34

### Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63

Bureau of Environment  
Division of Environmental Protection  
Office of Air Quality  
House Bill 4223 Section 64-3-1(n)

6/16/99	Filed Notice of Public Hearing with Secretary of State.
6/16/99	Initial Filing with Legislative Rule-Making Review Committee.
7/14/99	Filed Notice of Extension of Public Comment Period.
7/19/99	Held Public Hearing.
7/28/99	End of Public Comment Period.
8/5/99	Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
10/19/99	Rule Approved by Legislative Rule-Making Review Committee.
3/11/00	Passed the West Virginia Legislature.
4/3/00	Signed by the Governor.
5/19/00	Rule Final Filed with Secretary of State.
6/1/00	Effective Date of Rule.

MAY 19 9 36 AM '00

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

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.** -- May 19, 2000

1.4. **Effective Date.** -- June 1, 2000

1.5. **Incorporation by Reference.** -- Federal Counterpart Regulation. The Director has determined that a federal counterpart regulation exists, and in accordance with the Director's recommendation, with limited exception, this rule incorporates by reference, 40 CFR Part 63, effective July 1, 1998, as amended by the Federal Register through June 1, 1999.

1.6. **Former Rules.** -- This legislative rule

amends 45CSR34 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63" which was filed May 20, 1999, and which became effective June 1, 1999.

**§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.

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

45CSR34

45CSR13, 45CSR14, 45CSR30 and this rule.

**§45-34-3. Definitions.**

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

3.2. "Director" means the Director of the West Virginia 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.

3.3. "Hazardous air pollutant" means any air pollutant listed pursuant to §112(b) of the CAA as of June 1, 1999.

**§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 effective July 1, 1998, as amended by the Federal Register through June 1, 1999, for the purposes of implementing a program for national emission standards for hazardous air pollutants for source categories, except as follows:

4.1.a. Section 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.

4.1.b. Any provision related to section 112(r) of the CAA, notwithstanding any requirements of 45CSR30.

4.1.c. Subpart EEE of 40 CFR Part 63 shall be excluded.

**§45-34-5. Director.**

5.1. Any and all references in 40 CFR Part 63

to the "Administrator" are amended to be the "Director" 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; 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

45CSR34

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.