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

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 16
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

§45-16-1. General.

1.1. Scope. -- This rule establishes and 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). This rule codifies general procedures and criteria to implement the standards of performance for new stationary sources set forth in 40 CFR Part 60. 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. -- May 1, 2012.

1.4. Effective Date. -- June 1, 2012.

1.5. Incorporation By Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart rule exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 CFR Parts 60 and 65, to the extent referenced in 40 CFR Part 60, effective June 1, 2011.

1.6. Former Rules. -- This legislative rule amends 45CSR16 "Standards of Performance for New Stationary Sources" which was filed June 16, 2011, and which became effective June 16, 2011.

§45-16-2. 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. "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.

2.4. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 CFR Part 60. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

§45-16-3. Requirements.

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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 60 which results or will result in a violation of this rule.

§45-16-4. Adoption of Standards.

4.1. Standards. — The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Parts 60 and 65, to the extent referenced in 40 CFR Part 60, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 60 and 65, effective June 1, 2011, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

4.1.a. 40 CFR §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; and

4.1.b. Subparts B, C, Ca, Cb, Cc, Cd, Ce, Ea, Eb, Ec, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM of 40 CFR Part 60 shall be excluded.

§45-16-5. Secretary.

5.1. Any and all references in 40 CFR Parts 60 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 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 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 rule of the West Virginia Department of Environmental Protection, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method or rule.