



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)**

AGENCY

Air Quality

TITLE NUMBER

45

RULE TYPE

AMENDMENT TO EXISTING RULE

CITE AUTHORITY

Legislative

Yes

22-5-4

SERIES NUMBER OF RULE BEING AMENDED **34**

COMMENTS LIMITED TO
Oral And Written

DATE OF PUBLIC HEARING
Monday, July 30, 2012 6:00 PM

LOCATION OF PUBLIC HEARING
**West Virginia Department of Environmental Protection
Dolly Sods Conference Room (Room 1125)
601 57th Street, S.E.
Charleston, WV 25304**

DATE WRITTEN COMMENT PERIOD ENDS
Monday, July 30, 2012 7:00 PM

WRITTEN COMMENTS MAY BE MAILED TO
**Public Information Office
West Virginia Department of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 45-34



Rule Id: 8690



Document 23810



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**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 2)**

AGENCY

Air Quality

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45

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AMENDMENT TO EXISTING RULE

CITE AUTHORITY

Legislative

Yes

22-5-4

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PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

Refer to Form 12.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY

Air Quality

TITLE NUMBER

45

RULE TYPE

AMENDMENT TO EXISTING RULE

CITE AUTHORITY

Legislative

Yes

22-5-4

SERIES NUMBER OF RULE BEING AMENDED **34**

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

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

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY		TITLE NUMBER
Air Quality		45
RULE TYPE	AMENDMENT TO EXISTING RULE	CITE AUTHORITY
Legislative	Yes	22-5-4
SERIES NUMBER OF RULE BEING AMENDED	34	

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY

Air Quality

TITLE NUMBER

45

RULE TYPE

AMENDMENT TO EXISTING RULE

CITE AUTHORITY

Legislative

Yes

22-5-4

SERIES NUMBER OF RULE BEING AMENDED **34**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

Costs anticipated to be incurred in the implementation of federal rules promulgated under 40 CFR Parts 61 and 63 as of June 1, 2011 are included in prior cost estimates prepared for state implementation of Title V of the Clean Air Act, as amended, under 45CSR30. Full Title V program approval was issued by the U.S. Environmental Protection Agency on November 19, 2001.

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)

AGENCY

Air Quality

TITLE NUMBER

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RULE TYPE

AMENDMENT TO EXISTING RULE

CITE AUTHORITY

Legislative

Yes

22-5-4

SERIES NUMBER OF RULE BEING AMENDED **34**

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

None.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY

Air Quality

TITLE NUMBER

45

RULE TYPE

AMENDMENT TO EXISTING RULE

CITE AUTHORITY

Legislative

Yes

22-5-4

SERIES NUMBER OF RULE BEING AMENDED **34**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the CAA.

Revisions to the rule include general annual incorporation by reference updates. A few minor miscellaneous revisions are included which are stylistic in nature. The revised rule incorporates by reference the following source categories of new or revised NESHAP standards promulgated as of June 1, 2012 for major sources: National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units, Secondary Lead Smelting, Petroleum Refineries, Primary Lead Processing, Shipbuilding and Ship Repair (Surface Coating), Wood Furniture Manufacturing Operations and Polyvinyl Chloride and Copolymers Production.

The revised rule also incorporates by reference the following source categories of NESHAP standards promulgated as of June 1, 2012 for non-major area sources: National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities, and Stationary Reciprocating Internal Combustion Engines.

The following source categories of revised or newly promulgated NESHAPS affecting non-major area sources of hazardous air pollutants are excluded from incorporation by reference: Plating and Polishing; Prepared Feeds Manufacturing.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 45-34



Rule Id: 8690



Document 23810

45CSR34

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 34
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

§45-34-1. General.

1.1. Scope. -- This rule establishes and adopts a program of national emission standards for hazardous air pollutants (~~NESHAPS~~) and other regulatory requirements promulgated by the United States Environmental Protection Agency pursuant to 40 CFR Parts 61, 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 eight substances listed as hazardous air pollutants in 40 CFR §61.01(a), or 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. -- ~~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 regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 CFR Parts 61, 63 and 65, to the extent referenced in 40 CFR Parts 61 and 63, effective June 1, 2011.

1.6. Former Rules. -- This legislative rule amends 45CSR34 - "Emission Standards for Hazardous Air Pollutants" which was filed ~~June 16, 2011~~ May 1, 2012, and ~~which~~ became effective ~~June 16, 2011~~ June 1, 2012.

§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 40 CFR §61.01(a) or 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.

45CSR34

2.5. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 CFR Parts 61 and 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 subject to the provisions of 40 CFR Parts 61 and 63 which results or will result in a violation of this rule.

3.2. 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 40 CFR Part 63 and this rule for new sources will be met.

3.3. 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, 45CSR19, 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 61, 63 and 65, to the extent referenced in 40 CFR Parts 61 and 63, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61, 63 and 65, effective ~~June 1, 2011~~ June 1, 2012, for the purposes of implementing a program for emission standards for hazardous air pollutants, except as follows:

4.1.a. 40 CFR §§61.16 and 63.15 are 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. 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;

~~4.1.c. Provisions under Subpart III of 40 CFR Part 63 which apply to non-major area sources of hazardous air pollutants described in 40 CFR §63.760(b)(2) shall be excluded;~~

~~4.1.d. Provisions under Subpart ZZZZ of 40 CFR Part 63 which apply to non-major area sources of hazardous air pollutants described in 40 CFR §63.6585(c) and (d) shall be excluded;~~

~~4.1.c.~~ 4.1.c. Subparts DDDDDDD, LLLLLL, OOOOOO, PPPPPP, QQQQQQ, TTTTTT, WWWWW, ZZZZZ, HHHHHH, BBBB, CCCCC, WWWWW, XXXXXX, YYYYYY, ZZZZZZ, AAAAAA, BBBB, CCCCC, and DDDDDDD of 40 CFR Part 63 shall be excluded; and

~~4.1.f.~~ 4.1.d. Subparts B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of

40 CFR Part 61 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 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; 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, 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.