



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Air Quality TITLE-SERIES: 45-34  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 45-34 Emission Standards for Hazardous Air Pollutants

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: : W. Va. Code §22-5-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §22-5-4(a)(4) authorizes the director to promulgate legislative rules relating to the control of air pollution. This rule incorporates by reference the national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (EPA) pursuant to § 112 of the federal Clean Air Act, as amended (CAA).

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/6/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/11/2017

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: Yes

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Published public notice as a legal advertisement in the Charleston Newspapers  
Posted notice on the Department of Environmental Protection website  
Posted notice on the Division of Air Quality website  
Provide notice to U.S. EPA, Region 3

**SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:**

This rule incorporates by reference the national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (EPA) pursuant to § 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 hazardous air pollutants set forth in § 112(b) of the CAA, or one or more of the eight substances listed as hazardous air pollutants in 40 C.F.R. § 61.01(a). The rule incorporates by reference the NESHAP standards of 40 C.F.R. Parts 61, 63 and 40 C.F.R. Part 65 (Consolidated Federal Air Rule), to the extent referenced in 40 C.F.R. Parts 61 and 63, promulgated as of June 1, 2017. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. Parts 61 and 63. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 C.F.R. Parts 61 or 63 must comply with the applicable NESHAPS and this rule.

Proposed changes to the rule include revising the incorporation by reference and adoption of standards dates to June 1, 2017.

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:**

As provided in 40 C.F.R. §§ 61.04(b) and 63.12(b)(1), and because West Virginia has an approved Title V permit program, the Secretary therefore has the authority to implement and enforce national emission standards for hazardous air pollutants for stationary sources required to obtain a Title V permit under 40 C.F.R. Parts 61 and 63, pursuant to § 112 of the CAA. Promulgation of this rule is necessary for the State to fulfill its responsibilities under the CAA, and will enable the Department of Environmental Protection to continue to be the primary enforcement authority for NESHAP promulgated by the EPA under 40 C.F.R. Parts 61 and 63. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the CAA.

Revisions to the rule include incorporating by reference amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAPs) promulgated by the EPA under 40 C.F.R. Part 61 and Part 63 as of June 1, 2017 including: Aerospace Manufacturing and Rework Facilities, Area Space Boilers Rule; Method 303; Ferroalloys Production; Mercury and Air Toxics Standards (MATS); Petroleum Refinery Sector; Portland Cement Manufacturing; Radon Emissions from Operating Mill Tailings; Test Methods, Performance Specifications, and Testing Regulations; and Secondary Aluminum Production.

**SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:**

**A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:**

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

**B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:**

The proposed revisions to this rule should not have an economic impact on the state or its residents. In accordance with W. Va. Code §22-1A 3(c), the Secretary has determined that this rule will not result in a taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**C. FISCAL NOTE DETAIL:**

| <b>Effect of Proposal</b>          | <b>Fiscal Year</b>                              |   |   |
|------------------------------------|---|---|---|
|                                    | <b>2017<br/>Increase/Decrease<br/>(use "-")</b> | <b>2018<br/>Increase/Decrease<br/>(use "-")</b> | <b>Fiscal Year (Upon<br/>Full<br/>Implementation)</b> |
| <b>1. Estimated Total Cost</b>     | 0   | 0   | 0   |
| <b>Personal Services</b>           | 0   | 0   | 0   |
| <b>Current Expenses</b>            | 0   | 0   | 0   |
| <b>Repairs and Alterations</b>     | 0   | 0   | 0   |
| <b>Assets</b>                      | 0   | 0   | 0   |
| <b>Other</b>                       | 0   | 0   | 0   |
| <b>2. Estimated Total Revenues</b> | 0   | 0   | 0   |

**D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):**

Costs anticipated to be incurred in the implementation of federal rules promulgated under 40 CFR Parts 61 and 63 as of June 1, 2017 are included in prior cost estimates prepared for state implementation of Title V of the Clean Air Act, as amended, under 45CSR30. The U.S. Environmental Protection Agency provided full Title V program approval on November 19, 2001. The EPA approved revisions to the program on February 12, 2016.

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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 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. 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 15, 2017.~~

1.4. Effective Date. -- ~~June 1, 2017.~~

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, 2016~~ June 1, 2017.

**§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 the federal Clean Air Act, found at 42 U.S.C. §7401 et seq., as amended.

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.

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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, 2016~~ June 1, 2017, 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. Subparts DDDDDDD, LLLLLL, OOOOOO, PPPPPP, QQQQQQ, TTTTTT, WWWWW, ZZZZZ, HHHHHH, BBBBBB, CCCCCC, WWWWWW, XXXXXX, YYYYYY, ZZZZZZ, BBBBBBBB, CCCCCC, and DDDDDDD of 40 CFR Part 63 shall be excluded; and

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.

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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 Division of Air Quality, 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.