



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: 45-16
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 45-16 Standards of Performance for New Stationary Sources

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 standards of performance for new stationary sources (NSPS) and other regulatory requirements promulgated by the United States Environmental Protection Agency (EPA) pursuant to §111(b) 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:

The rule incorporates by reference the national standards of performance for new stationary sources (NSPS) and other regulatory requirements promulgated by the United States Environmental Protection Agency (EPA) pursuant to §111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 C.F.R. Part 60. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 C.F.R. Part 60 must comply with the applicable NSPS and this rule.

Proposed changes to the rule include revising the incorporation by reference and adoption of standards dates to June 1, 2017. Also, Subparts Cf and XXX for Municipal Solid Waste Landfills are being added to the exemption list under subdivision 4.1.b.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

As set forth in 40 C.F.R. § 60.4(b), § 111(c) of the CAA directs the EPA Administrator to delegate to each State the authority to implement and enforce standards of performance for new stationary sources. Promulgation of this rule will enable the State to continue to be the primary enforcement authority for the NSPS promulgated by the EPA. Revisions to this rule are necessary to maintain consistency with current federal regulations, and to fulfill the States responsibilities under the CAA. Revisions to the rule include annual incorporation by reference updates.

Revisions to the rule include: deleting the former rules section, clarifying the definition for Clean Air Act, and incorporating by reference amendments to the New Source Performance Standards (NSPS) promulgated by the EPA under 40 C.F.R. Part 60 as of June 1, 2017 including: Oil and Natural Gas Sector; CFR Corrections; Stationary Compression Ignition Internal Combustion Engines; Procedure 6 of Appendix F; and Test Methods, Performance Specifications, and Testing Regulations. Revisions to the rule also add the NSPS and Emission Guidelines (EG) for Municipal Solid Waste Landfills (Subparts Cf & XXX) to the exemption list under subdivision 4.1.b because they are adopted by reference under 45 C.S.R. 23.

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 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:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. 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
2. Estimated Total Revenues	0	0	0

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

Costs anticipated to be incurred for the implementation of federal rules promulgated under 40 CFR Part 60 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 Title V program was last approved by the U.S. Environmental Protection Agency on February 12, 2016.

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

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

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. 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 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 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, 2016~~ June 1, 2017.

§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 the federal Clean Air Act, found at 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.

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, 2016~~ June 1, 2017, 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, Cf, Ea, Eb, Ec, WWW, XXX, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM of 40 CFR Part 60 shall be excluded.

4.1.c. The following subparts of 40 CFR Part 60 relating to wood-burning heaters and appliances are expressly excluded and are not adopted or incorporated by reference in this rule:

4.1.c.1. The 2015 amendments to subpart AAA; and

4.1.c.2. Subpart QQQQ.

§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 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.