



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**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: Standards of Performance for New Stationary Sources

**PRIMARY CONTACT**

NAME: Laura Jennings  
ADDRESS: 601 57th Street Se  
Charleston, WV 25304  
EMAIL: laura.m.jennings@wv.gov  
PHONE NUMBER: 304-926-0475

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. W. Va. Code § 22-1-3(c) authorizes the director to incorporate by reference the federal counterpart regulation.

This rule incorporates by reference the federal standards of performance for new stationary sources (NSPS) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to § 111(b) of the federal Clean Air Act, as amended (CAA).

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/3/2024

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/6/2024

COMMENTS RECEIVED: Yes

(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?

Legal advertisement of public notice published 7/5/2024 in the Charleston Newspapers  
Public notice published 7/3/2024 in the WV State Register  
Notice posted on the Department of Environmental Protection website <https://dep.wv.gov/pio/Pages/Rules.aspx>  
Notice posted on the Division of Air Quality website  
<https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx>  
Public notice sent to the DEP email list 7/3/2024

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 establishes and adopts standards of performance for new stationary sources promulgated by the U.S. 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 adopts the federal standards by reference and 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.

The purpose of this rule is to maintain consistency with current federal regulations and to fulfill West Virginia's obligations under the CAA and continue to be the primary enforcement authority for NSPS promulgated by the U.S. EPA under 40 C.F.R. part 60.

Revisions to the rule include updating the annual incorporation by reference (IBR) of the New Source Performance Standards (NSPS) promulgated by the EPA under Clean Air Act § 111(b) and 40 CFR part 60 as of June 1, 2024, by updating the IBR dates in subsections 1.6 and 4.1 from June 1, 2023, to June 1, 2024. Paragraph 4.1.2 was updated to add 40 CFR part 60, subpart Ba to the subparts excluded from the adoption of standards section. Severability clauses were added under section 8. The IBR updates from the time 45CSR16 was last revised include:

- (1) Standards of Performance for New, Reconstructed, and Modified Sources: Oil and Natural Gas Sector including subparts KKK, OOOO, OOOOa, OOOOb and Appendix K to part 60 (Determination of Volatile Organic Compound and Greenhouse Gas Leaks Using Optical Gas Imaging);
- (2) New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units including subparts TTTT and TTTTa;
- (3) Appendix B to part 60, Performance Specification 19 Performance Specifications and Test Procedures for Ethylene Oxide (ETO) Continuous Emission Monitoring Systems;
- (4) Appendix F to part 60 Quality Assurance Procedures, Procedure 7. Quality Assurance Requirements for Gaseous Ethylene Oxide (ETO) Continuous Emission Monitoring Systems Used for Compliance Determination;
- (5) New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry including subparts III, NNN, RRR, VVa, VVb, IIIa, NNNa, and RRRa;
- (6) New Source Performance Standards for Bulk Gasoline Terminals including subparts XX and XXa;
- (7) New Source Performance Standards Review for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels and Correction including subparts AA, AAa, and AAb;
- (8) New Source Performance Standards Review for Secondary Lead Smelters including subparts L and La;
- (9) Testing Provisions for Air Emission Sources; Correction; and
- (10) Subpart A.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Promulgation of this rule will enable West Virginia to continue to be the primary enforcement authority for the NSPS promulgated by the EPA. As set forth in 40 C.F.R. § 60.4(b), section 111(c) of the CAA directs the U.S. EPA Administrator to delegate to each State the authority to implement and enforce standards of performance for new stationary sources. Revisions to this rule are necessary to maintain consistency with current federal regulations, and to fulfill West Virginia's responsibilities under the CAA. Upon authorization and promulgation, 45CSR16 will be submitted to the U.S. EPA to fulfill federal obligations under the CAA, including delegations and authorizations.

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

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

The proposed revision to this rule should not impact revenues of state government.

**B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:**

The proposed revisions to this rule should not impact special revenue accounts.

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

The proposed revisions to this rule should not impact costs of state government, nor should it have an economic impact on the state or its residents. The proposed revisions to this rule should not have additional impact on the cost of state government beyond that resulting from currently applicable federal requirements.

**D. FISCAL NOTE DETAIL:**

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**Effect of Proposal**

**Fiscal Year**

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	<b>2024 Increase/Decrease (use "-")</b>	<b>2025 Increase/Decrease (use "-")</b>	<b>Fiscal Year (Upon Full 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

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

Costs anticipated to be incurred for the implementation of federal rules promulgated under 40 C.F.R. part 60 as of June 1, 2024, are included in prior cost estimates prepared for state implementation of Title V of the Clean Air Act, as amended, under 45CSR30. 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.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Jason E Wandling -- 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.**

45CSR16  
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 C.F.R. 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 2, 2024.~~

1.4. Effective date. -- ~~June 1, 2024.~~

1.5. Sunset provision. -- Does not apply.

1.6. 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 C.F.R. parts 60 and 65, to the extent referenced in 40 C.F.R. part 60, effective June 1, ~~2023~~ 2024.

**§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, as amended, 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 C.F.R. 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 C.F.R. 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 C.F.R. parts 60 and 65, to the extent referenced in 40 C.F.R. part 60, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. parts 60 and 65, effective June 1, ~~2023~~ 2024, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

4.1.1. 40 C.F.R. § 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

4.1.2. Subparts B, Ba, C, Ca, Cb, Cc, Cd, Ce, Cf, Ea, Eb, Ec, WWW, XXX, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM of 40 C.F.R. part 60 shall be excluded.

4.1.3. The following subparts of 40 C.F.R. part 60 relating to wood-burning heaters and appliances are expressly excluded and are not adopted or incorporated by reference in this rule:

4.1.3.a. Subpart AAA; and

4.1.3.b. Subpart QQQQ.

**§45-16-5. Secretary.**

5.1. Any and all references in 40 C.F.R. parts 60 and 65 to the “Administrator” are amended to be the “Secretary” except as follows:

5.1.1. Where the federal regulations specifically provide that the Administrator shall retain authority and not transfer authority to the Secretary;

5.1.2. Where provisions occur which refer to:

5.1.2.a. Alternate means of emission limitations;

5.1.2.b. Alternate control technologies;

5.1.2.c. Innovative technology waivers;

5.1.2.d. Alternate test methods;

5.1.2.e. Alternate monitoring methods;

5.1.2.f. Waivers/adjustments to recordkeeping and reporting;

5.1.2.g. Emissions averaging;

5.1.2.h. Applicability determinations; or

5.1.2.i. The authority to require testing under Section 114 of the Clean Air Act, as amended;

or

5.1.3. 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.

**§45-16-8. Severability.**

8.1. Each of the provisions of 40 C.F.R. parts 60 and 65, to the extent referenced in 40 C.F.R. part 60, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. parts 60 and 65 and adopted and incorporated by reference under subsection 4.1 are severable.

8.2. In the event any provisions of 40 C.F.R. parts 60 and 65, to the extent referenced in 40 C.F.R. part 60, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. parts 60 and 65 and adopted and incorporated by reference under subsection 4.1 is withdrawn by the U.S. EPA, is invalidated by a court of competent jurisdiction in a final action after the last appeal deadline, and/or is invalidated by an act of the United States Congress, such provision is severed from 45CSR16 after the effective date of the withdrawal or invalidation and is no longer adopted and incorporated by reference under subsection 4.1.

8.3. In the event any provisions are severed pursuant to subsection 8.2, the Secretary may terminate any permit or section of an existing permit issued pursuant to 45CSR13, 45CSR14, 45CSR19, and 45CSR30 to address, and limited to, the affected severed provisions.

8.4. In the event any provision is severed in accordance with subsection 8.2, the Secretary shall publicly identify the severed provisions which are no longer adopted and incorporated by reference.