



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: 45-34

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

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

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 (U.S. EPA) pursuant to § 112 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 enhanced mailing 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:

This rule establishes and adopts a program of National Emission Standards for Hazardous Air Pollutants (NESHAPs) and other regulatory requirements promulgated by the U.S. 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 (IBR) the NESHAPs provided in 40 C.F.R. parts 61, 63 and 40 C.F.R. part 65, to the extent referenced in 40 C.F.R. parts 61 and 63, promulgated as of June 1, 2024, except as specified in the rule. 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. 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 NESHAPs promulgated by the U.S. EPA under 40 C.F.R. parts 61 and 63

Revisions to the rule include the annual incorporation by reference amendments as of June 1, 2024, by revising the IBR dates in subsections 1.6 and 4.1 from June 1, 2023, to June 1, 2024. Severability clauses were added under section 8. The National Emission Standards for Hazardous Air Pollutants incorporated by reference from the time 45CSR34 was last revised include:

- (1) National Emission Standards for Hazardous Air Pollutants: Ethylene Production, Miscellaneous Organic Chemical Manufacturing, Organic Liquids Distribution (Non-Gasoline), and Petroleum Refineries Reconsideration including subparts CC, XX, YY, EEEE, and FFFF;
- (2) National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review including subpart O;
- (3) National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review including subpart UUUUU, commonly known as MATS;
- (4) National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry including subparts F, G, H, I, U, & W;
- (5) National Emission Standards for Hazardous Air Pollutants: Gasoline Distribution Technology Reviews including subpart R;
- (6) National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review including subpart FFFFF;
- (7) National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing including subpart RRRRR; and
- (8) National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting Residual Risk and Technology Review and Primary Copper Smelting Area Source Technology Review including subpart QQQ and EEEEE.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Revisions to this rule are necessary to maintain consistency with current federal regulations and for West Virginia to fulfill its responsibilities under the CAA and continue to be the primary enforcement authority for the national emission standards for hazardous air pollutants promulgated by the U.S. EPA under 40 C.F.R. parts 61 and 63. As provided in 40 C.F.R. §§ 61.04(b) and 63.12(b)(1), section 112 of the CAA directs the Administrator of the U.S. EPA to delegate to each State, when appropriate, the authority to implement and enforce standards and other requirements pursuant to section 112 for stationary sources located in that State. Revisions to this rule include the annual incorporation by reference updates. Upon authorization and promulgation, 45CSR34 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 revisions 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 the cost of state government beyond that resulting from currently applicable federal requirements, nor should it have an economic impact on the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal

Fiscal Year

	2024 Increase/Decrease (use "-")	2025 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

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. parts 61 and 63 and part 65 to the extent referenced in 40 C.F.R. parts 61 and 63 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.

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 C.F.R. 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 C.F.R. § 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 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 regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 C.F.R. parts 61, 63 and 65, to the extent referenced in 40 C.F.R. parts 61 and 63, effective June 1, ~~2023~~ 2024.

§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, as amended, 42 U.S.C. § 7401, et seq.

2.3. "Hazardous air pollutant" means any air pollutant listed pursuant to 40 C.F.R. § 61.01(a) or § 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.

2.5. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 C.F.R. ~~P~~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 C.F.R. ~~P~~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 C.F.R. ~~P~~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 § 112(c)(1) of the CAA for which the Administrator has not promulgated emission standards in accordance with §§ 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 C.F.R. ~~P~~parts 61, 63 and 65, to the extent referenced in 40 C.F.R. ~~P~~parts 61 and 63, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. ~~P~~parts 61, 63 and 65, effective June 1, ~~2023~~2024, for the purposes of implementing a program for emission standards for hazardous air pollutants, except as follows:

4.1.1. 40 C.F.R. §§ 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;

4.1.2. Subpart E of 40 C.F.R. ~~P~~part 63 and any provision related to § 112(r) of the CAA, notwithstanding any requirements of 45CSR30 shall be excluded;

4.1.3. Subparts DDDDDD, LLLLLL, OOOOOO, PPPPPP, QQQQQQ, TTTTTT, WWWWW, ZZZZZ, HHHHHH, BBBBBB, CCCCCC, WWWWWW, XXXXXX, YYYYYY, ZZZZZZ, BBBBBB, CCCCCC, and DDDDDDD of 40 C.F.R. ~~P~~part 63 shall be excluded; and

4.1.4. Subparts B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of 40 C.F.R. ~~P~~part 61 shall be excluded.

§45-34-5. Secretary.

5.1. Any and all references in 40 C.F.R. ~~P~~parts 63 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

5.1.3. 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.

§45-34-8. Severability.

8.1. Each of the federal provisions of 40 C.F.R. parts 61, 63, and 65, to the extent referenced in 40 C.F.R. parts 61 and 63, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. parts 61, 63, 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 61, 63, and 65, to the extent referenced in 40 C.F.R. parts 61 and 63, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. parts 61, 63, 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 45CSR34 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 subsections 8.2, the Secretary shall publicly identify the severed provisions which are no longer adopted and incorporated by reference.