



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia  
Secretary Of State

## NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Air Quality

RULE TYPE: Legislative

TITLE-SERIES: 45-34

RULE NAME: EMISSION STANDARDS FOR  
HAZARDOUS AIR POLLUTANTS

CITE AUTHORITY: W. Va. Code § 22-5-4

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

**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~~ 1 or more of the ~~eight~~ 8 substances listed as hazardous air pollutants in 40 C.F.R. § 61.01(a), or ~~one~~ 1 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.