

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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2001 SEP 12 A 10: 29

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV DEP- Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Interpretive CITE AUTHORITY: W.Va.Code §§22-5-1 et seq; 45CSR13

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

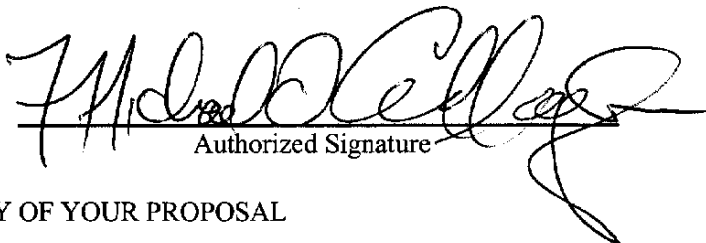
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 13A

TITLE OF RULE BEING PROPOSED: "The Permitting of Research and Development (R&D) Activities Under 45CSR13"

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 17, 2001 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

John A. Benedict, Deputy Director
Division of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**BUREAU OF ENVIRONMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 45CSR13A - "The Permitting of Research and Development Activities Under 45CSR13"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq. and 45CSR13

B. SUMMARY OF RULE:

This interpretive rule provides that certain research and development activities with emissions that are not from laboratories are exempt from the permitting requirements under 45CSR13 as long as they have actual emissions less than fixed amounts and they maintain records related to such emissions.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

This interpretive rule is necessary to provide guidance and clarification regarding the circumstances under which a permit is required for research and development activities under 45CSR13, the agency's minor source preconstruction permitting rule. The interpretive rule will result in the streamlining of permitting requirements and increased operational flexibility for these sources.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR13A - "The Permitting of Research and Development Activities Under 45CSR13"

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Air Quality

Address: 7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:

The proposed Interpretive Rule will have minimal effect on the costs to the Division of Air Quality and implementation will be absorbed into the existing work environment. Costs are covered under previous budget estimates.

3. Objectives of These Rules:

The objective of this rule is to provide guidance to sources with research and development activities regarding the permitting requirements under 45CSR13.

Rule Title: "The Permitting of Research and Development Activities Under 45CSR13"

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

See section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

There will be no economic impact on political subdivisions or the regulated community in West Virginia resulting from the Interpretive Rule contained herein. There may, in fact, be a beneficial effect on the regulated community due to clarifications in the underlying legislative rule, 45CSR13.

C. Economic Impact on Citizens/Public at Large.

There will be no economic impact on the citizens or public at large in West Virginia resulting from the Rule contained herein.

Date: _____

Signature of Agency Head or Authorized Representative:

TITLE 45
INTERPRETIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

FILED

2001 SEP 12 A 10:29

SERIES 13A
THE PERMITTING OF RESEARCH AND DEVELOPMENT (R&D) ACTIVITIES UNDER 45CSR13

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§45-13A-1. General.

1.1. Scope. -- The purpose of this rule is to provide guidance and clarification regarding the permitting of Research and Development (R&D) activities under 45CSR13 while ensuring compliance with all applicable requirements and at the same time providing operational flexibility.

1.2. Authority.-- W. Va. Code §§22-5-1 et seq. and WV 45CSR13.

1.3. Filing Date. --

1.4. Effective Date. --

§45-13A-2. Definitions.

2.1. "Research and Development (R&D) Activities" means activities the primary purpose of which is at least one of the following:

2.1.a. to evaluate process changes in connection with pollution prevention efforts (including improved process efficiencies);

2.1.b. to develop data for correction of manufacturing facility operational problems and customer product quality concerns; or

2.1.c. to produce products for commercial sale for the purpose of customer evaluation, market development or testing, provided that such activity is not the principal purpose of the facility.

2.2. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 45CSR13 and W. Va. Code § 22-5-2.

§45-13A-3. Applicability.

3.1 Emissions from laboratory facilities associated with R&D activities shall not be considered R&D activities subject to this rule. Such emissions shall be subject to the provisions of 45CSR13B.

§45-13A-4. Activities Exempt from Permitting.

4.1. R&D activities shall be exempt from permitting requirements under 45CSR13, provided the following terms and conditions are met:

4.1.a. The R&D activities do not result in any new or increased actual emissions of regulated pollutants or the applicability of any new requirements; nor do such activities constitute a "major modification" under 45CSR14 or 45CSR19; or

4.1.b. The R&D activities have new or increased actual emissions of regulated pollutants and meet one of the following criteria:

4.1.b.1. The R&D activities do not increase actual emissions more than 6 pounds

per hour or 2 tons per year of a criteria pollutant;

4.1.b.2. The R&D activities do not increase actual emissions more than 2 pounds per hour or 1 ton per year of aggregated hazardous air pollutants (HAPs), including any new or different HAPs; provided that the new or different HAPs do not result in the applicability of any new or revised requirements; or

4.1.b.3. The R&D activities do not increase actual emissions of toxic air pollutants more than the amounts listed in subdivisions 2.17.c and 2.17.d of 45CSR13.

4.2. R&D activities eligible for the permitting exemption under subdivisions 4.1.a or 4.1.b shall maintain records on-site for at least two (2) years which records shall be available to the Director upon request and shall include the following:

4.2.a. Description of the research and development activity;

4.2.b. The operating data to support methods, procedures and/or techniques used to control emissions;

4.2.c. The estimated actual emissions of regulated pollutants and supporting calculations; and

4.2.d. The date and duration of regulated pollutant emissions.

4.3. R&D equipment which is not operated at least 500 hours in one, 12-month period within the previous five (5)-year time period may be considered permanently shutdown, unless such source can provide to the Director, with reasonable specificity, information to the contrary.

§45-13A-5. Effect on Other Rules.

5.1. For application of the exemptions for particulate matter and mineral acids provided by section 10 of 45CSR7 and of the exemptions for sulfur dioxide provided by section 4 of 45CSR10, actual emissions from R&D activities will be regarded the same as potential to emit.