

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

Form #2

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2003 FEB 11 P 2:37

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WVDEP - Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Interpretive CITE AUTHORITY: W.Va. §§22-5-4; 22-5-10; 29A-1-2(c); 45CSR31

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

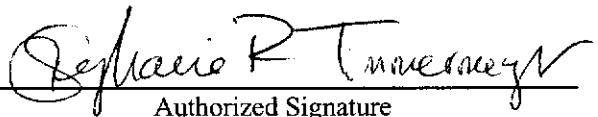
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 31B

TITLE OF RULE BEING PROPOSED: "Confidential Business Information and Emission Data"

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 March 21, 2003 AT 5:00 pm 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

\$3.20

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

RULE TITLE: 45CSR31B - "Confidential Business Information and Emission Data"

A. AUTHORITY: W.Va. §§22-5-4; 22-5-10; 29A-1-2(c); 45CSR31

B. SUMMARY OF RULE:

45CSR31B, "Confidential Business Information and Emission Data" is a proposed new interpretive rule that will provide clarification and guidance concerning what information constitutes emission data and is thus public information pursuant to 45CSR31. The rule further defines the term "types and amounts of pollutants discharged" by defining the term "necessary," a critical term used in that definition. The rule references a list of data elements and information contained in federal regulations that the U.S. Environmental Protection Agency (EPA) has published regarding the issue. If the information being considered is contained on the list and is necessary as defined in the interpretive rule, it will be deemed public information. The rule also addresses whether information contained in permits may be claimed confidential and the significance of any determination by EPA regarding whether information constitutes emission data.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

45CSR31 is the Division of Air Quality's legislative rule regarding confidential business information. That rule provides in section 6 that "types and amounts of pollutants discharged" as defined in the rule may not be claimed as confidential information. The proposed interpretive rule, 45CSR31B, provides guidance to the public by further defining that term.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 31B- "Confidential Business Information and Emission Data"

Type of Rule: _____ Legislative X Interpretive _____ Procedural

Agency: Division of Air Quality

Address: 7012 MacCorkle Avenue, SE
 Charleston, WV 25304

| 1. Effect of Proposed Rule | Annual | | Fiscal Year | | |
|----------------------------|----------|----------|-------------|--------|-------------|
| | Increase | Decrease | Current | Next | There-after |
| Estimated Total Cost | \$ -0- | \$ -0- | \$ -0- | \$ -0- | \$ -0- |
| Personal Services | -0- | -0- | -0- | -0- | -0- |
| Current Expense | -0- | -0- | -0- | -0- | -0- |
| Repairs and Alterations | -0- | -0- | -0- | -0- | -0- |
| Equipment | -0- | -0- | -0- | -0- | -0- |
| Other | -0- | -0- | -0- | -0- | -0- |

2. Explanation of above estimates: The adoption of 45CSR31B 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 and clarification concerning the term "types and amounts of pollutants discharged" defined under 45CSR§31-2.4, the Division's legislative rule entitled "Confidential Information," and thus what information may not be claimed confidential in accordance with 45CSR§31-6.

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.

The proposed rule is expected to have no impact on sources regulated by the Division of Air Quality.

C. Economic Impact on Citizens/Public at Large.

The proposed rule will have no economic impact on citizens or the public at large.

Date: 2/11/03

Signature of Agency Head or Authorized Representative

Stephen F. Timmerman

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

WEST VIRGINIA
STATE

SERIES 31B
CONFIDENTIAL BUSINESS INFORMATION AND EMISSION DATA

§45-31B-1. General.

1.1. Scope. -- Series 31B provides guidance and clarification concerning the term "types and amounts of pollutants discharged" defined under 45CSR§31-2.4, the Division's legislative rule entitled "Confidential Information," and thus what information may not be claimed confidential in accordance with 45CSR§31-6.

1.2. Authority. -- W. Va. Code §§22-5-4; 22-5-10; 29A-1-2(c); and WV45CSR31.

1.3. Filing Date.--

1.4. Effective Date.--

§45-31B-2. Definitions.

2.1. "Types and amounts of air pollutants discharged," or "emission data," means, with reference to any source of emission of any substance into the air --

2.1.a.

2.1.a.1. Emission data necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

2.1.a.2. Emission data necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the

extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

2.1.a.3. A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

2.1.b. Notwithstanding paragraph a of this subsection, the following information shall be considered to be emission data only to the extent necessary to allow the Director to disclose publicly that a source is (or is not) in compliance with an applicable standard or limitation, or to allow the Director to demonstrate the feasibility, practicability, or attainability (or lack thereof) of an existing or proposed standard or limitation:

2.1.b.1. Information concerning research, or the results of research, on any project, method, device or installation (or any component thereof) which was produced, developed, installed, and used only for research purposes; and

2.1.b.2. Information concerning any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so marketed or used.

2.2. "Necessary," as used in this rule, means data or information indispensable or essential to determining emissions or location and for which there is no readily available non-confidential alternative. Where the determination of emissions involves a series of calculations or prescribed parameters, only the final series of calculations or parameters preceding the final emissions rate will be deemed "necessary" under this rule.

§45-31B-3. What Information Constitutes Emission Data.

3.1. When information is submitted to the Secretary in any regulatory context, including, but not limited to, permitting, enforcement and emission inventory contexts, the data elements and types of information listed in Tables 2A through 2D of Appendix A to Subpart A of 40 C.F.R. Part 51, as further defined in the Glossary in such Appendix, will be considered emission data, and thus non-confidential, if the information is necessary to determine emissions or location as defined under subsections 2.1 and 2.2 of this rule.

3.2. Information in addition to that listed in the Tables referenced in subsection 3.1 will also be deemed emission data if the information is necessary to determine emissions or location as defined under subsections 2.1 and 2.2 of this rule.

3.3. The determination as to what information constitutes emission data will be made by the Secretary on a case-by-case basis after application of the definitions and principles stated in this rule.

§45-31B-4. Contents of Permit.

4.1. The contents of any permit issued by the Secretary pursuant to 45CSR13, 45CSR14, 45CSR19 or 45CSR30 may not be claimed as confidential, provided that information contained in an application for such permit may be claimed confidential.

§45-31B-5. Information Determined Emission Data by EPA.

5.1. Notwithstanding the provisions of this rule, information and data determined to be emission data by EPA in accordance with 40 C.F.R. §2.301 will be deemed emission data by the Secretary, provided that the mere fact that information or data is included in Tables 2A through 2D of Appendix A to Subpart A of 40 C.F.R. Part 51 and EPA has not made a case-specific determination will not be considered a determination for purposes of this section.