



**WEST VIRGINIA  
SECRETARY OF STATE**

**NATALIE E. TENNANT**

**ADMINISTRATIVE LAW DIVISION**

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7/22/2013 11:16:23 AM

OFFICE OF  
WEST VIRGINIA SECRETARY OF STATE

**FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY **Air Quality**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **45-16**

RULE NAME **Standards of Performance for New Stationary Sources**

CITE AUTHORITY **22-5-4**

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**

**Kristin A Boggs -- 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-Series: 45-16



Rule Id: 9075



Document: 25100



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)**

AGENCY **Air Quality**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **45-16**

RULE NAME **Standards of Performance for New Stationary Sources**

CITE AUTHORITY **22-5-4**

AUTHORIZING STATUTE(S) CITATION

**22-5-4**

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD

**Thursday, June 06, 2013**

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

**Public Notice placed on Department of Environmental Protection's web site, distributed via the agency's mailing list, and in a Class I legal ad published in the Charleston Newspapers.**

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED

**Monday, July 08, 2013**

**Kristin A Boggs -- 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.**



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 2)**

AGENCY **Air Quality**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **45-16**  
RULE NAME **Standards of Performance for New Stationary Sources**

CITE AUTHORITY **22-5-4**

ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED,  
AMENDMENTS, REASONS FOR AMENDMENTS.

**No comments received**

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE  
FOLLOWING PUBLIC HEARING: (BE EXACT)

**Monday, July 22, 2013**

NAME, TITLE, ADDRESS AND PHONE FAX EMAIL NUMBERS OF AGENCY PERSON(S) TO RECEIVE  
ALL WRITTEN CORRESPONDENCE REGARDING THIS RULE

**Public Information Office  
WV Department of Environmental Protection  
601 57th Street, SE  
Charleston, WV 25304  
Phone: (304) 926-0499  
Fax: (304) 926-0447  
E-Mail: [dep.comment@wv.gov](mailto:dep.comment@wv.gov)**

**Kristin A Boggs -- 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.**



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 3)**

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RULE NAME **Standards of Performance for New Stationary Sources**

CITE AUTHORITY **22-5-4**

IF DIFFERENT FROM ABOVE, PLEASE GIVE NAME, TITLE, ADDRESS, AND PHONE NUMBER(S) OF AGENCY PERSON(S) WHO WROTE AND OR HAS RESPONSIBILITY FOR THE CONTENTS OF THIS RULE

**John A. Benedict, Director**  
**Division of Air Quality**  
**WV Department of Environmental Protection**  
**601 57th Street, SE**  
**Charleston, WV 25304**  
**Phone: (304) 926-0499**  
**Fax: (304) 926-0488**  
**E-Mail: tammy.l.mowrer@wv.gov**

IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION. GIVE THE DATE UPON WHICH YOU FILED IN THE STATE REGISTER A NOTICE OF THE TIME AND PLACE OF A HEARING FOR THE TAKING OF EVIDENCE AND A GENERAL DESCRIPTION OF THE ISSUES TO BE DECIDED.

**Thursday, June 06, 2013**

**Kristin A Boggs -- 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.**



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 4)**

AGENCY **Air Quality**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **45-16**  
RULE NAME **Standards of Performance for New Stationary Sources**

CITE AUTHORITY **22-5-4**

DATE OF HEARING OR COMMENT PERIOD

**Monday, July 08, 2013**

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS  
REQUIRED TOGETHER WITH THE REASONS THEREFOR?

**Monday, July 22, 2013**

ATTACH FINDINGS AND DETERMINATIONS AND REASONS

**None**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**

**Kristin A Boggs -- 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.**



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)**

AGENCY      Air Quality  
RULE TYPE    Legislative                      AMENDMENT TO EXISTING RULE    Yes    TITLE-SERIES    45-16  
RULE NAME   Standards of Performance for New Stationary Sources

CITE AUTHORITY    22-5-4

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

**No impact above that resulting from currently applicable federal emission standards.**

**Kristin A Boggs -- 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-Series: 45-16



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)**

AGENCY **Air Quality**  
 RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **45-16**  
 RULE NAME **Standards of Performance for New Stationary Sources**

CITE AUTHORITY **22-5-4**

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
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
ESTIMATED TOTAL REVENUES	0	0	0

Kristin A Boggs -- 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.



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)**

AGENCY Air Quality  
RULE TYPE Legislative AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 45-16  
RULE NAME Standards of Performance for New Stationary Sources

CITE AUTHORITY 22-5-4

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

Costs anticipated to be incurred in the implementation of federal rules promulgated under 40 CFR Part 60 as of June 1, 2013 are included in prior cost estimates prepared for state implementation of Title V of the Clean Air Act, as amended, under 45CSR30. Full Title V program approval was issued by the U.S. Environmental Protection Agency on November 19, 2001.

Kristin A Boggs -- 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-Series: 45-16



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)**

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RULE NAME **Standards of Performance for New Stationary Sources**

CITE AUTHORITY **22-5-4**

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

**N/A**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Kristin A Boggs -- 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.**



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**FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)**

AGENCY **Air Quality**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **45-16**  
RULE NAME **Standards of Performance for New Stationary Sources**

CITE AUTHORITY **22-5-4**

**SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.**

The rule incorporates by reference the national standards of performance for new stationary sources 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). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule also 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 CFR Part 60 must comply with the applicable NSPS and this rule.

As set forth in 40 CFR §60.4(b), §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. Promulgation of this rule will enable the State to continue to be the primary enforcement authority for the NSPS promulgated by U.S. EPA. Revisions to this rule are necessary to maintain consistency with current federal regulations, and to fulfill the States responsibilities under the CAA. Revisions to the rule include annual incorporation by reference updates.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated under 40 CFR Part 60

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.**

**Yes**

**Kristin A Boggs -- 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-Series: 45-16



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**FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 2)**

AGENCY Air Quality  
RULE TYPE Legislative AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 45-16  
RULE NAME Standards of Performance for New Stationary Sources

CITE AUTHORITY 22-5-4

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

as of June 1, 2013: Standards of Performance for Portland Cement Plants; Nitric Acid Plants; Oil and Natural Gas Sector; Petroleum Refineries; Stationary Internal Combustion Engines; and Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes  
Kristin A Boggs -- 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-Series: 45-16



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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 CFR 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 1, 2013~~.

1.4. Effective Date. -- ~~June 1, 2013~~.

1.5. 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 CFR Parts 60 and 65, to the extent referenced in 40 CFR Part 60, effective ~~June 1, 2012~~ June 1, 2013.

1.6. Former Rules. -- This legislative rule amends 45CSR16 "Standards of Performance for New Stationary Sources" which was filed ~~May 1, 2012~~ May 1, 2013, and became effective ~~June 1, 2012~~ June 1, 2013.

**§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 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 CFR 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.**

## 45CSR16

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 CFR 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 CFR Parts 60 and 65, to the extent referenced in 40 CFR Part 60, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 60 and 65, effective ~~June 1, 2012~~ June 1, 2013, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

4.1.a. 40 CFR §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.b. Subparts B, C, Ca, Cb, Cc, Cd, Ce, Ea, Eb, Ec, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM of 40 CFR Part 60 shall be excluded.

### §45-16-5. Secretary.

5.1. Any and all references in 40 CFR Parts 60 and 65 to the “Administrator” are amended to be the “Secretary” except as follows:

5.1.a. where the federal regulations specifically provide that the Administrator shall retain authority and not transfer authority to the Secretary;

5.1.b. where provisions occur which refer to:

5.1.b.1. alternate means of emission limitations;

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

5.1.b.5. alternate monitoring methods;

5.1.b.6. waivers/adjustments to recordkeeping and reporting;

5.1.b.7. emissions averaging;

5.1.b.8. applicability determinations; or

5.1.b.9. the authority to require testing under Section 114 of the Clean Air Act, as amended; or

5.1.c. 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 West Virginia Department of Environmental Protection, 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.