



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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8/26/2016 10:48:52 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 **W. Va. Code §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: 10185



Document: 28886



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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 W. Va. Code §22-5-4

PRIMARY CONTACT

Laura M. Jennings
601 57th Street, SE

Charleston, STATE ZIP

SECONDARY CONTACT

Tammy Mowrer
601 57th Street, SE

Charleston, STATE SECONDARY ZIP SECONDARY

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CITE AUTHORITY **W. Va. Code §22-5-4**

AUTHORIZING STATUTE(S) CITATION
W. Va. Code §22-5-4

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD
Wednesday, June 29, 2016

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?
Filed with Secretary of State/State Register
Filed Legal Notice in the Charleston Newspapers
Issued DEP Press Release
Provided Notice to U.S. EPA Region III

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED
Monday, August 01, 2016

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**

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CITE AUTHORITY **W. Va. Code §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)

Friday, August 26, 2016

**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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CITE AUTHORITY **W. Va. Code §22-5-4**

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.

Wednesday, June 29, 2016

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)

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CITE AUTHORITY **W. Va. Code §22-5-4**

DATE OF HEARING OR COMMENT PERIOD
Monday, August 01, 2016

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS
REQUIRED TOGETHER WITH THE REASONS THEREFOR?
Friday, August 26, 2016

ATTACH FINDINGS AND DETERMINATIONS AND REASONS
None

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

Yes
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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

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

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CITE AUTHORITY W. Va. Code §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

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CITE AUTHORITY **W. Va. Code §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, 2016 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.



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

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CITE AUTHORITY **W. Va. Code §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.

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

AGENCY **Air Quality**
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CITE AUTHORITY **W. Va. Code §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 (NSPS) and other regulatory requirements promulgated by the United States Environmental Protection Agency (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 C.F.R. 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 C.F.R. Part 60 must comply with the applicable NSPS and this rule.

As set forth in 40 C.F.R. § 60.4(b), § 111(c) of the CAA directs the 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 the EPA. Revisions to this rule are necessary to maintain consistency with current federal regulations, and to fulfill the States responsibilities under

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

AGENCY **Air Quality**
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RULE NAME **Standards of Performance for New Stationary Sources**

CITE AUTHORITY **W. Va. Code §22-5-4**

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

the CAA. Revisions to the rule include annual incorporation by reference updates.

Revisions to the rule include: deleting the former rules section, clarifying the definition for Clean Air Act, and incorporating by reference amendments to the New Source Performance Standards (NSPS) promulgated by the EPA under 40 C.F.R. Part 60 as of June 1, 2016 including: Performance Specification 18 including a subsequent correction; Technical Amendments to Performance Specification 18 and Procedure 6; Electric Utility Generating Sector; Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units; Oil and Natural Gas Sector; Petroleum Refinery Sector; Phosphate Processing; and Portland Cement Plants. The Inconsistency Between Rules section was revised to reflect only DAQ.

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Yes
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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. -- ~~June 16, 2016.~~

1.4. Effective Date. -- ~~July 1, 2016.~~

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, 2015~~ June 1, 2016.

~~1.6. Former Rules. This legislative rule amends 45CSR16 "Standards of Performance for New Stationary Sources" which was filed April 6, 2015, and became effective June 1, 2015.~~

§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 the federal Clean Air Act, found at 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.

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, 2015~~ June 1, 2016, 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.

4.1.c. The following subparts of 40 CFR Part 60 relating to wood-burning heaters and appliances are expressly excluded and are not adopted or incorporated by reference in this rule:

4.1.c.1. The 2015 amendments to subpart AAA; and

4.1.c.2. Subpart QQQQ.

§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;

45CSR16

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~~ 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.