

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

Do Not Mark In This Box

SEP 12 30 PM '99

OFFICE OF THE SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative, CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: "Ambient Air Quality Standards for Sulfur Oxides  
and Particulate Matter"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

DATE OF PUBLIC HEARING: October 12, 1999 TIME: 6 00 p.m.

LOCATION OF PUBLIC HEARING: Office of Water Quality - Conference Room  
1201 Greenbrier Street  
Charleston, West Virginia 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Edward L. Kropp, Chief

The Department requests that persons wishing to make  
comments at the hearing make an effort to submit written  
comments in order to facilitate the review of these comments.

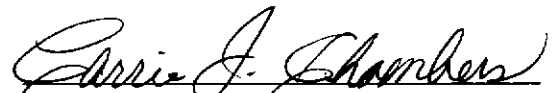
Office of Air Quality

1558 Washington Street East

The issues to be heard shall be limited to the proposed rule.

Charleston, WV 25311-2599

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

  
Authorized Signature

\$4.00



Executive Office  
#10 McJunkin Road  
Nitro, WV 25143-2506  
Telephone No: (304)759-0575  
Fax No: (304)759-0526



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## West Virginia Bureau of Environment

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Cecil H Underwood  
Governor

Michael C Castle  
Commissioner

September 1, 1999

**Ms. Judy Cooper**  
Director, Administrative Law  
Division  
Secretary of State's Office  
Capitol Complex  
Charleston, West Virginia 25305

**RE: 45CSR8 - "Ambient Air Quality Standards for Sulfur Oxides and  
Particulate Matter"**

Dear Ms. Cooper:

This letter will serve as approval for filing the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of Public Hearing/Comment Period.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers in my office at 759-0515.

Sincerely yours,

**Michael C. Castle**  
Commissioner

**MCC:cc**

**Attachment**

**cc: Skipp Kropp**  
**Karen Watson**  
**Carrie Chambers**

**BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

**Rule Title:** 45CSR8- "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"

**A. AUTHORITY:** W.Va. Code §§22-5-1 et seq.

**B. SUMMARY OF RULE:**

The purpose of this rule is to establish ambient air quality standards for sulfur oxides and particulate matter, equivalent to those national primary and secondary ambient air quality standards established by the U.S. EPA.

National primary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator of the U.S. EPA deems necessary to protect the public health and welfare.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

In accordance with sections 108 and 109 of the Clean Air Act (CAA), EPA reviewed the air quality criteria and national ambient air quality standards (NAAQS) for particulate matter (PM) and for ozone (O<sub>3</sub>). Based on these reviews, EPA revised the standards for both classes of pollutants (July 18, 1997 Federal Register).

With respect to PM, EPA revised the current primary PM<sub>10</sub> standards by adding two new primary PM<sub>2.5</sub> standards to provide increased protection against a wide range of PM-related health effects, including premature mortality and increased hospital admissions and emergency room visits (primarily in the elderly and individuals with cardiopulmonary disease); increased respiratory symptoms and disease (in children and individuals with cardiopulmonary disease such as asthma); decreased lung function (particularly in children and individuals with asthma), and alterations in lung tissue and structure and in respiratory tract defense mechanisms. The revised annual PM<sub>2.5</sub> standard would be based on the 3-year average of the annual arithmetic mean PM<sub>2.5</sub> concentrations. The revised 24-hour PM<sub>2.5</sub>

standard would be based on the 3-year average of the 98<sup>th</sup> percentile of 24-hour PM<sub>2.5</sub> concentrations at each monitor within an area. The EPA revised the current 24-hour primary PM<sub>10</sub> standard of 150 µg/m<sup>3</sup> by replacing the 1-expected-exceedance form with a 99<sup>th</sup> percentile form, averaged over 3 years at each monitor within an area. The EPA retained the current annual primary PM<sub>10</sub> standard of 50 µg/m<sup>3</sup>. Further, EPA adopted new data handling conventions for calculating 98<sup>th</sup> percentile values and spatial averages (Appendix K), revised the reference method for monitoring PM as PM<sub>10</sub> (Appendix J), and adopted a new reference method for monitoring PM as PM<sub>2.5</sub> (Appendix L).

The 1999 Legislature, by the passage of House Bill No. 2533, authorized the promulgation of the rule adopting the revised federal standards discussed above. This rule was filed by the Director June 1, 1999, and was made effective August 30, 1999. However, as a result of a federal court ruling on May 14, 1999, the federal standard for PM<sub>2.5</sub> was remanded to U.S. EPA and the standard for PM<sub>10</sub> was vacated. (See American Trucking Associations, Inc., et al v. United States Environmental Protection Agency, Case Nos. 97-1440 and 97-1441, United States Court of Appeals, District of Columbia Circuit, May 14, 1999.)

To be consistent with this ruling, the rule being proposed by the Director suspends the PM<sub>2.5</sub> standard until further direction from either the U.S. EPA or the U.S. Supreme Court of Appeals. The proposed rule retains the standard for PM<sub>10</sub> since the sole basis for the Court vacating the PM<sub>10</sub> standard was that the PM<sub>2.5</sub> and the PM<sub>10</sub> standards could not co-exist without there being essentially double regulation.

**D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:**

Since the proposed rule amendments are being made to conform to the federal counterpart rule as interpreted by the D.C. Circuit Court of Appeals, no determination of stringency is required.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with §22-1A-1 and 3(c), the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

The Advisory Council has received a copy of the proposed rule and will have the opportunity to consult with the Director at the Council's meeting in September of 1999. The Council's recommendations and the Director's response to any recommendations will be included in the filing of an agency-approved rule with the Secretary of State and the Legislative Rule-Making Review Committee.

## APPENDIX B

### FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR8 - "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"

Type of Rule:   X   Legislative        Interpretive        Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

| 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 actual revisions to this rule will have no additional economic impact because they impose no additional requirements beyond the current federal requirements.
  
3. Objectives of these rules: This rule revises the ambient air quality standards for sulfur oxides and particulate matter to conform to those promulgated by the U.S. EPA under the federal Clean Air Act, as amended, and as interpreted by the U.S. Circuit Court of Appeals for the D.C. Circuit. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act.

- 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.

No impact above that resulting from the currently applicable federal standards.

- C. Economic Impact on Citizens/Public at Large.

No impact above that resulting from the currently applicable federal standards.

Date: September 1, 1999

Signature of Agency Head or Authorized Representative

Carrie J. Chambers

TITLE 45  
LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

JUN 1 2 33 PM '99  
OFFICE OF THE SECRETARY  
STATE OF WEST VIRGINIA

SERIES 8  
AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES  
AND PARTICULATE MATTER

**§45-8-1. General.**

1.1. Scope. -- The purpose of this rule is to establish ambient air quality standards for sulfur oxides and particulate matter, equivalent to those national primary and secondary ambient air quality standards established by the U.S. EPA.

National primary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the administrator of the U.S. EPA judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator of the U.S. EPA deems necessary to protect the public health and welfare.

1.2. Authority. -- W. Va. Code §22-5-1 et seq.

1.3 Filing Date. -- ~~June 1, 1999.~~

1.4 Effective Date. -- ~~August 30, 1999.~~

1.5 Former Rules -- This legislative rule amends 45CSR8 - "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter" which was filed on June 1, 1999 and became effective on August 30, 1999.

**§45-8-2. Anti-Degradation Policy**

2.1. Pursuant to the best interests of the State of West Virginia, it is the objective of the Director to obtain and maintain the cleanest air possible, consistent with the best available technology.

2.2. Where the present ambient air is of better quality than the established standards, the Director will develop long-range plans to protect the difference between the present quality and the established standards. The plans will be based upon the best available forecasts of probable land and air uses in these areas of high air quality.

2.3. The air quality of these areas will not be lowered unless it has been clearly demonstrated to the Director that such a change is justifiable as a result of necessary economic or social development and will not result in statutory air pollution. This will require that any industrial, public, or private project or development which could constitute a new source of air pollutants, within an area of such high air quality, provide the best practicable control available under existing technology as part of the initial project or development.

**§45-8-3. Definitions.**

3.1. "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.

3.2. "Air Pollution", 'statutory air pollution', ~~has~~ shall have the meaning ascribed to it in W. Va. Code §22-5-2.

3.3 "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

3.4 "PM<sub>2.5</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

3.5. "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

3.6. "Ambient Air Quality Standards" means the numerical expression of a specified concentration level for a particular air pollutant in the ambient air and the time-averaging interval over which that concentration level is measured.

#### §45-8-4. Ambient Air Quality Standards.

4.1. The following ambient air quality standards shall not be exceeded:

##### 4.1.a. Sulfur Dioxide

##### 4.1.a.1. Primary Standard

4.1.a.1.A. Annual Arithmetic Mean Concentration - 80 micrograms per cubic meter (0.003 parts per million).

4.1.a.1.B. Maximum 24-Hour Concentration - 365 micrograms per cubic meter (0.14 ppm) - not to be exceeded more than once per year.

##### 4.1.a.2. Secondary Standard

4.1.a.2.A. Maximum Three (3) Hour Concentration - 1300 micrograms per cubic meter (0.5 ppm) - not to be exceeded more than once per year.

##### 4.1.b. Particulate Matter Primary and Secondary Standards

##### 4.1.b.1. PM<sub>2.5</sub>

4.1.b.1.A. Annual arithmetic mean concentration of 15 micrograms per cubic meter (ug/m<sup>3</sup>), attained when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 15.0 micrograms per cubic meter (15.0 ug/m<sup>3</sup>).

4.1.b.1.B. Average 24-hour concentration of 65 micrograms per cubic meter (ug/m<sup>3</sup>), attained when the 98<sup>th</sup> percentile 24-hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 65 micrograms per cubic meter (65 ug/m<sup>3</sup>).

4.1.b.1.C. Inasmuch as the federal PM<sub>2.5</sub> standard was remanded to the U.S. EPA (see American Trucking Associations, Inc., et al. v. United States Environmental Protection Agency, Case Nos. 97-1440 and 97-1441, United States Court of Appeals, District of Columbia Circuit, May 14, 1999), the provisions of subparagraphs 4.1.b.1.A. and 4.1.b.1.B. are suspended until the Director files notice with the Secretary of State that U.S. EPA or the United States Supreme Court of Appeals has reinstated substantively the same standard. In the event the U.S. EPA promulgates a different standard, the suspension will remain in effect until this rule is amended by the Director in accordance with the rule-making procedures of W.Va. Code §29A-3-1 et seq.

##### 4.1.b.2. PM<sub>10</sub>

4.1.b.2.A. Annual arithmetic mean concentration of 50 micrograms per cubic meter (ug/m<sup>3</sup>), attained when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 50 micrograms per cubic meter (50 ug/m<sup>3</sup>).

4.1.b.2.B. Average 24-hour concentration of 150 micrograms per cubic meter (ug/m<sup>3</sup>), attained when the 99<sup>th</sup> percentile 24-hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 150 micrograms per cubic meter (150 ug/m<sup>3</sup>).

**§45-8-5. Methods of Measurement.**

5.1.  $PM_{2.5}$  concentrations shall be measured in the ambient air as particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers by

5.1.a a reference method based on Appendix L of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53, or

5.1.b. an equivalent method designated in accordance with 40 CFR Part 53

5.2.  $PM_{10}$  concentrations shall be measured in the ambient air as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers by.

5.2.a. a reference method based on Appendix M of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or

5.2.b. an equivalent method designated in accordance with 40 CFR Part 53.

5.3. Sulfur dioxide concentrations shall be measured in the ambient air as sulfur dioxide by:

5.3.a. a reference method based on Appendix A of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or

5.3.b. an equivalent method designated in accordance with 40 CFR Part 53.

**§45-8-6. Inconsistency Between Rules.**

In the event of any inconsistency between this rule and any other rule of the Director, the resolution of such inconsistency shall be based upon the application of the more stringent provision, term, condition, method, or rule.