

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

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JUN 16 10 33 AM '98

OFFICE OF WEST VIRGINIA
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: 9

TITLE OF RULE BEING AMENDED: "Rules Pertaining to Ambient Air Quality Standards
for Carbon Monoxide and Ozone"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 21, 1998 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Johnston, 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 Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

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

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

3:80

John H. Johnston
by: [Signature]



BUREAU OF ENVIRONMENT

10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

Michael P. Miano
COMMISSIONER

June 15, 1998

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

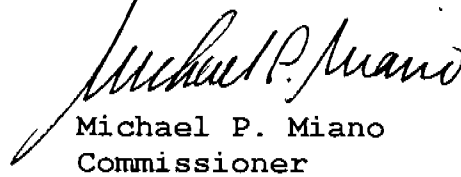
RE: 45CSR9 - "Rules Pertaining to Ambient Air
Quality Standards for Carbon
Monoxide and Ozone"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your office 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 contact Carrie Chambers in my office at 759-0515.

Sincerely yours,


Michael P. Miano
Commissioner

MPM:cc

cc: Carrie Chambers
Karen Watson, OAQ

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 45CSR9 - "Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone"

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 carbon monoxide and ozone, 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 (Act), EPA has reviewed the air quality criteria and national ambient air quality standards (NAAQS) for ozone (O₃) and particulate matter (PM). Based on these reviews, the EPA revised the standards for both classes of pollutants.

Ozone and related pollutants have long been recognized, in both clinical and epidemiological research, to affect public health. The revised standard would provide protection for children and other at-risk populations against a wide range of O₃-induced health effects, including decreased lung function (primarily in children active outdoors), increased respiratory symptoms (particularly in highly sensitive individuals), hospital admissions and emergency room visits for respiratory causes (among children and adults with pre-existing respiratory disease such as asthma), inflammation of the lung, and possible long-term damage to the lungs.

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

A federal counterpart to this proposed rule exists. In accordance with the Director's recommendation, and with limited exception, the Office of Air Quality proposes that the rule incorporate by reference the federal counterparts.

Because the proposed rule incorporates by reference the federal counterpart, 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 proposed amendments to this rule will be reviewed by the Advisory Council during its meeting in July, 1998. Recommendations of the Council and the Director's response to Council's recommendations will be included in the August 3, 1998 filing with the Secretary of State's Office and Legislative Rulemaking Review Committee.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone"

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 carbon monoxide and ozone to conform to those promulgated by the U.S. EPA under the federal Clean Air Act, as amended. 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:

June 16, 1995

Signature of Agency Head or Authorized Representative

John H. [Signature]

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

FILED
JUN 16 10 33 AM '98
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 9
RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR
CARBON MONOXIDE, ~~NON-METHANE HYDROCARBONS,~~ AND OZONE

§45-9-1. General.

1.1. Scope. -- The purpose of ~~Series 9~~this rule is to establish ambient air quality standards for carbon monoxide, ~~non-methane hydrocarbons,~~ and ozone, 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 27, 1980.~~

1.4. Effective Date. -- ~~October 22, 1980.~~

§45-9-2. Anti-Degradation Policy.

2.1. In 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 such 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.

§45-9-3. 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', shall have the meaning ascribed to it in W. Va. Code §22-5-2.

~~3.3. [Reserved]~~

~~3.4. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.~~

~~3.5. "Hydrocarbons" means compounds whose molecules consist of atoms of hydrogen and carbon and exist in the atmosphere in the gas phase. Specifically excluded are hydrocarbons and other organics associated only with suspended particles in the atmosphere. For purposes of these air quality standards non-methane hydrocarbons shall be taken to be the difference between the reported total hydrocarbons and methane values obtained from an air sample.~~

~~3.63. "Ozone" means the triatomic oxygen molecule (O₃), a very reactive form of oxygen.~~

~~3.7. "Standard Conditions" means for the purposes of this rule a temperature of 25 degrees C and a pressure of 760 mm of mercury column.~~

~~3.84. "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.~~

§45-9-4. Ambient Air Quality Standards.

4.1. The following ambient air pollutant concentrations shall not be exceeded:

4.1.a. Carbon Monoxide

~~4.1.a.1. Maximum eight (8) hour concentration, ten (10) milligrams per cubic meter (9 ppm) - not to be exceeded more than once per year.~~

~~4.1.a.2. Maximum one (1) hour concentration, forty (40) milligrams per cubic meter (35 ppm) - not to be exceeded more than once per year.~~

4.1.b. Ozone

~~4.1.b.1. Maximum one (1) hour concentration (highest single value per day), two hundred thirty-five (235) micrograms per cubic meter (0.12 ppm). Violation of this standard shall occur when the average number of expected exceedances is greater than one per year based on three (3) years data. (Reference 1). The level of the~~

8-hour primary and secondary ambient air quality standards is 0.08 parts per million (ppm), daily maximum 8-hour average, attained when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm as determined in accordance with Appendix I of 40 CFR Part 50.

~~4.1.c. Hydrocarbons (Measured and Corrected for Methane)~~

~~Maximum three (3) hour concentration; one hundred sixty (160) micrograms per cubic meter (0.24 ppm) for the time period of 6:00 a.m. to 9:00 a.m. - not to be exceeded more than once per year.~~

~~The hydrocarbon standard is to be used as a guide in devising implementation plans to achieve ozone standards.~~

§45-9-5. Methods of Measurement.

5.1. Carbon Monoxide concentrations shall be determined by nondispersive infrared (NDIR) methods or by such other methods approved as equally or more specific, accurate, sensitive, and reproducible by the Director.

~~5.2. Ozone concentrations shall be determined by the chemiluminescence reaction of ozone with ethylene and calibrated by the UV photometric procedure (Reference 2), or by the boric acid potassium iodide (BAKI) method which may be used as the calibration procedure in place of the UV photometric method until August, 1980, or by such other detection and/or calibration methods approved as equally or more specific, accurate, sensitive, and reproducible by the Director measured in the ambient air by a reference method based on Appendix D of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53.~~

~~5.3. Hydrocarbon concentrations shall be determined by subtraction of methane concentrations from total hydrocarbons concentrations determined by the flame ionization technique or by such other methods approved as equally or more specific, accurate, sensitive, and reproducible by the Director.~~

5.43. Other less specific methods of measurement may be used provided an accurate method of conversion can be developed to express the results in terms of equivalence to those that would be expected using the above methods or other more specific, accurate, sensitive, and reproducible methods approved by the Director.