

**WEST VIRGINIA  
SECRETARY OF STATE  
Betty Ireland  
ADMINISTRATIVE LAW DIVISION**

Form #1

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OFFICE OF THE  
SECRETARY OF STATE

**NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: WVDEP - Division 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: 12

TITLE OF RULE BEING AMENDED: Repeal - - Ambient Air Quality Standard for Nitrogen Dioxide

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

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

DATE OF PUBLIC HEARING: December 17, 2007 TIME: 6:00 P.M.

LOCATION OF PUBLIC HEARING: West Virginia Department of Environmental Protection

Dolly Sods Conference Room - Room #1125

601 57th Street, SE  
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL  WRITTEN  BOTH

DATE WRITTEN COMMENT PERIOD ENDS: December 17, 2007 TIME: 6:00 P.M.

WRITTEN COMMENTS MAY BE MAILED TO:

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.

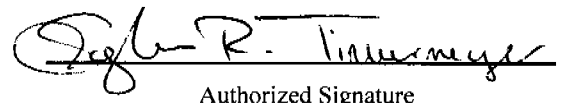
John Benedict, Director  
WVDEP - Division of Air Quality

601 57th Street, SE

Charleston, WV 25304

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

  
Authorized Signature

#3.20

## **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

### **BRIEFING DOCUMENT**

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR12 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public.

The substantive provisions of 45CSR12 have been updated and included in the provisions of the agency-approved rule 45CSR8, previously filed with the Secretary of State on July 26, 2007, and proposed for authorization by the 2008 Legislature.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 45CSR12 - "Ambient Air Quality Standard For Nitrogen Dioxide"

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency: Division of Air Quality

Address: 601 57<sup>th</sup> Street SE  
Charleston, WV 25304

Phone Number: 926-0475

Email: tmowrer@wvdep.org

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR12 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public.

The substantive provisions of 45CSR12 have been updated and included in the provisions of the agency-approved rule 45CSR8, previously filed with the Secretary of State on July 26, 2007, and proposed for authorization by the 2008 Legislature. The proposed repeal of this rule should cause no additional impact on costs and revenues of state government.

**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.

**FISCAL YEAR**

Effect of Proposal	2008 Increase/Decrease (use "-")	2009 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

Rule Title: 45CSR12 - "Ambient Air Quality Standard For Nitrogen Dioxide"

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The proposed repeal of this rule will have no effect on the costs to the Division of Air Quality. Refer to above explanation.

### MEMORANDUM


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.

The Department of Environmental Protection, Division of Air Quality, is proposing to repeal 45CSR12 as a part of its rule consolidation and streamlining efforts. These efforts will result in consolidating several existing rules addressing the same general subject into a fewer number of rules to provide a more efficient and user-friendly set of rules for the regulated community and the general public.

The substantive provisions of 45CSR12 have been updated and included in the provisions of the agency-approved rule 45CSR8, previously filed with the Secretary of State on July 26, 2007, and proposed for authorization by the 2008 Legislature. The proposed repeal of this rule should cause no additional impact on costs and revenues of state government.

Date: November 14, 2007

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
John A. Benedict, Director

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

**SERIES 12  
AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE**

**§45-12-1. General:**

— 1.1. Scope. -- The purpose of this rule is to establish ambient air quality standards for nitrogen dioxide 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. -- May 19, 2000:

— 1.4. Effective Date. -- June 1, 2000:

— 1.5. Former Rules. -- This legislative rule amends 45CSR12 "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed February 2, 1972, and which became effective March 15, 1972.

**§45-12-2. 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:

**§45-12-3. 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. "Ambient Air Quality Standard" 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:

~~§45-12-4. Ambient Air Quality Standard.~~

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

~~———— Nitrogen Dioxide~~

~~———— Annual Arithmetic Mean ——— 100  
micrograms per cubic meter (0.053 parts per  
million)~~

~~§45-12-5. Methods of Measurement.~~

~~5.1. Nitrogen dioxide concentrations shall be measured in the ambient air by:~~

~~———— 5.1.a. a reference method based on Appendix F 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.~~