



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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

AGENCY: Air Quality TITLE-SERIES: 45-08
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 45-08 Ambient Air Quality Standards

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W.Va. Code § 22-5-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §22-5-4(a)(4) authorizes the director to promulgate legislative rules relating to the control of air pollution. This rule incorporates by reference the National Ambient Air Quality Standards promulgated by the EPA under 40 C.F.R. Part 50 and the ambient air monitoring reference and equivalent methods under 40 C.F.R. Part 53.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/6/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/11/2017

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: Yes

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

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

Published public notice as a legal advertisement in the Charleston Newspapers
Posted notice on the Department of Environmental Protection website
Posted notice on the Division of Air Quality website
Provide notice to U.S. EPA, Region 3

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule incorporates by reference the ambient air quality standards in West Virginia for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to the national primary and secondary ambient air quality standards (NAAQS) established under §109 of the Clean Air Act, and promulgated by the United States Environmental Protection Agency under 40 C.F.R. Part 50. National primary ambient air quality standards define levels of air quality which the Administrator of the 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 EPA judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant.

The rule also incorporates by reference the ambient air monitoring reference methods and equivalent methods promulgated by the EPA under 40 C.F.R. Part 53. These reference methods are used to demonstrate attainment (or non-attainment) of the NAAQS.

The standards and methods under 40 C.F.R. Parts 50 and 53 are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator of the EPA deems necessary to protect the public health and welfare.

Revisions to the rule include incorporation by reference and adoption of standards effective June 1, 2017.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

In accordance with §109 of the Clean Air Act (CAA), the EPA has promulgated air quality criteria and NAAQS for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead. 45 C.S.R. 8 will meet the requirements for State Implementation Plans under §110 of the CAA through the NAAQS for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead incorporated by reference in this rule.

The EPA promulgated two rules regarding the National Ambient Air Quality Standards for Lead and Particulate Matter under 40 C.F.R. Part 50 that retained the national ambient air quality standard for lead, and published a technical correction to the national ambient air quality standard for particulate matter. The EPA also designated reference methods and equivalent methods under 40 C.F.R. Part 53 that designated one new ambient air monitoring reference method for measuring concentrations of sulfur dioxide and four new ambient air monitoring equivalent methods for measuring concentrations of PM_{2.5}, PM₁₀ and PM_{102.5} in ambient air; and designated two new equivalent method for measuring concentrations of nitrogen dioxide in ambient air.

45 C.S.R. 8 incorporates by reference these revised standards and methods. In accordance with §110(a)(2)(H) of the CAA, the DAQ will submit final rule 45 C.S.R. 8 as a revision to the State Implementation Plan.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed revisions to this rule should cause no additional impact on costs and revenues of state government.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The proposed revisions to this rule should not have an economic impact on the state or its residents.

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

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. 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
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The proposed revisions to this rule will have a minimal effect on the costs to the Division of Air Quality

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TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY

SERIES 8
AMBIENT AIR QUALITY STANDARDS

§45-8-1. General.

1.1. Scope. -- This rule establishes and adopts ambient air quality standards in West Virginia for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to the national primary and secondary ambient air quality standards established under Section 109 of the Clean Air Act, and promulgated by the United States Environmental Protection Agency under 40 C.F.R. Part 50. National primary ambient air quality standards define levels of air quality which the Administrator 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 judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. This rule also establishes and adopts ambient air monitoring reference methods and equivalent methods promulgated by the United States Environmental Protection Agency under 40 CFR Part 53. The Secretary hereby adopts these standards and methods by reference. The Secretary also adopts the appendices to these standards and methods. These standards and methods are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator deems necessary to protect the public health and welfare.

1.2. Authority. -- W.Va. Code § 22-5-4.

1.3. Filing Date. -- ~~May 15, 2017.~~

1.4. Effective Date. -- ~~June 1, 2017.~~

1.5. Incorporation by Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation this rule incorporates by reference 40 CFR Part 50, "National Primary and Secondary Ambient Air Quality Standards," and 40 CFR Part 53, "Ambient Air Monitoring Reference and Equivalent Methods," effective ~~June 1, 2016~~ June 1, 2017.

§45-8-2. 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" or "CAA" means the federal Clean Air Act, 42 U.S.C. § 7401 et seq., as amended.

2.3. "Secretary" means the Secretary of the Department of Environmental Protection or such other

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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 § 50.1. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

§45-8-3. Adoption of Standards.

3.1. The Secretary hereby adopts and incorporates by reference the national primary and secondary ambient air quality standards promulgated by the United States Environmental Protection Agency under 40 CFR Part 50, effective ~~June 1, 2016~~ June 1, 2017. These standards are adopted for the purpose of establishing ambient air quality standards in West Virginia that are equivalent to those established under Section 109 of the Clean Air Act, as amended.

3.2. The Secretary hereby adopts and incorporates by reference the ambient air monitoring reference methods and equivalent methods promulgated by the United States Environmental Protection Agency under 40 CFR Part 53, effective ~~June 1, 2016~~ June 1, 2017. These standards are adopted for the purpose of establishing ambient air monitoring reference methods and equivalent methods in West Virginia.

§45-8-4. Inconsistency Between Rules.

4.1. In the event of any inconsistency between this rule and any other rule of the 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.