



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Air Quality

TITLE-SERIES: 45-08

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Ambient Air Quality Standards

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

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/06/2021 6:00 PM

LOCATION OF PUBLIC HEARING:

WV Department of Environmental Protection; 601 57th Street SE; Charleston, WV 25304; Coopers Rock Conference Room; (Virtual option also available)

DATE WRITTEN COMMENT PERIOD ENDS: 07/06/2021 6:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Sandra Adkins

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Charleston, WV 25304

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The rule establishes and adopts the ambient air quality standards in West Virginia for carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide, 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 CFR 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 CFR Part 53. These reference methods are used to determine attainment (or non-attainment) of the NAAQS.

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

Summary of changes in the rule:

Revisions to the rule include the annual incorporation by reference of 40 CFR Parts 50 and 53 promulgated by EPA as of June 1, 2021.

The criteria pollutants identified in the scope subsection 1.1 were alphabetized. The Incorporation by Reference subsection 1.6 was revised to reflect the effective date of the standards being incorporated from June 1, 2020 to June 1, 2021. The Adoption of standards subsections 3.1 and 3.2 were revised to change the date the standards being incorporated from June 1, 2020 to June 1, 2021.

Statement of circumstances requiring the rule:

This rule is exempt from the Regulatory Moratorium of Executive Order 2-18 under condition 3(g), updating state rules to comply with federal law requirements.

This rule is part of the West Virginia State Implementation Plan (SIP), as required under § 110 of the federal Clean Air Act (CAA). The annual incorporation by reference updates to this rule allow WV to retain primacy of its air quality programs. Revisions to the rule include the annual incorporation by reference of 40 CFR Parts 50 and 53 promulgated by EPA as of June 1, 2021 including:

Method 201A of Appendix M of Part 51 - The erroneous gas filtration temperature limit of 30 C is revised to 29.4 C in section 1.2. In section 1.6, the erroneous word recommended is corrected to required. Section 6.2.1(d) is revised to allow polystyrene petri dishes as an alternative to polyethylene due to the lack of commercially available polyethylene petri dishes. In section 8.6.6, the erroneous stack temperature of 10 C is revised to 28 C. In section 17.0, the erroneous caption for Figure 7 is corrected from Minimum Number of Traverse Points for Preliminary Method 4 Traverse to Maximum Number of Required Traverse Points, and the erroneous y-axis label is corrected from Minimum Number of Traverse Points to Maximum Number of Traverse Points.

Review of the National Ambient Air Quality Standards for Particulate Matter - The U.S. EPA retained the current primary (health-based) and secondary (welfare-based) particulate matter NAAQS without revision following its review. There are two primary PM_{2.5} standards, an annual average standard with a level of 12.0 mg/m³ and a 24-hour standard with a 98th percentile form and a level of 35 mg/m³. The primary PM₁₀ standard is a 24-hour standard of 150 mg/m³. The secondary PM standards are set equal to the primary standards, except that the level of the secondary annual PM_{2.5} standard is 15.0 mg/m³.

Review of the Ozone National Ambient Air Quality Standards - The U.S. EPA retained the current standards for photochemical oxidants including ozone (O₃) without revision. The existing primary and secondary standards, established in 2015, are 0.070 parts per million (ppm), as the fourth-highest daily maximum 8-hour concentration, averaged across three consecutive years.

Designation of One New Reference Method and One New Equivalent Method The U.S. EPA has designated one new reference method for measuring concentrations of sulfur dioxide (SO₂), and one new equivalent method for measuring concentrations of particulate matter (PM₁₀) in ambient air.

Upon authorization and promulgation, 45 CSR 8 will be submitted to the EPA as a revision to the State Implementation Plan pursuant to the CAA.

Determination of Stringency:

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, the Division of Air Quality proposes that the rule incorporate by reference the federal counterparts. The proposed rule incorporates by reference the federal counterpart; therefore, no determination of stringency is required.

Consultation with the Environmental Protection Advisory Council:

The Environmental Protection Advisory Council received a copy of this proposed rule in advance of the June 3, 2021 meeting to discuss this rule.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed revisions to this rule should not impact revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed revisions to this rule should not impact special revenue accounts.

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

The proposed revisions to this rule should not impact costs of state government, nor should it have an economic impact on the state or its residents. The proposed revisions to this rule should have no additional impact on the cost of state government beyond that resulting from currently applicable federal requirements.

D. FISCAL NOTE DETAIL:

Effect of Proposal

Fiscal Year

	2021 Increase/Decrease (use "-")	2022 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

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

Annual revisions to this rule will not impact costs or revenues.

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.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jason E Wandling -- 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 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, lead, nitrogen dioxide, ozone, ~~nitrogen dioxide~~ particulate matter, and ~~lead sulfur dioxide~~, 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 C.F.R. 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. -- ~~April 28, 2021.~~

1.4. Effective Date. -- ~~June 1, 2021.~~

1.5. Sunset Provision. -- Does not apply.

1.6. 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 C.F.R. Part 50, "National Primary and Secondary Ambient Air Quality Standards," and 40 C.F.R. Part 53, "Ambient Air Monitoring Reference and Equivalent Methods," effective June 1, ~~2020~~ 2021.

§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" ("CAA") means the federal Clean Air Act, as amended, 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 C.F.R. § 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 C.F.R. Part 50, effective June 1, ~~2020~~ 2021. 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 C.F.R. Part 53, effective June 1, ~~2020~~ 2021. 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.