



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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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: 08/06/2024 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual

DATE WRITTEN COMMENT PERIOD ENDS: 08/06/2024 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Laura Jennings

ADDRESS: WV Department of Environmental Protection - Division of Air Quality  
601 57th Street, SE, Charleston, WV 25304

EMAIL: laura.m.jennings@wv.gov

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 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. The purpose of this rule is for West Virginia to retain primacy of its air quality program and remain current with the federal counterpart regulations.

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 (IBR) of 40 CFR parts 50 and 53 promulgated by EPA as of June 1, 2024 by updating the IBR date in section 1.6 and the adoption of standards dates in sections 3.1 and 3.2 and adding severability clauses under section 5. The IBR updates include the following: Reconsideration of the National Ambient Air Quality Standards for Particulate Matter; Ambient Air Monitoring Equivalent and Equivalent Methods; Designation of One New Equivalent Method; Ambient Air Monitoring Reference and Equivalent Methods; Designation of Two New Equivalent Methods; and Reference Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere (Chemiluminescence Method).

Statement of circumstances requiring the rule:

The incorporation by reference updates to this rule allow WV to retain primacy of its air quality programs and remain current with federal counterpart regulations. 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.

Determination of Stringency:

Federal counterparts to the proposed rule are incorporated by reference; 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 its June 4, 2024 meeting.

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		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>	0	0	0
<b>Current Expenses</b>	0	0	0
<b>Repairs and Alterations</b>	0	0	0
<b>Assets</b>	0	0	0
<b>Other</b>	0	0	0
<b>2. Estimated Total Revenues</b>	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.**

45CSR8

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 carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and 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. -- ~~May 2, 2024.~~

1.4. Effective Date. -- ~~June 1, 2024.~~

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, ~~2023~~ 2024.

**§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, ~~2023~~ 2024. 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, ~~2023~~ 2024. 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.

**§45-8-5. Severability.**

5.1. Each of the national primary and secondary ambient air quality standards promulgated by the United States Environmental Protection Agency under 40 C.F.R. part 50 and adopted and incorporated by reference under subsection 3.1 are severable.

5.2. Each of the ambient air monitoring reference methods and equivalent methods promulgated by the United States Environmental Protection Agency under 40 C.F.R. part 53 and adopted and incorporated by reference under subsection 3.2 are severable.

5.3. In the event any national primary and secondary ambient air quality standards promulgated by the United States Environmental Protection Agency under 40 C.F.R. part 50 and adopted and incorporated by reference under subsection 3.1 is withdrawn by the U.S. EPA, is invalidated by a court of competent jurisdiction, and/or is invalidated by an act of the United States Congress, are severed from 45CSR8 and no longer adopted and incorporated by reference under subsection 3.1.

5.4. In the event any ambient air monitoring reference methods and equivalent methods promulgated by the United States Environmental Protection Agency under 40 C.F.R. part 53 and adopted and incorporated by reference under subsection 3.2 is withdrawn by the U.S. EPA, is invalidated by a court of competent jurisdiction, and/or is invalidated by an act of the United States Congress, are severed from 45CSR8 and no longer adopted and incorporated by reference under subsection 3.2.