



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**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: 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. W. Va. Code § 22-1-3(c) authorizes the director to incorporate by reference the federal counterpart regulation.

This rule incorporates by reference the ambient air quality standards in West Virginia for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO2), ozone (O3), particulate matter (PM), and sulfur dioxide (SO2) 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 (U.S. EPA) under 40 C.F.R. part 50. The rule also incorporates by reference the ambient air monitoring reference methods and equivalent methods promulgated by the U.S. EPA under 40 C.F.R. part 53.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/3/2024

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/6/2024

COMMENTS RECEIVED: Yes

(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?

Legal advertisement of public notice published 7/5/2024 in the Charleston Newspapers

Public notice published 7/3/24 in the WV State Register

Notice posted on the Department of Environmental Protection website <https://dep.wv.gov/pio/Pages/Rules.aspx>

Notice posted on the Division of Air Quality website

<https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx>

Public notice sent to the DEP enhanced mailing list 7/3/2024

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 carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), particulate matter (PM), and sulfur dioxide (SO₂) 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 U.S. EPA determines 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 determines 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 U.S. EPA under 40 C.F.R. part 53. These reference methods are used to determine attainment (or non-attainment) of the NAAQS. The purpose of the rule is for West Virginia to retain primacy of its air quality program and remain current with the federal counterpart regulations.

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 from the time 45CSR8 was last revised 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 WHICH REQUIRE THE RULE:

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 for this rule allows WV to retain primacy of its air quality programs. Revisions to this rule are required to adopt the ambient air quality standards promulgated by the U.S. EPA under 40 C.F.R. part 50 and the ambient air monitoring reference and equivalent methods promulgated by the U.S. EPA under 40 C.F.R. part 53 as of June 1, 2024.

Upon authorization and promulgation, 45CSR8 will be submitted to the U.S. EPA as a revision to the SIP pursuant to the CAA.

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 revision 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 LEGISLATIVE 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 not have 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)
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.

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. ~~P~~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. ~~P~~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. ~~P~~part 50, "National Primary and Secondary Ambient Air Quality Standards," and 40 C.F.R. ~~P~~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 in a final action after the last appeal deadline, and/or is invalidated by an act of the United States Congress, such provision is severed from 45CSR8 after the effective date of the withdrawal or invalidation and is 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 in a final action after the last appeal deadline, and/or is invalidated by an act of the United States Congress, such provision is severed from 45CSR8 after the effective date of the withdrawal or invalidation and is no longer adopted and incorporated by reference under subsection 3.2.

5.5. In the event any provision is severed in accordance with subsection 5.3, the Secretary shall publicly identify the severed provisions which are no longer adopted and incorporated by reference.