



WEST VIRGINIA SECRETARY OF STATE

KRIS 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: 45-43

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

RULE NAME: Cross-State Air Pollution Rule to Control Annual Nitrogen Oxides Emissions, Annual Sulfur Dioxide Emissions, and Ozone Season Nitrogen Oxides Emissions

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

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/01/2025 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual

DATE WRITTEN COMMENT PERIOD ENDS: 07/01/2025 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Laura Jennings

ADDRESS: 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:

This rule incorporates by reference the federal Cross-State Air Pollution Rule (CSAPR), limiting the emissions of nitrogen oxides (NOX) and sulfur dioxide (SO₂), through three emissions trading programs. CSAPR was promulgated by the United States Environmental Protection Agency under § 110 of the federal Clean Air Act, as amended and 40 C.F.R. §§ 52.38 and 52.39 as a means of mitigating interstate transport of fine particulates, nitrogen oxides, ozone, and sulfur dioxide. The trading programs include: the CSAPR NOX Annual Trading Program set forth in 40 C.F.R. part 97, subpart AAAAA; the CSAPR NOX Ozone Season Group 3 Trading Program set forth under 40 CFR part 97, subpart GGGGG; and the CSAPR SO₂ Group 1 Trading Program set forth in 40 C.F.R. part 97, subpart CCCCC. This rule codifies general procedures and criteria to implement these trading programs and adopts and incorporates by reference these standards with limited exceptions, along with the associated reference methods, performance specifications and other test methods referenced by these standards.

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 following: (1) replaced the NOX Ozone Season Group 2 Trading Program under 40CFR97 subpart EEEEE with the Group 3 Trading Program under 40CFR97 subpart GGGGG in the general requirements (sections 1.1.2 and 1.6), definitions (sections 2.1, 2.5, 2.7.2, and 2.10), adoption of standards (sections 3.2 and 3.4), trading program requirements (section 5), and secretary provisions (section 7.1); (2) revised definition of CAA and Secretary for consistency with other DAQ rules; and (3) revised the numbering to comport with 153CSR1.

Statement of circumstances requiring the rule:

West Virginia is currently subject to the CSAPR Federal Implementation Plan (FIP) under 40 C.F.R. §§ 52.38 and 52.39 relating to emissions of nitrogen oxides and sulfur dioxide, respectively. Revisions to this rule are necessary to update the NOx ozone season trading program that West Virginia is subject. Upon authorization and promulgation, 45 C.S.R. 43 will be submitted to the EPA as a revision to the State Implementation Plan pursuant to the CAA. This rule is exempt from the Regulatory Moratorium of Executive Order 21-21 under condition 2(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 the draft proposed rule April 25, 2025.

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 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 rule should not impact costs of state government, nor should it have an economic impact on the state or its residents. The proposed 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		
	2025 Increase/Decrease (use "-")	2026 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):

The proposed revisions to this rule will have a minimal effect on the costs to the Division of Air Quality because they impose no additional requirements beyond current federal requirements. The trading programs will continue to be administered by the EPA. 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

Charles Driver -- 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 43
CROSS-STATE AIR POLLUTION RULE TO CONTROL ANNUAL NITROGEN OXIDES
EMISSIONS, ANNUAL SULFUR DIOXIDE EMISSIONS, AND OZONE SEASON NITROGEN
OXIDES EMISSIONS

§45-43-1. General.

1.1. Scope. -- This rule establishes and adopts the federal Cross-State Air Pollution Rule (CSAPR), limiting the interstate transport of emissions of nitrogen oxides (NO_x) and sulfur dioxide (SO₂), through emissions trading programs. CSAPR was promulgated by the United States Environmental Protection Agency under section 110 of the federal Clean Air Act, as amended and 40 C.F.R. §§ 52.38 and 52.39 as a means of mitigating interstate transport of fine particulates, nitrogen oxides, ozone and sulfur dioxide.

1.1.a1. This rule codifies general procedures and criteria to implement the CSAPR NO_x Annual Trading Program set forth in 40 C.F.R. part 97, subpart AAAAA. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods referenced by these standards.

1.1.b2. This rule codifies general procedures and criteria to implement the CSAPR NO_x Ozone Season Group 23 Trading Program set forth in 40 C.F.R. part 97, ~~subpart EEEEE~~ subpart GGGGG. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods referenced by these standards.

1.1.e3. This rule codifies general procedures and criteria to implement the CSAPR SO₂ Group 1 Trading Program set forth in 40 C.F.R. part 97, subpart CCCCC. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods referenced by these standards.

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

1.3. Filing Date. -- ~~April 24, 2019~~.

1.4. Effective Date. -- ~~May 1, 2019~~.

1.5. Sunset Provision. -- Does not apply.

1.6. Incorporation By Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart rule exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 C.F.R. 97, subparts AAAAA, CCCCC and ~~EEEEEGGGGG~~, effective June 1, 2018 2025.

§45-43-2. Definitions.

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under 40 C.F.R. part 97, subparts AAAAA, CCCCC, or ~~EEEEEGGGGG~~.

2.2. "Clean Air Act" ("CAA") means the federal Clean Air Act, ~~found at~~ 42 U.S.C. § 7401 et seq., as

amended.

2.3. “CSAPR” means Cross-State Air Pollution Rule.

2.4. “CSAPR NO_x Annual Trading Program” means a multi-state NO_x air pollution control and emission reduction program established in accordance with 40 C.F.R. part 97, subpart AAAAA and 40 C.F.R. § 52.38(a) (including such a program that is revised in a SIP revision approved by the Administrator under 40 C.F.R. § 52.38(a)(3) or (4) or that is established in a SIP revision approved by the Administrator under 40 C.F.R. § 52.38(a)(5)), as a means of mitigating interstate transport of fine particulates and NO_x.

~~2.5. “CSAPR NO_x Ozone Season Group 2 Trading Program” means a multi-state NO_x air pollution control and emission reduction program established in accordance with 40 C.F.R. part 97, subpart EEEEE and 40 C.F.R. §§ 52.38(b)(1), (b)(2)(i) and (iii), (b)(6) through (11), and (b)(13) (including such a program that is revised in a SIP revision approved by the Administrator under 40 C.F.R. § 52.38(b)(7) or (8) or that is established in a SIP revision approved by the Administrator under 40 C.F.R. § 52.38(b)(6) or (9)), as a means of mitigating interstate transport of ozone and NO_x.”~~ “CSAPR NO_x Ozone Season Group 3 Trading Program” means a multi-state NO_x air pollution control and emission reduction program established in accordance with 40 C.F.R. part 97, subpart GGGGG and 40 C.F.R. §§ 52.38(b)(1), (b)(2)(iii), and (b)(10) through (14) and (17) (including such a program that is revised in a SIP revision approved by the Administrator under 40 C.F.R. §§ 52.38(b)(10) or (11) or that is established in a SIP revision approved by the Administrator under 40 C.F.R. § 52.38(b)(12)), as a means of mitigating interstate transport of ozone and NO_x.

2.6. “CSAPR SO₂ Group 1 Trading Program” means a multi-state SO₂ air pollution control and emission reduction program established in accordance with 40 C.F.R. part 97, subpart CCCCC and 40 C.F.R. §§ 52.39(a), (b), (d) through (f), and (j) through (l) (including such a program that is revised in a SIP revision approved by the Administrator under 40 C.F.R. § 52.39(f)), as a means of mitigating interstate transport of fine particulates and SO₂.

2.7. “Existing unit” for the purpose of allocation means:

2.7.a1. A unit under the CSAPR NO_x Annual Trading Program or the CSAPR SO₂ Group 1 Trading Program that commenced commercial operation prior to January 1, 2010.

~~2.7.b2. A unit under the CSAPR NO_x Ozone Season Group 2 Trading Program that commenced commercial operation prior to January 1, 2015~~ A unit under the CSAPR NO_x Ozone Season Group 3 Trading Program that commenced commercial operation prior to January 1, 2019.

2.8. “New unit” for the purpose of allocation means any unit that is not an existing unit.

2.9. “Secretary” means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§ 22-1-6 or 22-1-8.

2.10. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 C.F.R. part 97, subparts AAAAA, CCCCC, and ~~EEEEEGGGGG~~. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

§45-43-3. Adoption of standards.

3.1. CSAPR NO_x Annual Trading Program -- The Secretary hereby adopts and incorporates by reference the provisions of 40 C.F.R. part 97, subpart AAAAA, including any applicable reference methods, performance specifications and other test methods, and monitoring, record keeping and reporting requirements which are required by that subpart, effective June 1, 2018, for the purposes of implementing the CSAPR NO_x Annual Trading Program, except as follows:

3.1.a1. The provisions of 40 C.F.R. § 97.410 are not adopted or incorporated by reference;

3.1.b2. The provisions of 40 C.F.R. §§ 97.411(b)(2) and (c)(5)(iii), 97.412(b) and 97.421 (h) and (j) are not adopted or incorporated by reference;

3.1.e3. The provisions of 40 C.F.R. § 97.404(a)(1) that are otherwise adopted and incorporated by reference are modified by removing the phrase “The following units in a State (and Indian country within the borders of such State)” and adding in its place the phrase “The following units in West Virginia”; and

3.1.d4. The provisions of 40 C.F.R. § 97.404(b)(1) that are otherwise adopted and incorporated by reference are modified by removing the phrase “Any unit in a State (and Indian country within the borders of such State)” and adding in its place the phrase “Any unit in West Virginia”.

3.2. ~~CSAPR NO_x Ozone Season Group 2 Trading Program~~ — The Secretary hereby adopts and incorporates by reference the provisions of 40 C.F.R. part 97, subpart EEEEE, including any applicable reference methods, performance specifications and other test methods, and monitoring, record keeping and reporting requirements required by that subpart, effective June 1, 2018, for the purposes of implementing the CSAPR NO_x Ozone Season Group 2 Trading Program, except as follows:

~~3.2.a. The provisions of 40 C.F.R. § 97.810 are not adopted or incorporated by reference;~~

~~3.2.b. The provisions of 40 C.F.R. §§ 97.811(b)(2) and (c)(5)(iii), 97.812(b) and 97.821 (h) and (j) are not adopted or incorporated by reference;~~

~~3.2.c. The provisions of 40 C.F.R. § 97.804(a)(1) that are otherwise adopted and incorporated by reference are modified by removing the phrase “The following units in a State (and Indian country within the borders of such State)” and adding in its place the phrase “The following units in West Virginia”; and~~

~~3.2.d. The provisions of 40 C.F.R. § 97.804(b)(1) that are otherwise adopted and incorporated by reference are modified by removing the phrase “Any unit in a State (and Indian country within the borders of such State)” and adding in its place the phrase “Any unit in West Virginia”. Reserved.~~

3.3. CSAPR SO₂ Group 1 Trading Program -- The Secretary hereby adopts and incorporates by reference the provisions of 40 C.F.R. part 97, subpart CCCCC, including any applicable reference methods, performance specifications and other test methods, and monitoring, record keeping and reporting requirements required by that subpart, effective June 1, 2018, for the purposes of implementing the CSAPR SO₂ Group 1 Trading Program, except as follows:

3.3.a1. The provisions of 40 C.F.R. § 97.610 are not adopted or incorporated by reference;

3.3.b2. The provisions of 40 C.F.R. §§ 97.611(b)(2) and (c)(5)(iii), 97.612(b) and 97.621 (h) and (j) are not adopted or incorporated by reference;

3.3.e3. The provisions of 40 C.F.R. § 97.604(a)(1) that are otherwise adopted and incorporated by reference are modified by removing the phrase “The following units in a State (and Indian country within the borders of such State)” and adding in its place the phrase “The following units in West Virginia”; and

3.3.d4. The provisions of 40 C.F.R. § 97.604(b)(1) that are otherwise adopted and incorporated by reference are modified by removing the phrase “Any unit in a State (and Indian country within the borders of such State)” and adding in its place the phrase “Any unit in West Virginia”.

3.4. CSAPR NO_x Ozone Season Group 3 Trading Program -- The Secretary hereby adopts and incorporates by reference the provisions of 40 C.F.R. part 97, subpart GGGGG, including any applicable reference methods, performance specifications and other test methods, and monitoring, record keeping and

reporting requirements required by that subpart, effective June 1, 2025, for the purposes of implementing the CSAPR NO_x Ozone Season Group 3 Trading Program, except as follows:

3.4.1. The provisions of 40 C.F.R. § 97.1010 are not adopted or incorporated by reference;

3.4.2. The provisions of 40 C.F.R. § 97.1004(a)(1) that are otherwise adopted and incorporated by reference are modified by removing the phrase “The following units in a State (and Indian country within the borders of such State)” and adding in its place the phrase “The following units in West Virginia”; and

3.4.3. The provisions of 40 C.F.R. § 97.1004(b)(1) that are otherwise adopted and incorporated by reference are modified by removing the phrase “Any unit in a State (and Indian country within the borders of such State)” and adding in its place the phrase “Any unit in West Virginia”.

§45-43-4. Requirements for the CSAPR NO_x Annual Trading Program.

4.1. No person may construct, reconstruct, modify, or operate or cause to be constructed, reconstructed, modified, or operated any source subject to the provisions of 40 C.F.R. part 97, subpart AAAAA which results or will result in a violation of this rule.

4.2. For each control period in 2019 and thereafter, the West Virginia NO_x Annual trading budget and new unit set-aside allocations of CSAPR NO_x Annual allowances, and the variability limit for the West Virginia NO_x Annual trading budget, are as follows:

4.2.a1. The NO_x annual trading budget is 54,582 tons;

4.2.b2. The new unit set-aside is 2,729 tons; and

4.2.e3. The variability limit is 9,825 tons.

4.3. The West Virginia NO_x Annual trading budget provided under subsection 4.2:

4.3.a1. Includes any tons in the new unit set-aside; and

4.3.b2. Does not include any tons in the variability limit.

§45-43-5. Requirements for the CSAPR NO_x Ozone Season Group 23 Trading Program.

5.1. No person may construct, reconstruct, modify, or operate or cause to be constructed, reconstructed, modified, or operated any source subject to the provisions of 40 C.F.R. part 97, subpart EEEEEGGGGG which results or will result in a violation of this rule.

~~5.2. For each control period in 2019 and thereafter, the West Virginia NO_x-Ozone Season Group 2 trading budget and new unit set aside for allocations of CSAPR NO_x-Ozone Season Group 2 allowances, and the variability limit for the West Virginia NO_x-Ozone Season Group 2 trading budget, are as follows:~~

~~5.2.a. The NO_x-Ozone Season Group 2 trading budget is 17,815 tons;~~

~~5.2.b. The new unit set aside is 356 tons; and~~

~~5.2.c. The variability limit is 3,741 tons.~~

5.2. Trading budgets. For each control period in 2026 through 2029, the West Virginia NO_x Ozone Season Group 3 preset trading budgets are as follows, except as provided in subdivision 5.2.5.

5.2.1. The preset trading budget for the 2026 period is 10,818 tons;

5.2.2. The preset trading budget for the 2027 period is 9,678 tons;

5.2.3. The preset trading budget for the 2028 period is 9,678 tons;

5.2.4. The preset trading budget for the 2029 period is 9,678 tons

5.2.5. If the preset trading budget indicated for a given control period is less than the dynamic trading budget for West Virginia referenced in the applicable notice promulgated in accordance with 40 C.F.R. § 97.1010(a)(4)(v)(C), then the West Virginia NO_x Ozone Season Group 3 trading budget for the control period shall be the dynamic trading budget referenced in the applicable notice promulgated in accordance with 40 C.F.R. § 97.1010(a)(4)(v)(C).

~~5.3. The NO_x Ozone Season Group 2 trading budget provided under subsection 5.2:~~

~~5.3.a. Includes any tons in the new unit set aside; and~~

~~5.3.b. Does not include any tons in the variability limit.~~

5.3. For each control period in 2030 and thereafter, the West Virginia NO_x Ozone Season Group 3 trading budget shall be the dynamic trading budget for West Virginia referenced in the applicable notice promulgated in accordance with 40 C.F.R. § 97.1010(a)(4)(v)(C).

5.4. The Administrator will calculate the dynamic trading budget for West Virginia for each control period in 2026 and thereafter in the year before the year of the control period in accordance with 40 C.F.R. § 97.1010(a)(4).

5.5. New unit set-asides. The new unit set-aside for allocations of CSAPR NO_x Ozone Season Group 3 allowances for West Virginia for each control period in 2023 and thereafter shall be calculated as the product (rounded to the nearest allowance) of the West Virginia NO_x Ozone Season Group 3 trading budget and control period established in accordance with subsections 5.2 through 5.4 multiplied by 0.05, for each control period in 2026 and thereafter.

5.6. Variability limits. The variability limit for the West Virginia NO_x Ozone Season Group 3 trading budget for each control period in 2023 and thereafter shall be calculated as the product (rounded to the nearest ton) of the West Virginia NO_x Ozone Season Group 3 trading budget and control period established in accordance with subsections 5.2 through 5.4 multiplied by the greater of subdivision 5.6.1 or 5.6.2.

5.6.1. 0.21; or

5.6.2. Any excess over 1.00 of the quotient (rounded to two decimal places) of paragraphs 5.6.2.a and 5.6.2.b.

5.6.2.a. The sum for all CSAPR NO_x Ozone Season Group 3 units in West Virginia of the total heat input reported for the control period in MMBtu, divided by

5.6.2.b. The state-level total heat input amount used in the calculation of the West Virginia NO_x Ozone Season Group 3 trading budget for control period in MMBtu, as identified in accordance with 5.6.3.

5.6.3. For purposes of paragraph 5.6.2.b, the state-level total heat input amount used in the calculation of the West Virginia NO_x Ozone Season Group 3 trading budget for a given control period shall be identified as follows:

5.6.3.a. For control periods in 2026 through 2029 if the West Virginia NO_x Ozone Season

Group 3 trading budget and control period under subsection 5.2 is the preset trading budget set forth in subdivisions 5.2.1 through 5.2.4, the state-level total heat input amounts shall be 273,151,957 MMBtu.

5.6.3.b. For a control period in 2026 through 2029 if the West Virginia NO_x Ozone Season Group 3 trading budget for the control period under subsection 5.2 is the dynamic trading budget for the State and control period referenced in the applicable notice promulgated in accordance with 40 C.F.R. 97 § 1010(a)(4)(v)(C), and for a control period in 2030 and thereafter, the state-level total heat input amount shall be the amount for West Virginia and the control period calculated in accordance with 40 C.F.R. 97 § 1010(a)(4)(ii)(B)(2).

5.7. Relationship of trading budgets, set-asides, and variability limits. The West Virginia NO_x Ozone Season Group 3 trading budget includes any tons in a new unit set-aside but does not include any tons in a variability limit.

§45-43-6. Requirements for the CSAPR SO₂ Group 1 Trading Program.

6.1. No person may construct, reconstruct, modify, or operate or cause to be constructed, reconstructed, modified, or operated any source subject to the provisions of 40 C.F.R. part 97, subpart CCCCC which results or will result in a violation of this rule.

6.2. For each control period in 2019 and thereafter, the West Virginia SO₂ Group 1 trading budget and new unit set-aside for allocations of CSAPR SO₂ Group 1 allowances, and the variability limit for the West Virginia SO₂ Group 1 trading budget are as follows:

6.2.a1. The SO₂ Group 1 trading budget is 75,668 tons;

6.2.b2. The new unit set-aside is 5,297 tons; and

6.2.e3. The variability limit is 13,620 tons.

6.3. The West Virginia SO₂ Group 1 trading budget provided under subsection 6.2:

6.3.a1. Includes any tons in the new unit set-aside; and

6.3.b2. Does not include any tons in the variability limit.

§45-43-7. Secretary.

7.1. Any and all references in 40 C.F.R. part 97, subparts AAAAA, CCCCC, and ~~EEEE~~GGGGG to the “Administrator” remain the “Administrator”.

§45-43-8. Permits.

8.1. Nothing contained in this adoption by reference shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way be limited or inapplicable.

§45-43-9. Inconsistency Between Rules.

9.1. 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.