

45CSR16
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
RESPONSE TO COMMENTS

The WV Department of Environmental Protection (DEP), Division of Air Quality (DAQ) commenced the public comment period for proposed legislative rule 45CSR16 on May 30, 2025. The public comment period concluded July 1, 2025, after satisfying the 30-day period. A public hearing was held virtually on July 1, 2025. The purpose of the public comment period and hearing was to accept oral and written comments on the proposed revisions to 45CSR16.

There was one written comment received during the public comment period from Mr. Jason Bostic, Executive Vice President, West Virginia Coal Association (WVCA). There were not any oral comments provided during the public hearing. A summary of the consolidated comments and responses are provided below.

The original comments received and the public hearing transcript are provided as part of the formal rulemaking record. There were not any changes made to 45CSR16 after reviewing and considering the comments received.

Commenter 1: West Virginia Coal Association (WVCA)

COMMENT 1: As explained to the West Virginia Department of Environmental Protection Advisory Council (WV DEP AC) during its review of the agency's proposed rule changes, the referenced severability language is being deleted based on comments and concerns raised by the federal Environmental Protection Agency (EPA).

RESPONSE 1: The WVCA's understanding that the proposal to remove the severability language was done in response to program delegation approvability concerns raised by EPA is correct. The Division of Air Quality (DAQ) identified this in the statement of circumstances requiring the rule when it filed the notice of public comment period with the West Virginia Secretary of State.

COMMENT 2: The WVCA believes maintaining state primacy over the air regulatory program is of the utmost importance and responding to valid and appropriate comments from EPA is part of maintaining the state's air program. The WVCA acknowledges the considerable efforts of DAQ to maintain state primacy for these programs.

RESPONSE 2: Thank you for your comment, a response is not necessary.

COMMENT 3: Concerning the severability language, WVCA believes that EPA's comments fall far short of conducting appropriate oversight of a delegated state regulatory program. West Virginia's rulemaking process is unique. In addition to the "traditional" public notice and comment procedures that exist for Clean Air Act programs, the West Virginia Administrative Procedures Act (WV APA) created "legislative rulemaking-review". As a function of the WV APA and rulemaking review, all agency administrative rules are considered, debated and potentially modified and approved by the West Virginia Legislature. Administrative rules are packaged as bills in a legislative session and are reviewed by the Governor, like any other legislation that passed both the Senate and House of Delegates. By virtue of these rulemaking steps, administrative rules become

more than just regulations, they function as acts of the Legislature and an expression of public policy on behalf of the State of West Virginia.

Any comments from EPA that attempt to interpret or implicate this process are misplaced and entirely inappropriate. If the severability language in the state rules was to become "operative" based on one of the listed circumstances contained in the rule language, the DAQ in concert with the West Virginia Legislature would appropriately address the situation. EPA lacks not only the expertise to comment on the state's internal rulemaking processes, but its technical oversight responsibility provides the federal agency with no authority to even make such an attempt: These are not matters of conformity with federal air standards but fundamental questions of public policy that are set by the West Virginia Legislature and the Governor.

Unfortunately, blatant "overreach" by EPA in delegated state programs is nothing new to West Virginia, especially under previous federal administrations. WVCA is hopeful that the "cooperative federalism" approach envisioned under the CAA returns to EPA under the Trump Administration.

WVCA understands the proposed changes are in line with EPA's requested actions and the need to maintain state primacy and control of the CAA programs. However the situations that were considered by the agency, the WVDEP AC and the Legislature when the severability language was added should be addressed. WVCA would suggest that DAQ, in preamble language or in the administrative record related to this rulemaking, clarify the actions that would be undertaken by the agency should an underlying federal regulation or requirement be invalidated.

RESPONSE 3: Severability language was added to multiple rules in response to comments received during the public comment period for DAQ rules proposed in the 2024 legislative session. The severability language was added to the rules identified in or associated with the 2015 Startup, Shutdown, Malfunction (SSM) SIP Call which was litigated and awaiting the court's decision at the time the proposed rules were filed. Because the severability language was added in response to public comments, the severability language was not vetted with EPA in advance, nor was it available for review by EPA during the public comment period. During the WV DEP AC meeting concerning draft 2025 rules, it was suggested DAQ add severability language to other rules which adopt federal counterpart regulations, similar to what was added in the 2024 SSM rules. Based on the recommendation, DAQ began discussions with EPA regarding severability language. Conversations with EPA concerning the severability language began after the 2024 DAQ Legislative rules passed and immediately prior to filing the proposed rules for the 2025 legislative session, thus not allowing sufficient time for EPA review and input prior to filing.

Listed below are a variety of actions DAQ could take if an underlying federal regulation or requirement is invalidated depending upon the unique circumstances. DAQ may need to request additional clarification, either internally or from EPA, prior to acting.

- Some DAQ rules, such as 45CSR16 and 45CSR34, which incorporate by reference and adopt the federal counterpart regulations, are filed with the Secretary of State each year to remain current with the most recent federal regulations as part of the delegation agreement with EPA. Therefore, any revision to the federal counterpart regulation would be adopted in the next rulemaking cycle.
- DAQ may revise a legislative rule due to a revised or repealed federal counterpart regulation, or due to a court decision invalidating the federal counterpart regulation, in the next legislative session.

- DAQ may file an emergency rule, if required conditions are met.
- DAQ may develop an interpretive rule.
- DAQ may develop a policy.
- DAQ may provide clarification/communication with regulated entities directly and/or through appropriate associations via letters or participation in annual meetings.

Regulated sources may request DAQ update their air quality permit if it includes an invalidated federal requirement. The DAQ would not implement nor enforce an underlying federal regulation or requirement which has been invalidated.

This response to comment document describing the situations considered when the severability language was added and describing actions which DAQ may take if an underlying federal regulation or requirement is invalidated will be filed with the Secretary of State under “Comments Received” with the Agency Approved version of 45CSR16 and remain part of the administrative record related to this rulemaking.



West Virginia Coal Association

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www.wvcoal.com

July 1, 2025

Ms. Laura Jennings
Assistant Director
Division of Air Quality
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

Re: Proposed Revisions to State Air Quality Rules

Submitted via electronic mail: laura.m.jennings@wv.gov

Dear Ms. Jennings:

Pursuant to the public notice published by the West Virginia Department of Environmental Protection (WV DEP), the West Virginia Coal Association (WVCA) offers the following comments in response to the agency's proposed changes to various administrative rules maintained by the Division of Air Quality (DAQ). WVCA requests that these comments be applied by the agency to the administrative record for all the air quality rules that contain the "severability" clause contained in several rules, including 45 CSR 01, 45 CSR 08, 45 CSR 16, 45 CSR 25 and 45 CSR 34.

WVCA is a non-profit state coal trade association representing the interests of the West Virginia coal industry on policy and regulation issues before various state and federal agencies that regulate coal extraction, processing, transportation, and consumption. Our general members account for 80 percent of the Mountain State's underground and surface production of both thermal and

metallurgical coal. We also represent associate members that supply an array of services to the mining industry in West Virginia. WVCA's members also include various in-state consumers that purchase West Virginia coal to produce electric power, process heat and steam for various industrial processes, iron, and steel, ferro alloys and specialty chemicals.

WVCA's primary goal is to enhance the viability of the West Virginia coal industry by supporting efficient and environmentally responsible coal removal and processing through reasonable, equitable and achievable state and federal policy and regulation. WVCA is the largest state coal trade association in the nation.

WVCA's general members and associate members operate and maintain various coal mining extraction, processing and handling facilities that are regulated by DAQ. WVCA's associate members include coal consumers that are both permitting and regulated under the various DAQ rule sections.

WVCA's comments will address the deletion of the "severability" or "savings clause" language that was added to the various rules last year.³

As explained to the West Virginia Department of Environmental Protection Advisory Council (WV DEP AC) during its review of the agency's proposed rule changes, the referenced severability language is being deleted based on comments and concerns raised by the federal Environmental Protection Agency (EPA). Like DAQ, we believe that maintaining state primacy over the air regulatory program is of the utmost importance. Responding to valid and appropriate comments from EPA is part of maintaining the state's air program. Concerning the severability language, WVCA believes that

³ See 45 CSR 01.8, "Disposition of Rule; Severability". Similar language was contained in several other state rule promulgated in 2024.

EPA's comments fall far short of conducting appropriate oversight of a delegated state regulatory program.

As the agency is aware, West Virginia's rulemaking process is unique. In addition to the "traditional" public notice and comment procedures that exist for Clean Air Act programs, the West Virginia Administrative Procedures Act (WV APA) created "legislative rulemaking-review":

The Legislature further finds that the delegation of its legislative powers to other departments and agencies of government requires of the Legislature that the rules and regulations of such other departments and agencies, which have the force and effect of law because of their legislative character, should be carefully and extensively reviewed by the Legislature in a manner properly respectful of the separation of powers but in keeping with the legislative force and effect of such rules and regulations. Accordingly the Legislature has and by this chapter intends to fix by law uniform and settled administrative practices and procedures, subject only to enumerated exceptions, for the exercise of executive rule-making authority and for the exercise by executive and administrative officers, offices and agencies of lawfully delegated legislative power, with appropriate legislative review of that exercise of such delegated legislative authority and with established procedures for Legislative Oversight of the exercise of executive rule-making authority.²

As a function of the WV APA and rulemaking review, all agency administrative rules are considered, debated and potentially modified and approved by the West Virginia Legislature. Administrative rules are packaged as bills in a legislative session and are reviewed by the Governor, like any other legislation that passed both the Senate and House of Delegates. By virtue of these rulemaking steps, administrative rules become more than just regulations, they function as acts of the Legislature and an expression of public policy on behalf of the State of West Virginia.

Any comments from EPA that attempt to interpret or implicate this process are misplaced and entirely inappropriate. If the severability language in the state rules was to become "operative" based

² See generally W.Va. Code §29A-1-1. And <https://wps.wv.gov/admin-law/Faces/LeafRule.aspx>
 Comments of the West Virginia Coal Association:
 Proposed Revisions to State Air Quality Rules
 July 1, 2025.

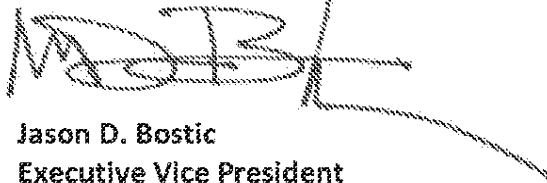
on one of the listed circumstances contained in the rule language, the DAQ in concert with the West Virginia Legislature would appropriately address the situation. EPA lacks not only the expertise to comment on the state's internal rulemaking processes, *but its technical oversight responsibility provides the federal agency with no authority to even make such an attempt. These are not matters of conformity with federal air standards but fundamental questions of public policy that are set by the West Virginia Legislature and the Governor.*

Unfortunately, blatant "overreach" by EPA in delegated state programs is nothing new to West Virginia, especially under previous federal administrations. WVCA is hopeful that the "cooperative federalism" approach envisioned under the CAA returns to EPA under the Trump Administration.

WVCA understands the proposed changes are in line with EPA's requested actions and the need to maintain state primacy and control of the CAA programs. However the situations that were considered by the agency, the WVDEP AC and the Legislature when the severability language was added should be addressed. WVCA would suggest that DAQ, in preamble language or in the administrative record related to this rulemaking, clarify the actions that would be undertaken by the agency should an underlying federal regulation or requirement be invalidated.

WVCA appreciates the opportunity to offer these comments and acknowledges the considerable efforts of DAQ to maintain state primacy for these programs.

Respectfully Submitted



Jason D. Bostic
Executive Vice President
West Virginia Coal Association

PROPOSED 2026 DAQ LEGISLATIVE RULES - VIRTUAL PUBLIC HEARING

Tuesday, July 1, 2025 at 6:00 p.m.

List of Registrars

6/16/2025 14:58:25	bc.ro.d.spart@wv.gov	Bezie	Owner	207009 - DAQ	MT 207009-00	Chickston, WV 26010	no	None
6/16/2025 15:44:04	Laura.LaSherr@wv.gov	Laura	Chairman	DAQ	001 207009-00	Chickston, WV 26004	no	
6/24/2025 8:49:48	eric.j.walsh@wv.gov	Eric	Spokesman	TRAIL	101 207009-00	Georgetown, WV 26866	no	None
6/12/2025 7:03:42	mark.walsh@wv.gov	Mark	Spokesman	DAQ	001 207009-00	Georgetown, WV 26866	no	None
6/11/2025 14:05:46	jeff@wv.gov	Jeff	Chair	WV Chapter of Cattle Club	Montgomery, WV 26366	Montgomery, WV 26366	Yes	MSOP2 - Performance Evidence Limitations Control
6/16/2025 14:27:28	Kyle@wv.gov	Kyle	Spokesman	DAQ	MT 207009-00	Chickston, WV 26004	no	
7/1/2025 12:52:59	owen@wv.gov	Owen	Spokesman	Spokane Tribes & State Park	001 207009-00	Chickston, WV 26004	no	
7/1/2025 13:54:19	rd@wv.gov	Rod	Spokesman	WV State Police & State Park	001 207009-00	Chickston, WV 26004	no	None

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY
PUBLIC HEARINGS FOR
PROPOSED 2026 LEGISLATIVE RULES
45CSR1, 45CSR8, 45CSR16, 45CSR18,
45CSR25, 45CSR34, 45CSR43, and 45CSR45

Taken On
July 1, 2025
at
6:00 p.m.

on behalf of

West Virginia Department of
Environmental Protection
Division of Air Quality

via

Google Meet Videoconference

Transcript of the public hearing in the
above matter, held pursuant to notice remotely via
Google Meet, on the 1st day of July, 2025.

ESQUIRE DEPOSITION SOLUTIONS
BRAD L. COOPER, Notary Public
713 Lee Street
Charleston, West Virginia 25301
(202) 429-0014
www.esquiresolutions.com

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APPEARANCES:

Nicole Ernest, WVDEP DAQ Administrative Services
Manager

Laura Jennings, WVDEP DAQ Assistant Director

Richard Eric Ray, WVDEP DAQ Engineer

Jason Wandling, West Virginia Manufacturers
Association (WVMA)

Brad Cooper, Court Reporter

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P R O C E E D I N G S

(Proceedings commenced at 6:06 p.m.)

MS. ERNEST: Good evening, and thank
you for participating in the public hearing
tonight. My name is Nicole Ernest with the West
Virginia Department of Environmental Protection's
Division of Air Quality. Welcome to the public
hearings for the Division of Air Quality's eight
proposed rules for the upcoming 2026 West Virginia
Legislative Session.

There will be a separate public
hearing for each of the eight DAQ proposed rules.
The hearings will be held sequentially and will
commence immediately following the conclusion of
the hearing for the previous proposed rule.

With me this evening from the Division
of Air Quality is Laura Jennings. A court reporter
is also in attendance this evening.

The purpose of each public hearing is
to receive public comments on the record regarding
each of the proposed DAQ rules. DAQ is limiting
public comments to the proposed revisions to the
rules and is not soliciting comments not related to
the proposed revisions.

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Each public hearing is being recorded
and a court reporter is in attendance to meet Clean
Air Act requirements and to consider comments
during the rulemaking process. The purpose of the
public hearing is to listen to your comments. It
is not a forum to engage the DAQ in open discussion
or debate about proposed rules.

Unlike a public meeting, the DAQ will
not be responding to questions during the hearing.
All comments received will be addressed in a
response to comments document that will be part of
the official rulemaking record made available on
the Secretary of State's website.

All participants are asked to mute
their mics to ensure we are not interrupting others
or talking over one another.

Participants were asked to
pre-register to speak and will be called upon when
it's your turn to speak. When called upon, you
will be unmuted and told to go ahead with your
comment. Please clearly state your name and
indicate if you're representing any organization or
group, and limit your comments to five minutes.

Please specify when your comment is

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1 finished and re-mute your mic. If you did not
2 pre-register as a speaker but would like to speak,
3 please use the "raise hand" feature in Google Meet.
4 As a reminder, video demonstration and screen
5 sharing by witnesses is not permitted.
6 The chat feature in Google Meet will
7 be monitored during the public hearing to assist
8 with any technical issues. We ask everyone be
9 respectful and considerate of each other by:
10 Refraining from using foul language, refraining
11 from name calling, refraining from interrupting
12 others while they are speaking, and keeping your
13 comments on topic of the proposed DAQ rule.
14 I am now turning this over to Laura
15 Jennings with the Division of Air Quality.
16 MS. JENNINGS: Thanks, Nicole. Is the
17 court reporter ready?
18 COURT REPORTER: I am.
19 MS. JENNINGS: Okay, thank you.
20 (Public hearing for Proposed
21 Legislative Rule 45CSR1 commenced at
22 6:08 p.m.)
23 Okay. The virtual hearing for the
24 proposed legislative rule 45CSR1, Alternative

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1 Emission Limitations During Startup and Shutdown
2 Operations, will now come to order on this 1st day
3 of July 2025.
4 Oral comments and testimony will be
5 accepted until the close of this hearing and will
6 be made part of the rulemaking record. Any
7 question regarding revisions to the rules should be
8 included with your comments, and any such question
9 will be addressed as part of the response to
10 comment in the rulemaking record.
11 The purpose of this public hearing is
12 to accept comments on proposed revisions to Rule 1,
13 which was last promulgated in the 2024 session.
14 This rule sets forth the criteria and
15 air quality permit application requirements for
16 establishing an alternative emission limitation
17 during periods of startup or shutdown.
18 The rule is being revised to address
19 state implementation plan approvability concerns
20 with the severability language and Section 8 by
21 removing this language. Additionally,
22 recordkeeping and reporting requirements were
23 streamlined in Sections 6.2 and 6.4, and
24 Requirements 3.2 and 3.8 were clarified.

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1 The floor is now open for comments.
2 Nicole, has anyone pre-registered to provide
3 comments on proposed Rule 45CSR1? If so, please
4 unmute their line and call on them now.
5 MS. ERNEST: Thank you. We have one
6 person that pre-registered to speak. Jim Kotcon,
7 if you're available, please unmute your mic, state
8 your name, and indicate any organization that
9 you're representing.
10 And Jim, if you phoned in, you can
11 unmute your mic by pressing *6.
12 (No response.)
13 MS. ERNEST: Okay. We'll move on. If
14 you did not pre-register to speak but would like to
15 do so now, please use the "raise hand" option or
16 unmute your mic, state your name, and indicate any
17 group you may be representing. And if you are
18 joining us by telephone, please unmute your line by
19 pressing *6.
20 Going once, going twice. Laura, back
21 to you.
22 MS. JENNINGS: Thanks, Nicole. There
23 being nothing further, the public hearing for
24 Proposed Rule 45CSR1 is concluded. The public

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1 hearing for Proposed Rule 45CSR8 will begin
2 momentarily.
3 (Public hearing for Proposed
4 Legislative Rule 45CSR1 concluded at
5 6:11 p.m.)
6 MS. JENNINGS: Okay. Is the court
7 reporter ready for the next hearing?
8 COURT REPORTER: I am.
9 MS. JENNINGS: Thank you. Okay.
10 (Public hearing for Proposed
11 Legislative Rule 45CSR8 commenced at
12 6:11 p.m.)
13 MS. JENNINGS: The virtual public
14 hearing for the Proposed Legislative Rule 45CSR8,
15 Ambient Air Quality Standards, will now come to
16 order on this 1st day of July 2025.
17 Oral comments and testimony will be
18 accepted until the close of this hearing and will
19 be made part of the rulemaking record. Any
20 question regarding revisions to the rule should be
21 included with your comments, and any such question
22 will be addressed as part of the response to
23 comments in the rulemaking record.
24 The purpose of this public hearing is

<p style="text-align: right;">Page 9</p> <p>1 to accept comments on proposed revisions to 45CSR8, 2 which was last promulgated in the 2025 session. 3 This rule establishes and adopts 4 ambient air quality standards in West Virginia for 5 carbon monoxide, lead, nitrogen dioxide, ozone, 6 particulate matter, and sulfur dioxide, equivalent 7 to the national primary and secondary ambient air 8 quality standards established under Section 109 of 9 the Clean Air Act and promulgated by the United 10 States Environmental Protection Agency under 40 11 C.F.R. Part 50. 12 This rule also establishes and adopts 13 ambient air monitoring reference methods and 14 equivalence methods promulgated by the U.S. EPA 15 under 40 C.F.R. Part 53. Reference, excuse me, 16 reference methods are used to determine attainment 17 or non-attainment of the NAAQS. 18 Revisions to the rule include the 19 annual incorporation by reference of 40 CFR Parts 20 50 and 53 promulgated by the U.S. EPA as of June 21 1st, 2025, by updating the IBR date in section 1.6 22 and the adoption of standard states in sections 3.1 23 and 3.2. The severability language in section 5 24 was removed to address State Implementation Plan</p>	<p style="text-align: right;">Page 11</p> <p>1 MS. JENNINGS: Okay, thank you. 2 (Public hearing for Proposed 3 Legislative Rule 45CSR16 commenced at 4 6:15 p.m.) 5 MS. JENNINGS: The virtual public 6 hearing for the proposed legislative rule 45CSR16, 7 Standards of Performance For New Stationary 8 Sources, will now come to order on this 1st day of 9 July 2025. 10 Oral comments and testimony will be 11 accepted until the close of this hearing and will 12 be made part of the rulemaking record. Any question 13 regarding revisions to the rules should be included 14 with your comments and any such question will be 15 addressed as part of the response to comments 16 document in the rulemaking record. 17 The purpose of this public hearing is 18 to accept comments on proposed revisions to rule 19 45CSR16. This rule, last promulgated in the 2025 20 session, establishes and adopts national standards 21 of performance for new stationary sources and other 22 regulatory requirements promulgated by the United 23 States Environmental Protection Agency pursuant to 24 section 111(b) of the Federal Clean Air Act. This</p>
<p style="text-align: right;">Page 10</p> <p>1 (SIP) approvability concerns. 2 The floor is now open for comments. 3 Nicole, has anyone pre-registered to provide 4 comments on proposed rule 45CSR8? If so, please 5 unmute their line and call on them now. 6 MS. ERNEST: Thanks, Laura. We do not 7 have anyone pre-registered to speak. If you did 8 not pre-register to speak but would like to do so 9 now, please use the "raise hand" option. If you 10 are joining us by telephone, please unmute your 11 line by pressing *6. 12 Going once, going twice, back to you, 13 Laura. 14 MS. JENNINGS: Okay. Thanks, Nicole. 15 There being nothing further, this public hearing 16 for proposed rule 45CSR8 is concluded. The public 17 hearing for the proposed rule 45CSR16 will begin 18 momentarily. 19 (Public hearing for Proposed 20 Legislative Rule 45CSR8 concluded at 21 6:15 p.m.) 22 MS. JENNINGS: Is the court reporter 23 ready for the next hearing? 24 COURT REPORTER: I am.</p>	<p style="text-align: right;">Page 12</p> <p>1 rule codifies general procedures and criteria to 2 implement standards of performance for new 3 stationary sources set forth in 40 CFR Part 60. 4 The rule also adopts associated 5 appendices, reference methods, performance 6 specifications, and other test methods which are 7 appended to such standards. Revisions to this rule 8 are necessary to maintain consistency with current 9 federal regulations and for the State to fulfill 10 its responsibilities under the Clean Air Act and 11 enable the West Virginia Department of 12 Environmental Protection to continue to be the 13 primary enforcement authority for such national 14 standards promulgated by the U.S. EPA. 15 Revisions to this rule include 16 updating the annual incorporation by reference of 17 the New Source Performance Standards, or NSPS, 18 promulgated by the EPA under 40 CFR part 60 as of 19 June 1st, 2025, by updating the IBR dates in 20 subsections 1.6 and 4.1. The severability language 21 in section 8 was removed to address program 22 delegation approvability concerns. 23 The floor is now open for comments. 24 Nicole, has anyone pre-registered to provide</p>

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1 comments on proposed rule 45CSR16? If so, please
2 unmute their line now and call on them. Thank you.
3 MS. ERNEST: Thanks, Laura. We do not
4 have anyone pre-registered to speak. If you did
5 not pre-register to speak but would like to do so
6 now, please use the "raise hand" option or unmute
7 your mic.
8 If you're joining us by telephone,
9 please unmute your line by pressing *6.
10 Going once. Going twice. We'll
11 return to you, Laura.
12 MS. JENNINGS: Thanks, Nicole. There
13 being nothing further, this public hearing for
14 proposed rule 45CSR16 is concluded. The public
15 hearing for proposed rule 45CSR18 will begin
16 momentarily.
17 (Public hearing for Proposed
18 Legislative Rule 45CSR8 concluded at
19 6:19 p.m.)
20 MS. JENNINGS: Is the court reporter
21 ready for the next hearing?
22 COURT REPORTER: I am.
23 MS. JENNINGS: Okay, thank you.
24 (Public hearing for Proposed

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1 Legislative Rule 45CSR18 commenced at
2 6:19 p.m.)
3 MS. JENNINGS: The virtual public
4 hearing for the proposed legislative rule 45CSR18,
5 Control of Air Pollution From the Combustion of
6 Solid Waste, will now come to order on this 1st day
7 of July 2025.
8 Oral comments and testimony will be
9 accepted until the close of this hearing and will
10 be made part of the rulemaking record. Any
11 question regarding revisions to the rules should be
12 included with your comments, and any such question
13 will be addressed as part of the response to
14 comments document in the rulemaking record.
15 The purpose of this public hearing is
16 to accept comments on proposed revisions to rule
17 45CSR18, which was last promulgated in 2022. This
18 rule adopts standards of performance, and
19 implements the federal emission guidelines and
20 compliance times pursuant to §§ 111(b), 111(d) and
21 129 of the federal Clean Air Act to control certain
22 designated pollutants from new and existing
23 affected large municipal waste combustors, small
24 municipal waste combustion units; hospital,

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1 medical, and infectious waste incinerators;
2 commercial and industrial solid waste incineration
3 units; other solid waste incineration units; and
4 sewage sludge incineration units in West Virginia.
5 The rule is being revised to address
6 deficiencies identified by EPA and comport with EPA
7 Method 23. Revisions to the rule include: (1)
8 changed Secretary to Administrator in section 9.6.I
9 to reflect that EPA retains this authority; revised
10 performance testing sections 9.7.g.2 and 9.7.j.2 to
11 reflect reorganization in EPA Test Method 23;
12 corrected numbering references in sections 9.13.b
13 and 9.13.e; corrected the reference in footnote c
14 and clarified the averaging time for cadmium and
15 dioxins in Table 45-18M; updated the numbering and
16 text formats to comport with 153CSR1 and replaced
17 alphabetic numbers with numbers throughout; updated
18 the incorporation by reference (IBR) of the New
19 Source Performance Standards (NSPS) promulgated by
20 the EPA under 40 CFR part 60 as of June 1st, 2025,
21 by updating the IBR dates in section 1.8.
22 The floor is now open for comments.
23 Nicole, has anyone pre-registered to
24 provide comments on proposed rule 45CSR18?

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1 MS. ERNEST: Thanks, Laura. We do not
2 have anyone pre-registered to speak. If you did
3 not pre-register to speak but would like to do so
4 now, please use the "raise hand" option or unmute
5 your mic.
6 If you are joining us by telephone,
7 please unmute your line by pressing *6.
8 Going once. Going twice. We'll
9 return to you, Laura.
10 MS. JENNINGS: Thanks, Nicole. There
11 being nothing further, this public hearing for
12 proposed rule 45CSR18 is concluded. The public
13 hearing for proposed rule 45CSR25 will begin
14 momentarily.
15 (Public hearing for Proposed
16 Legislative Rule 45CSR18 concluded at
17 6:23 p.m.)
18 MS. JENNINGS: Is the court reporter
19 ready for the next hearing?
20 COURT REPORTER: I am.
21 MS. JENNINGS: Okay. Thank you.
22 (Public hearing for Proposed
23 Legislative Rule 45CSR25 commenced at
24 6:19 p.m.)

<p style="text-align: right;">Page 17</p> <p>1 MS. JENNINGS: The virtual public 2 hearing for the proposed legislative rule 45CSR25, 3 Control of Air Pollution from Hazardous Waste 4 Treatment, Storage and Disposal Facilities, will 5 now come to order on this 1st day of July 2025. 6 Oral comments and testimony will be 7 accepted until the close of this hearing and will 8 be made part of the rulemaking record. Any 9 question regarding revisions to the rule should be 10 included with your comments and any such question 11 will be addressed as part of the response to 12 comments in the rulemaking record. 13 The purpose of this public hearing is 14 to accept comments on proposed revisions to rule 15 45CSR25 which was last promulgated in 2025. The 16 rule incorporates by reference emission standards 17 for the treatment, storage and disposal of 18 hazardous waste including any reference methods, 19 performance specifications and other test methods 20 that have been promulgated by the U.S. EPA pursuant 21 to the Resource Conservation and Recovery Act, or 22 (RCRA), as amended. This rule codifies the general 23 procedures and criteria to implement emission 24 standards set forth in 40 CFR Parts 260, 261, 262,</p>	<p style="text-align: right;">Page 19</p> <p>1 momentarily. 2 (Public hearing for Proposed 3 Legislative Rule 45CSR25 concluded at 4 6:26 p.m.) 5 MS. JENNINGS: Is the court reporter 6 ready to proceed to the next hearing? 7 COURT REPORTER: I am. 8 MS. JENNINGS: Okay. Thank you. 9 (Public hearing for Proposed 10 Legislative Rule 45CSR34 commenced at 11 6:27 p.m.) 12 MS. JENNINGS: The virtual public 13 hearing for the proposed legislative rule 45CSR34, 14 Emission Standards for Hazardous Air Pollutants, 15 will now come to order on this 1st day of July 16 2025. 17 Oral comments and testimony will be 18 accepted until the close of this hearing, and will 19 be made part of the rulemaking record. Any 20 question regarding revision to the rule should be 21 included with your comments, and any such question 22 will be addressed as part of the response to 23 comment in the rulemaking record. 24 The purpose of this public hearing is</p>
<p style="text-align: right;">Page 18</p> <p>1 264, 265, 266, 270, and 279. 2 Revisions to this rule include an 3 incorporation by reference update with 33CSR20 and 4 updating the air quality related incorporation by 5 reference amendments as of June 1st, 2025, by 6 revising the IBR dates in sections 1.6.1, 3.1, and 7 3.2. The severability language in section 9 was 8 removed to address approvability concerns. 9 The floor is now open for comments. 10 Nicole, has anyone pre-registered to provide 11 comments on proposed rule 45CSR25? If so, please 12 unmute their line and call on them now. 13 MS. ERNEST: Thanks, Laura. We do not 14 have anyone pre-registered to speak. If you did 15 not pre-register to speak, but would like to do so 16 now, please use the "raise hand" option or unmute 17 your mic. If you're joining us by telephone, 18 please unmute your line by pressing *6. 19 Going once. Going twice. Return to 20 you, Laura. 21 MS. JENNINGS: Okay. Thank you. 22 There being nothing further, this public hearing 23 for proposed rule 45CSR25 is concluded. The public 24 hearing for proposed rule 45CSR34 will begin</p>	<p style="text-align: right;">Page 20</p> <p>1 to accept comments on proposed revisions to rule 2 45CSR34. This rule, last promulgated in 2025, 3 incorporates and adopts national emission standards 4 for hazardous air pollutants and other regulatory 5 requirements promulgated by the U.S. Environmental 6 Protection Agency pursuant to the federal Clean Air 7 Act. Promulgation of this rule is necessary for 8 the State to fulfill its responsibilities under the 9 Clean Air Act and will enable the WV Department of 10 Environmental Protection to continue to be the 11 primary enforcement authority for such national 12 emission standards promulgated by the U.S. EPA. 13 Revisions to the rule include the 14 annual incorporation by reference amendments as of 15 June 1, 2025, by revising the IBR dates in sections 16 1.6 and 4.1. The severability language in section 17 8 was removed to address program delegation 18 approvability concerns. 19 The floor is now open for comments. 20 Nicole, has anyone pre-registered to provide 21 comments on proposed rule 45CSR34? If so, please 22 unmute their line and call on them now. 23 MS. ERNEST: Thanks, Laura. We do not 24 have anyone pre-registered to speak. If you did</p>

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1 not pre-register to speak, but would like to do so
2 now, please use the "raise hand" option or unmute
3 your mic.
4 If you're joining us by telephone,
5 please unmute your line by pressing *6.
6 Going once. Going twice. We'll
7 return to you, Laura.
8 MS. JENNINGS: Thanks, Nicole. There
9 being nothing further, this public hearing for the
10 proposed rule 45CSR34 is concluded. The public
11 hearing for proposed rule 45CSR43 will begin
12 momentarily.
13 (Public hearing for Proposed
14 Legislative Rule 45CSR34 concluded at
15 6:30 p.m.)
16 MS. JENNINGS: Is the court reporter
17 ready for the next hearing?
18 COURT REPORTER: I am.
19 MS. JENNINGS: Thank you.
20 (Public hearing for Proposed
21 Legislative Rule 45CSR43 commenced at
22 6:30 p.m.)
23 MS. JENNINGS: The virtual public
24 hearing for the proposed legislative rule 45CSR43,

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1 Cross-State Air Pollution Rule to Control Annual
2 Nitrogen Oxide Emissions, Annual Sulfur Dioxide
3 Emissions, and Ozone Season Nitrogen Oxide
4 Emissions, will now come to order on this 1st day
5 of July 2025. Oral comments and testimony will be
6 accepted until the close of this hearing and will
7 be made part of the rulemaking record.
8 The purpose of this public hearing is
9 to accept comments on proposed revisions to rule
10 45CSR43 which was last promulgated in 2019. The
11 rule incorporates by reference the federal Cross-
12 State Air Pollution Rule, or CSAPR, limiting
13 emissions of nitrogen oxides (NOX) and sulfur
14 dioxide (SO2), through three emissions trading
15 programs. CSAPR was promulgated by the EPA under §
16 110 of the CAA, as amended and under 40 CFR §§52.38
17 and 52.39 as a means of mitigating interstate
18 transport of fine particulates, nitrogen oxides,
19 ozone, and sulfur dioxide. The trading programs
20 included -- or specified in the scope of the rule.
21 The rule codifies general procedures
22 and criteria to implement these trading programs
23 and adopts and incorporates by reference these
24 standards with limited exceptions, along with the

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1 associated reference methods, performance
2 specifications and other test methods referenced by
3 these standards.
4 Revisions to the rule include the
5 following: Replaced the NOX Ozone Season Group 2
6 Trading Program with the Group 3 Trading Program in
7 the general requirements; several definitions were
8 updated, and the adoption of standards sections 3.2
9 and 3.4 were revised; trading program requirements
10 were revised; and provisions for the secretary
11 under 7.1. Definitions were revised for the Clean
12 Air Act and Secretary for consistency with other
13 DAQ Rules. And the numbering was revised to
14 comport with 153CSR1; and added severability
15 clauses -- scratch that last one. Sorry.
16 The floor is now open for comments.
17 Nicole, has anyone pre-registered to provide
18 comments on proposed Rule 45CSR43? If so, please
19 unmute their line and call on them now.
20 MS. ERNEST: Thanks, Laura. We have
21 one person that pre-registered to speak.
22 Jim Kotcon, if you're on the line,
23 please unmute your mic and begin speaking. If
24 you're calling by phone, you may press *6 to unmute

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1 your line.
2 (No response.)
3 MS. ERNEST: Okay. If you did not
4 pre-register to speak, but would like to do so now,
5 please use the "raise hand" option or unmute your
6 mic. State your name and indicate if you're
7 representing any group or organization. If you're
8 joining by phone, please unmute your mic by
9 pressing *6.
10 Jason, go ahead.
11 MR. WANDLING: Hey guys, is this 43 or
12 45? I apologize.
13 MS. ERNEST: 43.
14 MR. WANDLING: Okay, great. I'll sit
15 tight for another minute.
16 MS. ERNEST: Okay. Is there anybody
17 who would like to make a comment? Going once,
18 going twice. We'll return to you, Laura.
19 MS. JENNINGS: Thanks, Nicole. There
20 being nothing further, this public hearing for
21 proposed rule 45CSR43 is concluded. The public
22 hearing for proposed rule 45CSR45 will begin
23 momentarily.
24 (Public hearing for Proposed

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1 Legislative Rule 45CSR43 concluded at
2 6:35 p.m.)
3 MS. JENNINGS: Is the court reporter
4 ready to proceed to the next meeting?
5 COURT REPORTER: I am.
6 MS. JENNINGS: Okay, thank you.
7 (Public hearing for Proposed
8 Legislative Rule 45CSR45 commenced at
9 6:35 p.m.)
10 MS. JENNINGS: The virtual public
11 hearing for proposed legislative rule 45CSR45,
12 Standards of Performance For Existing Crude Oil and
13 Natural Gas Facilities, will now come to order on
14 this 1st day of July 2025.
15 Oral comments and testimony will be
16 accepted until the close of this hearing and will
17 be made part of the rulemaking record. Any
18 question regarding revisions to the rule should be
19 included with your comments and any such question
20 will be addressed as part of the response to
21 comments document in the rulemaking record.
22 This rule establishes emission
23 standards, compliance schedules, testing,
24 monitoring, recordkeeping, reporting, registration

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1 and permitting requirements, and implements the
2 federal emission guidelines and compliance times
3 pursuant to 40CFR60, subpart OOOOc, Emissions
4 Guidelines for Greenhouse Gas Emissions from
5 Existing Crude Oil and Natural Gas Facilities, and
6 § 111(d) of the Clean Air Act to control methane
7 emissions from existing designated facilities in
8 the crude oil and natural gas source category which
9 commenced construction, modification, or
10 reconstruction on or before December 6, 2022.
11 The designated facilities include
12 wells, centrifugal and reciprocal compressors,
13 process controllers, pumps, storage vessels,
14 fugitive emissions components, super emitter
15 events, and process unit equipment.
16 The rule adopts test methods and
17 performance testing, initial compliance
18 requirements, continuous compliance requirements,
19 recordkeeping requirements, reporting requirements,
20 and definitions to implement the standards of
21 performance. The rule also provides a mechanism
22 for either less stringent standards or longer
23 compliance times if remaining useful life and other
24 factors criteria are satisfied. RULOF requirements

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1 were developed for marginal wells, abandoned wells,
2 orphaned wells, and wells that do not have access
3 to electrical power.
4 The floor is now open for comments.
5 Nicole, has anyone pre-registered to provide
6 comments on proposed rule 45CSR45? If so, please
7 unmute their line and call on them now.
8 MS. ERNEST: Thanks, Laura. We had
9 one person pre-register to speak. Jim Kotcon, if
10 you're on the line, please unmute your mic and
11 begin with your comment. If you're calling in by
12 phone, press *6 to unmute your line.
13 (No response.)
14 MS. ERNEST: Okay. If you did not
15 pre-register to speak but would like to do so now,
16 please use the "raise hand" option or unmute your
17 mic. State your name, indicate if you're
18 representing any group or organization.
19 Jason, go ahead.
20 MR. WANDLING: Hey guys. Jason
21 Wandling. I represent the West Virginia
22 Manufacturers Association. The West Virginia
23 Manufacturers Association offers the following
24 comments in response to the notice of public

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1 comment period for new Division of Air Quality
2 Legislative Rule 45CSR45.
3 WVMA members have a vital interest in
4 this proposed legislative rule designated as
5 45CSR45, the proposed rule, and have been involved
6 in submitting comments and challenging the U.S.
7 Environmental Protection Agency's rule establishing
8 "standards of performance for new reconstructed and
9 modified sources and emissions guidelines for
10 existing sources," oil and gas, natural -- "and oil
11 and natural gas sector," sometimes referred to as
12 OOOOc.
13 Specific comments include: One, we
14 support your inclusion at West Virginia Code Rule
15 4545 2.19 of a definition of marginal well site,
16 which does not have a counterpart definition in 40
17 CFR part 60 subpart OOOOc.
18 This definition recognizes the reality
19 of oil and gas production in the state of West
20 Virginia and acknowledges the economic reality that
21 many facilities that meet the definition of
22 marginal well site will be unable to install
23 controls as required by OOOOc.
24 Two, while we support the DEP DAQ's

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1 inclusion of a definition for marginal well site,
2 we believe the agency should also consider
3 establishing an exemption from regulation for oil
4 and gas wells and regulated facilities with low
5 potential to emit methane. Simply put, some
6 sources are too small to warrant the cost and
7 complexities of the proposed 45CSR45 regime.
8 Accordingly, we recommend that the DAQ
9 adopt a categorical exemption for marginal low
10 producing oil and gas wells as defined at 2.19, for
11 which regulation of the well will not be able to
12 achieve meaningful methane reductions and for which
13 the imposition of regulation will doubtless render
14 the wells uneconomic. Such wells will be plugged
15 or otherwise abandoned by small producers unable to
16 meet the cost of compliance with the proposed
17 regulations.
18 Three, we request the DAQ incorporate
19 in the definitions the term, "routed to a
20 processor" or "route to a processor," as defined in
21 40 CFR 60.5430(c) as follows: Routed to a process,
22 or route to a process, means the emissions are
23 conveyed via a closed vent system to any enclosed
24 portion of a process that is operational where the

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1 emissions are predominantly recycled and/or
2 consumed in the same manner as a material that
3 fulfills the same function in the process and/or
4 transformed by chemical reaction into materials
5 that are not regulated materials and/or
6 incorporated into a product and/or recovered.
7 Four, the proposed rule provides
8 section 4.1.5.B, "the owner or operator shall
9 calculate the potential for methane emissions as
10 the cumulative emissions from all storage vessels
11 within the tank battery as specified by the
12 requirements in sub paragraphs 4.1.5.B.1 through
13 4.1.5.B.3. When making the determination, the
14 owner or operator may consider requirements under a
15 legally and practicably enforceable limit issued to
16 the owner or operator under 45 CSR 13, 14, 19, 30,
17 or other requirements established under federal or
18 state authority."
19 The WVMA notes that permits issued
20 under those rules do not carry legally and
21 practically enforceable limit for methane. We
22 request that the criteria for what constitutes the
23 legally and practically enforceable methane limit
24 in the absence of a numerical standard be clarified

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1 or requiring methane limits be clearly defined in
2 the permits.
3 Five, DAQ should eliminate these super
4 emitter provisions of 45-45-7. Instead, enforcement
5 of 45 CSR 45 should rest solely with DAQ. The
6 super emitter program creates unreasonable
7 incentives to third parties to attempt
8 investigations at critical energy production
9 facilities in the state of West Virginia without
10 meaningful or enforceable standards for third party
11 investigators or in the analyst.
12 The proposed rule 45-45-7 also creates
13 the potential for conflict between third
14 investigators and analysts which emphasize the
15 basic existing rationale of investing state
16 inspectors with the authority to perform such work
17 in a safe and meaningful manner.
18 Six, with regard to West Virginia code
19 rule 45-45-9, the proposed rule does not adequately
20 address conditions where it is not technically or
21 economically feasible to route excess associated
22 gas to a sale line or to a flare or to flare excess
23 associated gas. These conditions include long
24 distances to a sales line, large sale line

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1 connection costs, and insufficient excess gas to
2 fuel a flare.
3 Facilities that meet the definition of
4 2.19 should be allowed to vent and or to flare
5 without restriction.
6 Seven, we support your inclusion of
7 the remaining useful life and other factors, or
8 RULOF, analysis for process controller designated
9 facilities at West Virginia code 45 section 12.7.
10 Eight, we support your adoption of
11 your RULOF analysis at 45-45-15.13 for initial
12 fugitive emission monitoring surveys and for
13 monitoring frequency of subsequent fugitive
14 emission monitoring surveys for marginal well
15 sites. The requirements for fugitive emissions
16 monitoring as applied to marginal low producing
17 wells are unnecessarily and unreasonably expensive
18 as well as time consuming.
19 The monitoring methods and frequencies
20 are based on an erroneous component count theory
21 rather than throughput. The record keeping and
22 reporting requirements are too costly, complex, and
23 onerous. Marginal wells have low and limited
24 production revenue and producers are successful

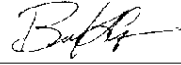
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1 only if they are able to operate at low cost.
 2 We applaud the DAQ's recognition of
 3 these operational facts.
 4 Nine, lastly, with regard to oil and
 5 gas well plugging requirements, we appreciate the
 6 insertion of RULOF analysis at West Virginia code
 7 rule 45-45-15.14 and 15.15. Your inclusion of
 8 these tools recognizes the economic reality of well
 9 plugging in the state of West Virginia and will
 10 encourage the plugging rather than mere abandonment
 11 or orphanage of marginal wells in the state.
 12 I appreciate your time and thank you
 13 for having this hearing and I appreciate the court
 14 reporter.
 15 MS. ERNEST: Thank you, Jason. If
 16 there's anyone else who would like to speak, please
 17 use the "raise hand" feature in Google or unmute
 18 your mic, state your name and any organization that
 19 you may represent.
 20 Going once. Going twice. Laura,
 21 we'll return to you.
 22 MS. JENNINGS: Okay, thank you.
 23 (Public hearing for Proposed
 24 Legislative Rule 45CSR45 commenced at

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1 6:47 p.m.)
 2 MS. JENNINGS: There are no further
 3 public hearings this evening. I'd like to thank
 4 everybody for their interest and participation in
 5 the public hearings for the 2026 DAQ proposed
 6 rules.
 7 Response to the comments presented
 8 this evening will be addressed in the response to
 9 comment document filed with the respective rule as
 10 part of the official rulemaking record and will be
 11 available on the Secretary of State's website.
 12 Have a good night and thank you again
 13 for your interest.
 14 (Proceedings concluded at 6:48 p.m.)
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1 STATE OF WEST VIRGINIA,
 2 COUNTY OF RALEIGH, to wit:
 3 I, Brad L. Cooper, a Notary Public within
 4 and for the County and State aforesaid, duly
 5 commissioned and qualified, do hereby certify that
 6 the foregoing proceedings were duly taken by me and
 7 before me at the time and place and for the purpose
 8 specified in the caption hereof.
 9 I do further certify that the said
 10 proceedings were recorded by means of digital audio
 11 and/or video recording, Stenomask, and/or correctly
 12 taken by me in shorthand notes, and that the same
 13 were accurately written out in full and reduced to
 14 typewriting by means of computer-aided
 15 transcription by me or under my supervision.
 16 My commission expires May 14, 2028.
 17 Given under my hand this 6th day of July,
 18 2025.
 19
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 21 _____
 22 BRAD L. COOPER, Notary Public
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