



**WEST VIRGINIA SECRETARY OF STATE**  
**KRIS WARNER**  
**ADMINISTRATIVE LAW DIVISION**

**eFILED**  
 3/31/2026 10:07:44 AM  
 Office of West Virginia  
 Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
 BY THE WEST VIRGINIA LEGISLATURE**

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

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB256

Section 64-3-1 (g) Passed On 2/23/2026 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 1, 2026

This rule shall terminate and have no further force or effect from the following date:

**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<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>), 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.

1.1.1. This rule codifies general procedures and criteria to implement the CSAPR NO<sub>x</sub> 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.

1.1.2. This rule codifies general procedures and criteria to implement the CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program set forth in 40 C.F.R. part 97, 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.

1.1.3. This rule codifies general procedures and criteria to implement the CSAPR SO<sub>2</sub> 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. -- March 31, 2026.

1.4. Effective Date. -- April 1, 2026.

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 GGGGG, effective June 1, 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 GGGGG.

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

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

2.4. “CSAPR NO<sub>x</sub> Annual Trading Program” means a multi-state NO<sub>x</sub> 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<sub>x</sub>.

2.5. “CSAPR NO<sub>x</sub> Ozone Season Group 3 Trading Program” means a multi-state NO<sub>x</sub> 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<sub>x</sub>.

2.6. “CSAPR SO<sub>2</sub> Group 1 Trading Program” means a multi-state SO<sub>2</sub> 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 SO<sub>2</sub>.

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

2.7.1. A unit under the CSAPR NO<sub>x</sub> Annual Trading Program or the CSAPR SO<sub>2</sub> Group 1 Trading Program that commenced commercial operation prior to January 1, 2010.

2.7.2. A unit under the CSAPR NO<sub>x</sub> 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 GGGGG. 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<sub>x</sub> 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<sub>x</sub> Annual Trading Program, except as follows:

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

3.1.2. 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;

3.1.3. 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

3.1.4. 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. Reserved.

3.3. CSAPR SO<sub>2</sub> 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 SO<sub>2</sub> Group 1 Trading Program, except as follows:

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

3.3.2. 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;

3.3.3. 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

3.3.4. 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> Annual trading budget and new unit set-aside allocations of CSAPR NO<sub>x</sub> Annual allowances, and the variability limit for the West Virginia NO<sub>x</sub> Annual trading budget, are as follows:

4.2.1. The NO<sub>x</sub> annual trading budget is 54,582 tons;

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

4.2.3. The variability limit is 9,825 tons.

4.3. The West Virginia NO<sub>x</sub> Annual trading budget provided under subsection 4.2:

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

4.3.2. Does not include any tons in the variability limit.

#### **§45-43-5. Requirements for the CSAPR NO<sub>x</sub> Ozone Season Group 3 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 GGGGG which results or will result in a violation of this rule.

5.2. Trading budgets. For each control period in 2026 through 2029, the West Virginia NO<sub>x</sub> 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<sub>x</sub> 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. For each control period in 2030 and thereafter, the West Virginia NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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 SO<sub>2</sub> 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 SO<sub>2</sub> Group 1 trading budget and new unit set-aside for allocations of CSAPR SO<sub>2</sub> Group 1 allowances, and the variability limit for the West Virginia SO<sub>2</sub> Group 1 trading budget are as follows:

6.2.1. The SO<sub>2</sub> Group 1 trading budget is 75,668 tons;

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

6.2.3. The variability limit is 13,620 tons.

6.3. The West Virginia SO<sub>2</sub> Group 1 trading budget provided under subsection 6.2:

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

6.3.2. 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 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.