



**WEST VIRGINIA  
SECRETARY OF STATE**

**NATALIE E. TENNANT**

**ADMINISTRATIVE LAW DIVISION**

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OFFICE OF  
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE  
(Page 1)**

AGENCY **Air Quality**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **45-08**  
RULE NAME **Ambient Air Quality Standards**

CITE AUTHORITY **W.Va. Code § 22-5-4**

COMMENTS LIMITED TO  
**Oral And Written**

DATE OF PUBLIC HEARING  
**Monday, August 01, 2016 6:00 PM**

LOCATION OF PUBLIC HEARING  
**Division of Environmental Protection  
Dolly Sods Conference Room (Room 1125)  
601 57th Street S.E.  
Charleston, WV 25304**

DATE WRITTEN COMMENT PERIOD ENDS  
**Monday, August 01, 2016 6:00 PM**

WRITTEN COMMENTS MAY BE MAILED TO  
**Public Information Office  
Division of Environmental Protection  
601 57th Street S.E.  
Charleston, WV 25304**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**  
**Kristin A Boggs -- 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-Series: 45-08



Rule Id: 10182



Document: 27635



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**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE  
(Page 2)**

AGENCY **Air Quality**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **45-08**  
RULE NAME **Ambient Air Quality Standards**

CITE AUTHORITY **W.Va. Code § 22-5-4**

**PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL**

The rule incorporates by reference the ambient air quality standards in West Virginia for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to the national primary and secondary ambient air quality standards (NAAQS) established under §109 of the Clean Air Act, and promulgated by the United States Environmental Protection Agency under 40 C.F.R. Part 50. National primary ambient air quality standards define levels of air quality which the Administrator of the EPA judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator of the EPA judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant.

The rule also incorporates by reference the ambient air monitoring reference methods and equivalent methods promulgated by the EPA under 40 C.F.R. Part 53. These reference methods are used to demonstrate attainment (or non-attainment) of the NAAQS.

The standards and methods under 40 C.F.R. Parts 50 and 53 are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator of the EPA deems necessary to protect the public health and welfare.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Kristin A Boggs -- 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.



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)**

AGENCY Air Quality  
RULE TYPE Legislative AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 45-08  
RULE NAME Ambient Air Quality Standards

CITE AUTHORITY W.Va. Code § 22-5-4

**PRIMARY CONTACT**

Laura Jennings  
601 57th Street, SE

Charleston, STATE ZIP

**SECONDARY CONTACT**

Tammy Mowrer

601 57th Street, SE  
Charleston, STATE SECONDARY ZIP SECONDARY

**Kristin A Boggs -- 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.**



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)**

AGENCY      Air Quality  
RULE TYPE    Legislative                      AMENDMENT TO EXISTING RULE    Yes    TITLE-SERIES    45-08  
RULE NAME    Ambient Air Quality Standards

CITE AUTHORITY    W.Va. Code § 22-5-4

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

**The proposed revisions to this rule should cause no additional impact on costs and revenues of state government.**

**Kristin A Boggs -- 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.**



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)**

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RULE NAME **Ambient Air Quality Standards**

CITE AUTHORITY **W.Va. Code § 22-5-4**

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
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
ESTIMATED TOTAL REVENUES	0	0	0

Kristin A Boggs -- 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.



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)**

AGENCY **Air Quality**  
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RULE NAME **Ambient Air Quality Standards**

CITE AUTHORITY **W.Va. Code § 22-5-4**

**3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.**

**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. Costs are covered under previous cost estimates.**

**Kristin A Boggs -- 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.**



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)**

AGENCY **Air Quality**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **45-08**  
RULE NAME **Ambient Air Quality Standards**

CITE AUTHORITY **W.Va. Code § 22-5-4**

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

**N/A**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Kristin A Boggs -- 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.**



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**FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)**

AGENCY **Air Quality**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **45-08**  
RULE NAME **Ambient Air Quality Standards**

CITE AUTHORITY **W.Va. Code § 22-5-4**

**SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.**

In accordance with §109 of the Clean Air Act (CAA), the EPA has promulgated air quality criteria and NAAQS for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead. 45 C.S.R. 8 will meet the requirements for State Implementation Plans under §110 of the CAA through the NAAQS for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead incorporated by reference in this rule.

Based on its review of the air quality criteria and the national ambient air quality standards for ozone (O3) and photochemical oxidants, the EPA revised the standard for ozone to provide requisite protection of public health and welfare, and made corresponding revisions to the data handling conventions for ozone and changes in the Air Quality Index (AQI).

With regard to primary and secondary standards for ozone (O3), the EPA revised both standards by lowering the level from 0.075 ppm to 0.070 ppm and retained their indicators, forms, and average times so as to provide increased protection against health effects associated with long and short-term exposures such as premature mortality, increased hospital admissions and emergency department visits, and development of chronic respiratory disease.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.**

**Yes**  
**Kristin A Boggs -- 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.**



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**FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 2)**

AGENCY **Air Quality**  
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **45-08**  
RULE NAME **Ambient Air Quality Standards**

CITE AUTHORITY **W.Va. Code § 22-5-4**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

The final rule also revised the O3 monitoring season, the Federal Reference Method (FRM), the Federal Equivalent Method (FEM), and the Photochemical Assessment Monitoring Stations (PAMS) network.

The EPA also promulgated five rules under 40 C.F.R. Part 53 that: (1) designated one new reference method and one new equivalent for measuring concentrations of PM2.5, one new equivalent method for measuring PM10-2.5, and two new equivalent methods for measuring ozone in the ambient air; (2) designated one new equivalent method for measuring concentrations of PM2.5 and one new equivalent method for measuring concentrations of ozone in the ambient air; (3) designated one new reference method for measuring concentrations of carbon monoxide (CO) and one new equivalent method for measuring concentrations of ozone in the ambient air; (4) designated one new reference method for measuring concentrations of PM10 in the ambient air; and (5) designated one reference method for measuring concentrations of PM10, one reference method for measuring PM10-2.5, one reference method for measuring ozone in ambient air, and three equivalent methods for measuring PM2.5 concentrations in ambient air.

45 C.S.R. 8 incorporates by reference these revised standards and methods. In

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**  
**Kristin A Boggs -- 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.**



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**FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 3)**

AGENCY **Air Quality**  
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RULE NAME **Ambient Air Quality Standards**

CITE AUTHORITY **W.Va. Code § 22-5-4**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

accordance with §110(a)(2)(H) of the CAA, the DAQ will submit final rule 45 C.S.R. 8 as a revision to the State Implementation Plan.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**  
**Kristin A Boggs -- 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.**



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45CSR8

TITLE 45  
LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AIR QUALITY

SERIES 8  
AMBIENT AIR QUALITY STANDARDS

**§45-8-1. General.**

1.1. Scope. -- This rule establishes and adopts ambient air quality standards in West Virginia for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to the national primary and secondary ambient air quality standards established under Section 109 of the Clean Air Act, and promulgated by the United States Environmental Protection Agency under 40 C.F.R. Part 50. National primary ambient air quality standards define levels of air quality which the Administrator judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. This rule also establishes and adopts ambient air monitoring reference methods and equivalent methods promulgated by the United States Environmental Protection Agency under 40 CFR Part 53. The Secretary hereby adopts these standards and methods by reference. The Secretary also adopts the appendices to these standards and methods. These standards and methods are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator deems necessary to protect the public health and welfare.

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

1.3. Filing Date. -- ~~April 4, 2014.~~

1.4. Effective Date. -- ~~June 1, 2014.~~

1.5. Incorporation by Reference. – Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary’s recommendation this rule incorporates by reference 40 CFR Part 50, “National Primary and Secondary Ambient Air Quality Standards,” and 40 CFR Part 53, “Ambient Air Monitoring Reference and Equivalent Methods,” effective ~~June 1, 2013~~ June 1, 2016.

~~1.6. Former Rules. — This legislative rule amends 45CSR8, “Ambient Air Quality Standards”, which was filed on May 1, 2012 and became effective on June 1, 2012.~~

**§45-8-2. Definitions.**

2.1. “Administrator” means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

2.2. “Clean Air Act” or “CAA” means the federal Clean Air Act, 42 U.S.C. § 7401 et seq., as amended.

## 45CSR8

2.3. "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.

2.4. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 CFR § 50.1. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

### **§45-8-3. Adoption of Standards.**

3.1. The Secretary hereby adopts and incorporates by reference the national primary and secondary ambient air quality standards promulgated by the United States Environmental Protection Agency under 40 CFR Part 50, effective ~~June 1, 2013~~ June 1, 2016. These standards are adopted for the purpose of establishing ambient air quality standards in West Virginia that are equivalent to those established under Section 109 of the Clean Air Act, as amended.

3.2. The Secretary hereby adopts and incorporates by reference the ambient air monitoring reference methods and equivalent methods promulgated by the United States Environmental Protection Agency under 40 CFR Part 53, effective ~~June 1, 2013~~ June 1, 2016. These standards are adopted for the purpose of establishing ambient air monitoring reference methods and equivalent methods in West Virginia.

### **§45-8-4. Inconsistency Between Rules.**

4.1. In the event of any inconsistency between this rule and any other rule of the ~~West Virginia Department of Environmental Protection~~ 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.