



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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7/24/2018 1:04:23 PM

Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Air Quality TITLE-SERIES: 45-36

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

RULE NAME: 45-36 (Repeal of) Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved under Title 23 USC or the Federal Transit Laws, to Applicable Air Quality Implementation Plans (Transportation Conformity)

PRIMARY CONTACT

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

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §22-5-4(a)(4) authorizes the director to promulgate legislative rules relating to the control of air pollution. Transportation conformity is a Clean Air Act (CAA) requirement that ensures that federally supported highway and transit projects are consistent with state air quality implementation plans in places where air quality does not currently meet federal standards or has not met them in the past.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/5/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/10/2018

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: Yes

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Legal advertisement of public notice published 6/8/18 in the Charleston Newspapers
Public notice published 6/8/18 in the WV State Register
Public notice posted on the Department of Environmental Protection website
Public notice posted on the Division of Air Quality website
Public notice sent to the DEP mailing list

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule is proposed for repeal in its entirety because the circumstances that required this rule no longer exist. The rule was initially established to adopt the requirements of 40 C.F.R. Part 93, Subpart A that was promulgated by the United States Environmental Protection Agency (EPA) to implement Section 176(c) of the Clean Air Act (CAA), as amended, and the related requirements of 23 U.S.C. Section 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation, and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This rule is no longer needed for West Virginia to comply with its Transportation Conformity obligations under the CAA.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is exempt from the Regulatory Moratorium of Executive Order 2-18 under condition 3(n), repealing existing rules.

Proposal of this rule is necessary for its repeal.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed repeal of this rule should not impact revenues of state government.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The proposed repeal of this rule should not impact revenues of state government.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 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

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

None.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Tammy L Mowrer -- 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
DIVISION OF AIR QUALITY

SERIES 36
REQUIREMENTS FOR DETERMINING CONFORMITY OF TRANSPORTATION PLANS,
PROGRAMS, AND PROJECTS DEVELOPED, FUNDED OR APPROVED UNDER
TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS, TO APPLICABLE
AIR QUALITY IMPLEMENTATION PLANS
(TRANSPORTATION CONFORMITY)

§45-36-1. General.

— 1.1. Scope. — This rule establishes and adopts the requirements of 40 CFR Part 93, Subpart A, “Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws.” 40 CFR Part 93, Subpart A was promulgated by the U.S. Environmental Protection Agency (USEPA) to implement Section 176(e) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. Section 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation, and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This rule codifies general policy, criteria, and procedures for demonstrating and assuring conformity of such activities to applicable air quality implementation plans developed pursuant to Section 110 and Part D of the CAA. The Secretary hereby adopts these requirements by reference.

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

— 1.3. Filing Date. — April 30, 2004.

— 1.4. Effective Date. — June 1, 2004.

— 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, with limited exception, this rule incorporates by reference 40 CFR Part 93, Subpart A, effective July 1, 2002, as amended by the Federal Register through June 1, 2003.

— 1.6. Former Rules. — This legislative rule amends 45CSR36 “Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved under Title 23 U.S.C. Or the Federal Transit Act, to Applicable Air Quality Implementation Plans (Transportation Conformity)” which was filed April 28, 1995 and became effective May 1, 1995.

§45-36-2. Definitions.

— 2.1. “Applicable State Implementation Plan” or “Applicable Air Quality Implementation Plan,” specifically means the West Virginia State Implementation Plan (SIP) including the most current revisions approved by the USEPA and any Federal Implementation Plan implemented in the state of West Virginia.

— 2.2. “Memorandum of Understanding” or “MOU” means a signed, mutual and binding agreement between specific parties which details procedures for meeting the interagency consultation (Federal, State and local), resolution of conflicts, and public consultation requirements set forth in 40 CFR §93.105 and section 5 of this rule.

— 2.3. “Party” or “parties” means the West Virginia Department of Environmental Protection, the West Virginia Department of Transportation, the Boone Clay Kanawha Putnam Regional Intergovernmental Council, the KYOVA Interstate Planning Commission, and the Wood Washington Wirt Interstate Planning

Commission, as identified in an MOU.

— 2.4. “Person” means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature.

— 2.5. “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.

— 2.5. “State Governor” or “Governor” means the Governor of West Virginia or his or her designated representative.

— 2.6. “State and Local Air Quality Agency(ies)” or “State Air Agency” means the West Virginia Department of Environmental Protection, Division of Air Quality.

— 2.7. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 CFR §93.101. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

§45-36-3. Requirements.

— 3.1. All transportation plans, programs, and projects developed, funded or approved in West Virginia, under Title 23 U.S.C. or the Federal Transit Laws, must conform to applicable air quality implementation plans in West Virginia. Any agency, organization or party responsible for making transportation conformity determinations or that is involved in transportation conformity-related activities shall do so pursuant to the provisions of 40 CFR Part 93, Subpart A and this rule. All such agencies, organizations or parties shall follow the consultation procedures set forth in section 5.

§45-36-4. Adoption of Policies, Criteria, and Procedures.

— 4.1. Policies, Criteria and Procedures. — The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Part 93, Subpart A, including associated policies, criteria, and procedures contained in 40 CFR Part 93, Subpart A, effective July 1, 2002, as amended by the Federal Register through June 1, 2003, for the purpose of meeting the transportation conformity requirements of 40 CFR §51.390, except that 40 CFR §93.105(e) is amended to provide that information shall be available to the public in accordance with 40 CFR §51.102, W.Va. Code §§22-5-1 et seq. and 29B-1-1 et seq.

§45-36-5. Consultation.

— 5.1. The interagency consultation, resolution of conflict, and public consultation procedures set forth in 40 CFR §93.105 shall be established, detailed and fulfilled using Memorandums of Understanding, as appropriate. The specific parties identified in a MOU shall mutually agree to adopt, implement and abide by such procedures. As required by 40 CFR §93.105(a), these mutually agreed and established procedures (MOUs) shall be included in any SIP revision submitted to USEPA under 40 CFR §51.390.

§45-36-6. Inconsistency Between Rules.

— 6.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.