

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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JUN 21 4 17 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection TITLE NUMBER: 45

RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 35

TITLE OF RULE BEING PROPOSED: Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)

DATE OF PUBLIC HEARING: July 29, 1994 TIME: 9:00 am

LOCATION OF PUBLIC HEARING: WVDEP - Office of Air Quality

1558 Washington Street East

Charleston WV 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Office of Air Quality

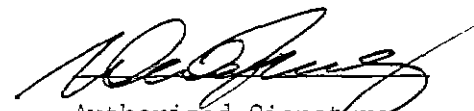
1558 Washington Street E

Charleston WV 25311

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

3.60

45CSR35

REQUIREMENTS FOR DETERMINING CONFORMITY OF GENERAL
FEDERAL ACTIONS TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS
(GENERAL CONFORMITY)

STATEMENT OF CIRCUMSTANCE

The purpose of this rule is to adopt the requirements of 40 CFR Part 93, Subpart B, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans". The Federal rule was promulgated by the U. S. Environmental Protection Agency (USEPA) to implement Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. §§ 7401 et seq.) which requires that all federal actions conform to applicable implementation plans under the Clean Air Act. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to applicable implementation plans developed pursuant to Section 110 and Part D of the CAA. The rule generally applies to federal actions except: (1) Those covered by the transportation conformity rule [40 CFR part 93, Subpart A]; (2) Actions with associated emissions below specified de minimis levels; and (3) Certain other actions which are exempt or presumed to conform to state and federal air quality plans.

This rule is necessary for the State to fulfill its responsibility under the Clean Air Act, as amended, and with the exceptions noted, incorporates by reference, the federal counterpart rule (40 CFR Part 93, Subpart B). The Director recommends incorporation of these criteria, procedures and requirements by reference.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)

Type of Rule: X Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East
 Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 28,000	\$ ----	\$ -0-	\$ 28,000	\$ 30,000
Personal Services	25,000	----	-0-	25,000	27,000
Current Expense	3,000	----	-0-	3,000	3,000
Repairs and Alterations	----	----	-0-	----	----
Equipment	----	----	-0-	----	----
Other	----	----	-0-	----	----

2. Explanation of above estimates: The Office of Air Quality of DEP projects that the proposed rule will require 0.5 man-year of professional staff time and the commitment of a small portion of clerical support for DEP/OAQ administration. Some office expenses and travel will also be involved.
3. Objectives of these rules: This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to all applicable implementation plans developed pursuant to Section 110 and part D of the CAA.
4. Explanation of overall economic impact of proposed rule.
 - A. Economic impact on state government.

See Note 2 above.

- B. Economic impact on political subdivisions; specific industries; specific groups of citizens.


The proposed rule could negatively impact certain industries such as the construction industry and material suppliers as well as if certain political subdivisions of projects were cancelled under a finding of non-conformity. The economic impact of failure to comply with Clean Air Act Standards, however, could have far greater negative economic impact in these areas.

- C. Economic impact on citizens/public at large.

Minimal impacts should result with respect to the public at large.

Date: June 21, 1994

Signature of agency head or authorized representative:


G. Dale Farley
Chief, Office of Air Quality

45CSR35

REQUIREMENTS FOR DETERMINING CONFORMITY OF GENERAL FEDERAL
ACTIONS TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS
(GENERAL CONFORMITY)

Summary

New Rule: The purpose of this rule is to adopt the requirements of 40 CFR Part 93, Subpart B, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans". The federal rule was promulgated by the U.S. Environmental Protection Agency (USEPA) to implement Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.) which requires that all federal actions conform to applicable air quality implementation plans.

This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to all applicable implementation plans developed pursuant to Section 110 and Part D of the CAA. The rule generally applies to federal actions except: (1) Those required under the transportation conformity rule [40 CFR Part 93, Subpart A]; (2) Actions with associated emissions below specified de minimis levels; and (3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

Some examples of federal actions requiring conformity determination include: Airport Construction/Modification grants; Leasing of Federal Land; Granting a Permit; Construction of Federal Office Buildings; Private Construction on Federal Land; Prescribed Burning; Reuse of Military Bases; and Water Treatment Plants.

FILED

TITLE 45
LEGISLATIVE RULE
BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

JUN 21 4 17 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 35

REQUIREMENTS FOR DETERMINING CONFORMITY OF GENERAL FEDERAL
ACTIONS TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS
(GENERAL CONFORMITY)

§45-35-1. General

1.1. Scope. - The purpose of this rule is to adopt the requirements of 40 CFR Part 93, Subpart B, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans". The federal rule was promulgated by the U.S. Environmental Protection Agency (USEPA) to implement Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.) which requires that all federal actions conform to applicable air quality implementation plans. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to all applicable implementation plans developed pursuant to Section 110 and Part D of the CAA. The rule generally applies to federal actions except: (1) Those required under the transportation conformity rule [40 CFR Part 93, Subpart A]; (2) Actions with associated emissions below specified de minimis levels; and (3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

1.2. Authority. - W.Va. Code §§22-5-1 et seq.

1.3. Filing Date. -

1.4. Effective Date. -

1.5. Incorporation by Reference - Federal Counterpart Regulations - This rule is necessary for the State to fulfill its responsibility under the Clean Air Act, as amended, and, with the exceptions noted, incorporates by reference the federal counterpart rule [40 CFR Part 93, Subpart B] in accordance with the Director's recommendation.

1.6. Determination of Stringency - Federal Counterpart Regulations - The Director has determined that this rule is no more or no less stringent than the federal counterpart rule.

1.7. Constitutional Takings Determination - The Director has determined that this rule will not result in the constitutional taking of real property.

§45-35-2. Definitions

For the purpose of this rule, the following definitions shall be used:

2.1. Unless specified or added below, all terms used, but not defined, shall have the meaning given them or referred to by 40 CFR Part 93, Section 93.152, "Definitions".

2.2 "Applicable State Implementation Plan" (SIP), [also referred to as "applicable air quality implementation plan(s)", "applicable implementation plan(s)", or "applicable SIP"] specifically means the West Virginia State Implementation Plan, including the most current revisions approved by the United States Environmental Protection Agency (USEPA) and any Federal Implementation Plan implemented in the State of West Virginia pursuant to the Clean Air Act..

2.3. "Director" means the Director of the West Virginia Division of Environmental Protection or such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

2.4. "Division of Environmental Protection" or "DEP" means the Division of Environmental Protection as defined in W. Va. Code §§22-1-1 et seq.

2.5. "State Governor" means the Governor of West Virginia or his or her designated representative.

2.6. "State and Local Air Quality Agency(ies)" and "State Agency" means the West Virginia Division of Environmental Protection, Office of Air Quality.

§45-35-3. Adoption of Criteria, Procedures and Requirements

3.1 The Director hereby adopts and incorporates by reference the provisions of 40 CFR Part 93, Subpart B, including associated criteria, procedures and requirements contained in 40 CFR Part 93, Subpart B, as in effect on January 31, 1994, for the purpose of meeting the requirements of 40 CFR Part 51, Subpart W, Section 51.851.

§45-35-4. Requirements

4.1 No department, agency or instrumentality of the federal government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to applicable implementation plans in West Virginia, as required and specified by 40 CFR Part 93, Subpart B.

§45-35-5. Severability

4.1 The provisions of this rule are severable and if any provisions or part thereof shall be held invalid, unconstitutional, or inapplicable to any person or circumstance; such invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sections, or parts of this rule; or their application to any persons or circumstances.