

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

Do Not Mark In this Box

FILED

Nov 23 9 16 AM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

WV Division of Environmental Protection
AGENCY: Office of Air Quality TITLE NUMBER: 45CSR35

CITE AUTHORITY WV Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

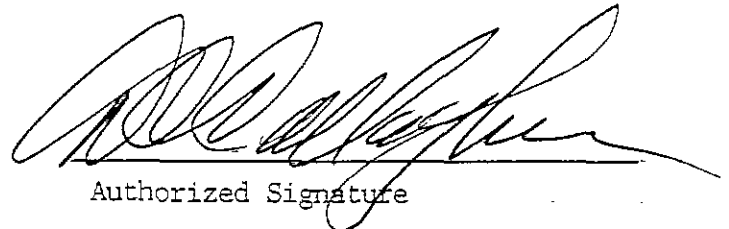
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 45CSR35

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

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

45CSR35

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

Determination of Stringency

W. Va. Code §22-1-3 in conjunction with W. Va. Code §22-1-3a requires, in part, the Director of the Division of Environmental Protection, to determine if a new or amended environmental provision should be the same in substance as a counterpart federal regulation. If the new rule should be the same in substance, as the counterpart federal regulation, then the Director shall incorporate by reference, to the greatest extent possible, the federal counterpart rule. If the Director determines the rule should not be the same in substance as the federal counterpart rule, then the Director shall file a statement setting forth the difference between the proposed rule and the counterpart federal regulation. W. Va. Code §22-1-3a requires the Director to conduct the "stringency" determination and provide specific reasons for deviation of the proposed state rule from the federal counterpart regulation.

This rule was developed as a part of the State's Implementation Plan (SIP) pursuant to the federal Clean Air Act, as amended. The Implementation Plan has as its purpose the attainment and maintenance of attainment with the National Ambient Air Quality Standards.

The Director has determined that this rule is no more or no less stringent than the federal counterpart rule, 40 CFR Part 93, Subpart B.

45CSR35

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

Consultation with the Environmental Protection Advisory Council

West Virginia Code Section §22-1-3(c) requires, in part, the Director of the Division of Environmental Protection to consult with the Environmental Protection Advisory Council prior to proposing any new rule. This rule was filed prior to the appointment of the Environmental Protection Advisory Council, therefore, no consultation with the Environmental Protection Advisory Council has been possible.

45CSR35

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

Private Real Property Protection Act Assessment

The Division of Environmental Protection is required to perform a "constitutional takings determination" or assessment in only limited circumstances (See "Private Real Property Protection Act", W. Va. Code §§22-1A-1 et seq.). Under W. Va. Code §22-1A-3(a), such an assessment is not required, unless the action being contemplated by the Division is reasonably likely to deprive a private real property owner of his or her property in fee simple or to deprive an owner of all productive use of his or her property.

W. Va. Code §22-1A-3(c) expressly exempts rulemaking which simply limits uses pursuant to statute from the assessment requirement. In pertinent part, Section 3(c) provides that the following actions do not require an assessment:

(1) Licensing or permitting conditions, requirements or limitations to the use of private real property pursuant to any applicable state or federal statutes, rules or regulations; or

(2) Rules and emergency rules of the division that are reasonably likely to limit the use of private real property pursuant to any applicable state or federal statutes, rules or regulations;

See W. Va. Code §22-1A-3(c)(1) and (2).

Therefore, since this is a rulemaking pursuant to statute, an assessment is not required.

