

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark in this Box

FILED

APR 28 3 45 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

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

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 2134

SECTION 64-3-1(a), PASSED ON March 10, 1995

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 1, 1995

Roger T Hall
AUTHORIZED SIGNATURE

Roger Hall

LEGISLATIVE HISTORY ABSTRACT

45CSR35

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

Bureau of Environment
Division of Environmental Protection
Office of Air Quality
House Bill 2134, Section 64-3-1(a)

- 06/24/94 Filed Notice of Public Hearing with Secretary of State.
- 06/24/94 Initial Filing with Legislative Rule-Making Review Committee.
- 07/29/94 Held Public Hearing.
- 07/29/94 End of Public Comment Period.
- 08/12/94 Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
- 11/13/94 Hearing Before the Legislative Rule-Making Review Committee.
- 11/13/94 Rule Approved by Legislative Rule-Making Review Committee with Modifications.
- 11/14/94 Legislative Rule-Making Review Committee Recommends that the Legislature Authorize the Agency to Promulgate 45CSR35 as Modified.
- 11/23/94 Modified Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.
- 03/10/95 Passed the West Virginia Legislature.
- 03/24/95 Approved by the Governor.
- 04/30/95 Rule Final Filed with Secretary of State.
- 05/01/95 Effective Date of Rule.

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

FILED

Nov 23 9 16 AM '94

SERIES 35

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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.

§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" (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.



BUREAU OF ENVIRONMENT
10 McJUNKIN ROAD
NITRO, WV 25143-2506

GASTON CAPERTON
GOVERNOR

DAVID C. CALLAGHAN
COMMISSIONER

April 26, 1995

Ms. Judy Cooper
Director, Administrative Law Division
Secretary of State's Office
Building 1, Suite 157K
Charleston, West Virginia 25305

RE: 45 CSR 35 - Conformity of Federal Actions
With State Plans

Dear Ms. Cooper: -----

This is to advise you that I am giving approval for the filing of the above-captioned rule as a final filing and adoption of a legislative rule authorized by the West Virginia Legislature.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Roger T. Hall at 759-0515.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "D. Callaghan", written over a horizontal line.

David C. Callaghan
Commissioner
Bureau of Environment

DCC;RTH:cc

Attachment

Bill-DEP, Conformity

6/12

45-35

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H. B. 2149

(By Delegates Gallagher, Douglas, Compton,
Linch, Faircloth and Riggs)
(Introduced January 23, 1995; referred to the
Committee on the Judiciary.)

10 A BILL to amend chapter sixty-four of the code of West Virginia,
11 one thousand nine hundred thirty-one, as amended, by adding
12 thereto a new article, designated article three-b, relating
13 to authorizing the division of environmental protection to
14 promulgate legislative rules relating to the requirements for
15 determining conformity of general federal actions to
16 applicable air quality implementation plans (general
17 conformity).

18 Be it enacted by the Legislature of West Virginia:

19 That chapter sixty-four of the code of West Virginia, one
20 thousand nine hundred thirty-one, as amended, be amended by
21 adding thereto a new article, designated article three-b, to read
22 as follows:

23 ARTICLE 3B. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO
24 PROMULGATE LEGISLATIVE RULES.

1 §64-3B-1. Division of environmental protection.

2 The legislative rules filed in the state register on the
3 twelfth day of August, one thousand nine hundred ninety-four,
4 modified by the division of environmental protection to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-third day of
7 November, one thousand nine hundred ninety-four, relating to the
8 division of environmental protection (requirements for
9 determining conformity of general federal actions to applicable
10 air quality implementation plans (general conformity)), are
11 authorized.

12

13 NOTE: The purpose of this bill is to authorize the Division
14 of Environmental Protection to promulgate legislative rules
15 relating to the requirements for determining conformity of
16 general federal actions to applicable air quality implementation
17 plans (general conformity).

18

19 This section is new; therefore, strike-throughs and
20 underscoring have been omitted.

SENATE BILL NO. 65

(By Senators Anderson, Boley, Grubb and Macnaughtan)

[Introduced January 20 , 1995; referred to the
Committee on Natural Resources; then to the
Committee on Finance; and then to the Committee
on the Judiciary]

45-35

8

9

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KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

March 29, 1995

Tammy Mowrer
DEP-Air Quality
1558 Washington St. E.
Charleston, WV 25311

HB 2134 authorizing, Title 45, Series 35, Requirements for determining conformity of general federal actions to applicable air quality implementation plans, passed the Legislature on March 10, 1995. It is was signed by the Governor on March 24, 1995.

You have sixty (60) days after the Governor signs HB 2134, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **HB 2134** section **64-3-1(a)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
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WV DIV OF ENVIR. PROTECT.
OFFICE OF AIR QUALITY

1995 OCT 18 A 11:05

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA
SECRETARY OF STATE RECEIVED

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

TO: Tammy Mowrer

AGENCY: DEP- Air Quality

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 17, 1995

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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FILED

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 35 TITLE: 45 DEP- Air Quality

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Tamra S. Mowrer

TITLE OF PERSON SIGNING: Administrative Secretary

DATE: November 20, 1995

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.