

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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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: 45CSR36

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

AMENDMENT TO AN EXISTING RULE: YES NO

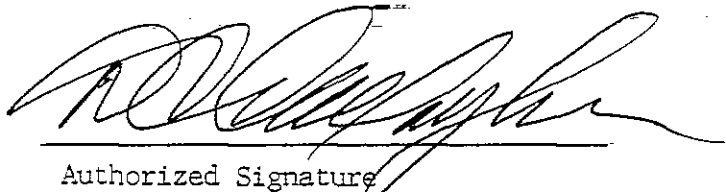
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 45CSR36

TITLE OF RULE BEING PROPOSED: 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

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

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

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 A.

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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

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.

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

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.



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Nov 14 3 18 PM '94

West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

November 13, 1994

Senator Joe Manchin, III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. David C. Callaghan, Commissioner
Bureau of Environment
10 McJunkin Road
Nitro, WV 25143-2506

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: 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

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Roger T. Hall
Dale Farley, Chief
Office of Air Quality