

## Form #6

~~OFFICE OF WEST VIRGINIA~~  
~~SECRETARY OF STATE~~

Roger Hall



**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 36 - Conformity of Transportation Plans  
With Federal Transit Act

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 "David C. Callaghan", written over the typed name.

David C. Callaghan  
Commissioner  
Bureau of Environment

DCC;RTH:cc

Attachment

# LEGISLATIVE HISTORY ABSTRACT

## 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

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

07/06/94	Filed Notice of Public Hearing with Secretary of State.
07/06/94	Initial Filing with Legislative Rule-Making Review Committee.
08/09/94	Held Public Hearing.
08/09/94	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 45CSR36 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.

FILED

TITLE 45

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

Nov 23 9 16 AM '84

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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  
ACT, TO APPLICABLE AIR QUALITY IMPLEMENTATION PLANS  
(TRANSPORTATION CONFORMITY)

§45-36-1. General.

1.1. Scope. -- The purpose of this rule is to adopt by reference the requirements of 40 CFR Part 93, "Determining the Conformity of Federal Actions to State or Federal Implementation Plans", 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 Act". 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.), 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 (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). This rule sets forth 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.

1.2. Authority. -- W.Va. Code §22-1-3 and §§22-5-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Incorporation by Reference - Federal Counterpart Regulations - The Director has determined that a federal counterpart regulation exists, and in accordance with the Director's recommendation, with limited exception, this rule incorporates by reference 40 CFR Part 93, Subpart A.

**§45-36-2. 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 § 93.101, "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.

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. "Party" or "Parties" means the agencies and organizations expressly listed in the individual Memorandums of Understanding referred to in Section 7 of this rule.

2.6. "Person" means any and all persons, natural or artificial, including any municipal, 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.

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

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

**§45-36-3. Adoption of Criteria, Procedures and Requirements.**

3.1. The Director hereby adopts and incorporates by reference, with the exceptions noted in Section 5 of this rule, the provisions of 40 CFR Part 93,

Subpart A, including associated criteria, procedures and requirements contained in 40 CFR Part 93, Subpart A, as in effect on December 27, 1993 for the purpose of meeting the requirements of 40 CFR Part 51, Subpart T, Section 51.396.

**§45-36-4. Requirements.**

4.1. All transportation plans, programs, and projects developed, funded or approved in West Virginia, under Title 23 U.S.C. or the Federal Transit Act, must conform to applicable air quality implementation plans in West Virginia. Any agency or organization charged with the responsibility to make transportation conformity determinations shall do so pursuant to the provisions of 40 CFR Part 93, Subpart A and this rule; and will use the consultation procedures specified below.

**§45-36-5. Consultation.**

5.1. The consultation requirements of 40 CFR Part 93, Subpart A, Section 93.105 are hereby addressed and fulfilled by state-specific consultation agreements (Memorandums of Understanding) mutually established by and among the W. Va. Division of Environmental Protection (WVDEP), the W. Va. Department of Transportation (WVDOT), and the appropriate Metropolitan Planning Organizations (MPO's), which agreements are included in Appendix A and are hereby incorporated by reference into this rule. These agreements address and comply with the requirements of 40 CFR Part 93, Subpart A, Section 93.105.

**§45-36-6. Severability.**

6.1. The provisions of this rule and associated memorandums of understanding 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 and associated memorandums of understanding; or their application to any persons or circumstances.

Bill-DEP, Transportation

SS12

45-36

H. B. 2155

(By Delegates Gallagher, Douglas, Compton,  
Linch, Faircloth and Riggs )

(Introduced January 23, 1995 ; referred to the  
Committee on the Judiciary .)

A BILL to amend chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-b, relating to authorizing the division of environmental protection to promulgate legislative rules relating to 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.

Be it enacted by the Legislature of West Virginia:

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

1 ARTICLE 3B. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE  
2 LEGISLATIVE RULES.

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

4 The legislative rules filed in the state register on the twelfth  
5 day of August, one thousand nine hundred ninety-four, modified by the  
6 division of environmental protection to meet the objections of the  
7 legislative rule-making review committee and refiled in the state  
8 register on the twenty-third day of November, one thousand nine  
9 hundred ninety-four, relating to the division of environmental  
10 protection (requirements for determining conformity of transportation  
11 plans, programs and projects developed, funded or approved under  
12 title 23 U.S.C. or the federal transit act, to applicable air quality  
13 implementation plans), are authorized.

14  
15 NOTE: The purpose of this bill is to authorize the Division of  
16 Environmental Protection to promulgate legislative rules relating to  
17 requirements for determining conformity of transportation plans,  
18 programs and projects developed, funded or approved under Title 23  
19 U.S.C. or the Federal Transit Act, to applicable air quality  
20 implementation plans.

21  
22 This section is new; therefore, strike-throughs and underscoring  
23 have been omitted.  
24

SENATE BILL NO.69

(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]

45-36

A BILL to amend chapter sixty-four of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, by adding thereto  
a new article, designated article three-b, relating to  
authorizing the division of environmental protection to  
promulgate legislative rules relating to 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.

Be it enacted by the Legislature of West Virginia:

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

1     **ARTICLE 3B.    AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE**  
2             **LEGISLATIVE RULES.**

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

4             The legislative rules filed in the state register on the twelfth  
5     day of August, one thousand nine hundred ninety-four, modified by the  
6     division of environmental protection to meet the objections of the  
7     legislative rule-making review committee and refiled in the state  
8     register on the twenty-third day of November, one thousand nine  
9     hundred ninety-four, relating to the division of environmental  
10    protection (requirements for determining conformity of transportation  
11    plans, programs and projects developed, funded or approved under  
12    title 23 U.S.C. or the federal transit act, to applicable air quality  
13    implementation plans), are authorized.

14  
15            NOTE:   The purpose of this bill is to authorize the Division of  
16    Environmental Protection to promulgate legislative rules relating to  
17    requirements for determining conformity of transportation plans,  
18    programs and projects developed, funded or approved under Title 23  
19    U.S.C. or the Federal Transit Act, to applicable air quality  
20    implementation plans.

21  
22            This section is new; therefore, strike-throughs and underscoring  
23    have been omitted.  
24

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

STEPHEN N. REED  
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

PENNEY BARKER  
Supervisor, Corporations

## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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: September 20, 1995

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: 36 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: Tammy S. Mowrer

TITLE OF PERSON SIGNING: Administrative Secretary

DATE: Nov. 20, 1995

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

FILED  
Nov 27 2 53 PM '95  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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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

March 29, 1995

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

**HB 2134** authorizing, Title 45, Series 36, Requirements for determining conformity of transportation plans, programs a projects developed, funded or approved under Title 23 USC or the federal transit act, 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(e). 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