

TITLE 45
LEGISLATIVE RULE
~~DIVISION~~ DEPARTMENT OF ENVIRONMENTAL PROTECTION
~~OFFICE OF AIR QUALITY~~

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~~ This rule establishes and adopts the requirements of 40 CFR Part 93, Subpart B, “Determining Conformity of General Federal Actions to State or Federal Implementation Plans” for the purpose of meeting the implementation plan requirements of 40 CFR §51.851. ~~The federal rule 40 CFR Part 93 Subpart B 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 any applicable air quality implementation plans plan. This rule sets forth policy, codifies general criteria, and procedures and requirements for demonstrating and assuring conformity of such activities actions to all any 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 plan. The Secretary hereby adopts these requirements by reference.~~

1.2. Authority. -- W.-Va. Code §22-5-1 et seq §22-5-4.

1.3. Filing Date. -- April 28, 1995.

1.4. Effective Date. -- May 1, 1995.

1.5. Incorporation by Reference. -- Federal Counterpart ~~Regulations=~~ Regulation. The ~~Director~~ Secretary has determined that a federal counterpart regulation exists, and in accordance with the ~~Director's~~ Secretary's recommendation, with limited exception, this rule incorporates by reference; 40 CFR Part 93; Subpart B, effective June 1, 2011.

1.6. Former Rules. -- This legislative rule amends 45CSR35 - “Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)” which was filed April 28, 1995, and which became effective May 1, 1995.

§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.

2.1. "Applicable implementation plan" or "applicable SIP" means the portion (or portions) of the state implementation plan or most recent revision thereof, which has been approved under §110(k) of the CAA, a federal implementation plan promulgated under §110(c) of the CAA, or a plan promulgated or approved pursuant to §301(d) of the CAA (Tribal implementation plan or TIP) and which implements the relevant requirements of the CAA.

2.2. CAA means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

2.3. "Secretary" means the Secretary of the Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.4. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 CFR §93.152. Words and phrases not defined therein shall have the meaning given to them in federal Clean Air Act.

~~§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. §45-35-3. Requirements.~~

~~4.1. 3.1.~~ 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 an applicable implementation plans in West Virginia, as required and specified by 40 CFR Part

~~93, Subpart B plan.~~

3.2. A federal agency must make a determination that a federal action conforms to the applicable implementation plan in accordance with the requirements of 40 CFR Part 93 Subpart B before the action is taken.

3.3 [Reserved].

3.4. Notwithstanding any provision of 40 CFR Part 93 Subpart B, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the National Environmental Policy Act, or the CAA.

3.5. If an action would result in emissions originating in more than one nonattainment or maintenance area, the conformity must be evaluated for each area separately.

§45-35-4. Adoption of Requirements.

4.1. The Secretary hereby adopts and incorporates by reference the criteria, procedures and requirements of 40 CFR Part 93 Subpart B, effective June 1, 2011, for the purpose of meeting the requirements of 40 CFR §51.851.

§45-35-5. Inconsistency Between Rules.

5.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method or rule.