

**TITLE 45  
LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY**

**SERIES 35REQUIREMENTS 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. -- April 28, 1995.

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

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 B.

**§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.