

**TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY**

**SERIES 35
DETERMINING CONFORMITY OF GENERAL FEDERAL ACTIONS
TO APPLICABLE IMPLEMENTATION PLANS
(GENERAL CONFORMITY)**

§45-35-1. General.

1.1. Scope. -- 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. 40 CFR Part 93 Subpart B was promulgated by the U.S. Environmental Protection Agency to implement Section 176(c) of the Clean Air Act (CAA), which requires that all federal actions conform to any applicable implementation plan. This rule codifies general criteria, procedures and requirements for demonstrating and assuring conformity of such actions to any applicable implementation plan. The Secretary hereby adopts these requirements by reference.

1.2. Authority. -- W.Va. Code §22-5-4.

1.3. Filing Date. -- May 1, 2012.

1.4. Effective Date. -- June 1, 2012.

1.5. Incorporation by Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the 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.

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. Requirements.

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 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.