

**Subpart MM—Oregon**

2. Section 52.1970 is amended by adding paragraph (c) (112) to read as follows:

**§ 52.1970 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(112) On November 16, 1992, the Director for the Oregon Department of Environmental Quality (ODEQ) submitted the Oregon State Small Business Stationary Source Technical and Environmental Compliance Assistance Program and on May 16, 1995, the Administrator for ODEQ submitted the Small Business Assistance Program Confidentiality Option as revisions to the Oregon State Implementation Plan.

(i) Incorporation by reference.

(A) The November 16, 1992 letter from the Director of the Oregon Department of Environmental Quality submitting the Small Business Stationary Source Technical and Environmental Compliance Assistance Program to EPA; The Oregon Air Quality Small Business Assistance Program State Implementation Plan Revision adopted on October 16, 1992, and evidence that the State has the necessary legal authority, Oregon Revised Statutes 468A.330 (Small Business Stationary Source Technical and Environmental Compliance Assistance Program).

(B) The May 16, 1995 letter from the Administrator of the Oregon Department of Environmental Quality, Air Quality Division, submitting the Small Business Assistance Program confidentiality option to EPA; The Air Quality Guidance, Restriction of Information Obtained by the AQ Small Business Assistance Program adopted on May 16, 1995.

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**40 CFR Part 52**

[WV31-1-7063a; FRL-5278-9]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia, 45CSR35, Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision

submitted by the State of West Virginia. The 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 Clean Air Act (CAA). The intended effect of this action is to approve the SIP revision of West Virginia General Conformity Rule. This action is being taken under section 110 of the CAA.

**DATES:** This final rule is effective November 6, 1995 unless notice is received on or before October 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 597-3164, at the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:** On November 23, 1994, the State of West Virginia submitted a formal revision to its State Implementation Plan (SIP) to EPA for the purpose of meeting the requirements of 40 CFR 51.851, General Conformity. West Virginia had adopted an emergency rule (45CSR35) that adopts the provisions of federal General Conformity Rule (40 CFR Part 93, Subpart B), which was effective on November 16, 1994. The exact same version of 45CSR35, the General Conformity Rule, was submitted to the West Virginia legislature for permanent authorization. On May 16, 1995, the State of West Virginia submitted the final SIP revision of 45CSR35 to EPA, promulgated as final legislative rule in accordance to West Virginia law, that became effective on May 1, 1995. (Note: The Transportation Conformity Rule submitted on May 16, 1995 is the subject of a separate rulemaking action.)

**Summary of SIP Revision**

West Virginia's rule 45CSR35, Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity), adopts the requirements of 40 CFR Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans by incorporating these federal regulations by reference. The federal rule was promulgated by EPA to implement Section 176(c) of the 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 only applies to areas designated nonattainment or maintenance areas under the CAA, as amended.

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.

Some examples of federal actions requiring conformity determination include: Airport Construction/Modification grants; Leasing of Federal Land; Granting a Permit; Construction of Federal Office Buildings; Private Construction on Federal Land; Prescribed Burning; Reuse of Military Bases; and Water Treatment Plants.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document elsewhere in this **Federal Register**, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 6, 1995 unless, by 30 days of October 5, 1995 adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 6, 1995.

**Final Action**

EPA is approving the final SIP revision of 45CSR35, submitted by the State of West Virginia on May 16, 1995, which was effective on May 1, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal

governments have elected to adopt the program provided for under section 176 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action to approve West Virginia's General Conformity Rule must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 19, 1995.

**Stanley L. Laskowski**,  
*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

**Subpart XX—West Virginia**

2. Section 52.2520 is amended by adding paragraph (c)(37) to read as follows:

**§ 52.2520 Identification of Plan.**

\* \* \* \* \*

(c) \* \* \*

(37) Revisions to the West Virginia State Implementation Plan submitted on May 16, 1995 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of May 16, 1995 from West Virginia Division of Environmental Protection, transmitting the General Conformity Rule.

(B) Title 45, Legislative Rule, Series 35 (45CSR35), Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity), effective May 1, 1995.

(ii) Additional material.

(A) Remainder of May 16, 1995 State submittal pertaining to 45CSR35 referenced in paragraph (c)(37) of this section.

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**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 64**

[Docket No. FEMA-7624]

**Suspension of Community Eligibility**

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date,