

**Water Resources and Wetlands**

Clean Water Act, 33 U.S.C. 1251–1377  
 Section 404  
 Section 401  
 Section 319  
 Coastal Barrier Resources Act, 16 U.S.C.  
 3501–3510  
 Coastal Zone Management Act, 16 U.S.C.  
 1451–1465  
 Land and Water Conservation Fund (LWCF),  
 16 U.S.C. 4601–4604  
 Safe Drinking Water Act (SDWA), 42 U.S.C.  
 300(f)–300(j)(6)  
 Rivers and Harbors Act of 1899, 33 U.S.C.  
 401–406  
 Wild and Scenic Rivers Act, 16 U.S.C. 1271–  
 1287  
 Emergency Wetlands Resources Act, 16  
 U.S.C. 3921, 3931  
 TEA–21 Wetlands Mitigation, 23 U.S.C.  
 103(b)(6)(m), 133(b)(11)  
 Flood Disaster Protection Act, 42 U.S.C.  
 4001–4128

**Parklands**

Section 4(f) of the Department of  
 Transportation Act of 1966, 49 U.S.C. 303

**Hazardous Materials**

Comprehensive Environmental Response,  
 Compensation, and Liability Act  
 (CERCLA), 42 U.S.C. 9601–9675  
 Superfund Amendments and Reauthorization  
 Act of 1986 (SARA)  
 Resource Conservation and Recovery Act  
 (RCRA), 42 U.S.C. 6901–6992(k)

**Land**

Landscaping and Scenic Enhancement  
 (Wildflowers), 23 U.S.C. 319

**Executive Orders Relating to Highway  
Projects**

The following is a list of Executive Orders  
 that apply to Highway Projects. STDs  
 assuming FHWA's lead agency  
 responsibilities under NEPA will be required  
 to comply with these Executive Orders as a  
 condition of application approval.

E.O. 11990 Protection of Wetlands  
 E.O. 11988 Floodplain Management  
 E.O. 12898 Federal Actions to Address  
 Environmental Justice in Minority  
 Populations and Low Income Populations  
 \*E.O. 11593 Protection and Enhancement of  
 Cultural Resources  
 \*E.O. 13007 Indian Sacred Sites  
 E.O. 13287 Preserve America  
 \*E.O. 13175 Consultation and Coordination  
 with Indian Tribal Governments  
 E.O. 11514 Protection and Enhancement of  
 Environmental Quality  
 E.O. 13112 Invasive Species

\*These laws and Executive Orders involve  
 FHWA's responsibilities for government to  
 government tribal consultation. These  
 responsibilities may only be administered by  
 the STD if the tribe consents to consultation  
 with the STD through a formally signed MOU  
 or agreement.

[FR Doc. E6–4911 Filed 4–4–06; 8:45 am]

**BILLING CODE 4910–22–P**

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Parts 51 and 93**

[EPA–HQ–OAR–2004–0491; FRL–8055–4]

**RIN 2060–AN60**

**PM<sub>2.5</sub> De Minimis Emission Levels for  
General Conformity Applicability**

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to  
 amend its regulations relating to the  
 Clean Air Act (CAA) requirement that  
 Federal actions conform to the  
 appropriate State, Tribal or Federal  
 implementation plan for attaining clean  
 air (“general conformity”) to add de  
 minimis emissions levels for particulate  
 matter with an aerodynamic diameter  
 equal to or less than 2.5 microns (PM<sub>2.5</sub>)  
 National Ambient Air Quality Standards  
 (NAAQS) and its precursors.

**DATES:** Comments must be received by  
 May 5, 2006.

**ADDRESSES:** Submit your comments,  
 identified by Docket ID No. EPA–HQ–  
 OAR–2004–0491, by one of the  
 following methods:

- <http://www.regulations.gov>: Follow  
 the on-line instructions for submitting  
 comments.

- E-mail: [A-and-R-Docket@epa.gov](mailto:A-and-R-Docket@epa.gov),  
 attention Docket No. EPA–HQ–OAR–  
 2004–0491.

- Fax: 202–566–1741.

- Mail: PM<sub>2.5</sub> De Minimis Emission  
 Levels for General Conformity  
 Applicability, Docket ID No. EPA–HQ–  
 OAR–2004–0491, Environmental  
 Protection Agency Docket Center, Mail  
 Code: 6102T, 1200 Pennsylvania  
 Avenue, NW., Washington, DC 20460.  
 Please include a total of two copies, if  
 possible. In addition, please mail a copy  
 of your comments on the information  
 collection provisions to the Office of  
 Information and Regulatory Affairs,  
 Office of Management and Budget  
 (OMB), Attn: Desk Officer for EPA, 725  
 17th St., NW., Washington, DC 20503.

- Hand Delivery: PM<sub>2.5</sub> De Minimis  
 Emission Levels for General Conformity  
 Applicability, Docket ID No. EPA–HQ–  
 OAR–2004–0491, Environmental  
 Protection Agency Docket Center, EPA  
 West, Room B–102, 1301 Constitution  
 Avenue, NW., Washington, DC. Such  
 deliveries are only accepted during the  
 Docket's normal hours of operation, and  
 special arrangements should be made  
 for deliveries of boxed information.

**Instructions:** Direct comments to  
 Docket ID No. EPA–HQ–OAR–2004–  
 0491. The EPA's policy is that all

comments received will be included in  
 the public docket without change and  
 may be made available online at  
<http://www.regulations.gov>,  
 including any personal information  
 provided, unless the comment includes  
 information claimed to be Confidential  
 Business Information (CBI) or other  
 information whose disclosure is  
 restricted by statute. Do not submit  
 information that you consider to be CBI  
 or otherwise protected through [http://](http://www.regulations.gov)  
[www.regulations.gov](http://www.regulations.gov) or e-mail. The  
<http://www.regulations.gov> Web site is  
 an “anonymous access” system, which  
 means EPA will not know your identity  
 or contact information unless you  
 provide it in the body of your comment.  
 If you send an e-mail comment directly  
 to EPA without going through [http://](http://www.regulations.gov)  
[www.regulations.gov](http://www.regulations.gov), your e-mail  
 address will be automatically captured  
 and included as part of the comment  
 that is placed in the public docket and  
 made available on the Internet. If you  
 submit an electronic comment, EPA  
 recommends that you include your  
 name and other contact information in  
 the body of your comment and with any  
 disk or CD-ROM you submit. If EPA  
 cannot read your comment due to  
 technical difficulties and cannot contact  
 you for clarification, EPA may not be  
 able to consider your comment.  
 Electronic files should avoid the use of  
 special characters, any form of  
 encryption, and be free of any defects or  
 viruses. For additional information  
 about EPA's public docket visit the EPA  
 Docket Center homepage at [http://](http://www.epa.gov/epahome/dockets.htm)  
[www.epa.gov/epahome/dockets.htm](http://www.epa.gov/epahome/dockets.htm).

**Docket:** All documents in the docket  
 are listed in the [http://](http://www.regulations.gov)  
[www.regulations.gov](http://www.regulations.gov) index. Although  
 listed in the index, some information is  
 not publicly available, e.g., CBI or other  
 information whose disclosure is  
 restricted by statute. Certain other  
 material, such as copyrighted material,  
 will be publicly available only in hard  
 copy. Publicly available docket  
 materials are available either  
 electronically in [http://](http://www.regulations.gov)  
[www.regulations.gov](http://www.regulations.gov) or in hard copy at  
 the Docket, EPA/DC, EPA West, Room  
 B102, 1301 Constitution Ave., NW.,  
 Washington, DC. The Public Reading  
 Room is open from 8:30 a.m. to 4:30  
 p.m., Monday through Friday, excluding  
 legal holidays. The telephone number  
 for the Public Reading Room is (202)  
 566–1744, and the telephone number for  
 the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Mr.  
 Thomas Coda, Office of Air Quality  
 Planning and Standards, U.S.  
 Environmental Protection Agency, Mail

Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-3037 or by e-mail at [coda.tom@epa.gov](mailto:coda.tom@epa.gov).

#### SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does This Action Apply to Me?

Today's action applies to all Federal agencies and Federal activities.

#### B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

### II. Today's Rule

This proposed rule and the accompanying direct final rule are available electronically on the day of

publication from EPA's **Federal Register** Web site <http://www.epa.gov/docs/fedrgstr/EPA-AIR/>. For further information, including the rationale, administrative requirements, statutory authority, and regulatory text for these amendments, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

### III. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a regulation that may:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these revisions to the regulations are considered a "significant regulatory action" because they may interfere with actions taken or planned by other Federal agencies. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations can be found in the public docket.

#### B. Paperwork Reduction Act

This action does not directly impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, on non-Federal entities. The General Conformity Regulations require Federal agencies to determine that their actions conform to the SIPs or TIPs. However, depending upon how Federal agencies implement the regulations, non-Federal

entities seeking funding or approval from those Federal agencies may be required to submit information to that agency.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed revisions to the regulations on small entities, small entity is defined as:

1. A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.201);
2. A governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and
3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Today's proposed revisions to the regulations, if promulgated will not impose any requirements on small entities and therefore, will not have a significant economic impact on a substantial number of small entities. The General Conformity Regulations

require Federal agencies to conform to the appropriate State, Tribal or Federal implementation plan for attaining clean air. We continue to be interested in the potential impacts of the regulations on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final regulations with “Federal mandates” that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA regulation for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the regulation. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final regulations an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these revisions to the regulations do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today’s proposed regulation revisions are not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that these proposed regulation revisions contain no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled “Federalism” (64 FR 43255; August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.” “Policies that have Federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This action does not have Federalism implications. The regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Previously, EPA determined the costs to States to implement the General Conformity Regulations to be less than \$100,000 per year. Thus, Executive Order 13132 does not apply to these proposed regulation revisions.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” This determination is stated below.

These proposed regulation revisions do not have Tribal implications as defined by Executive Order 13175. They do not have a substantial direct effect on one or more Indian Tribes, since no Tribe has to demonstrate conformity for their actions. Furthermore, these proposed regulation revisions do not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing

to modify that relationship. Because these proposed regulation revisions do not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to these regulations, EPA encourages Tribal input and specifically solicits comment on this regulation from Tribal officials.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: “Protection of Children from Environmental Health and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These proposed revisions to the regulations are not subject to Executive Order 13045 because they are not economically significant as defined in Executive Order 12866 and because EPA does not have reason to believe the environmental health or safety risk addressed by the General Conformity Regulations present a disproportionate risk to children. The General Conformity Regulations ensure that Federal agencies comply with the SIP, TIP or FIP for attaining and maintaining the NAAQS. The NAAQS are promulgated to protect the health and welfare of sensitive populations, including children.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

These revisions to the regulations are not considered a “significant energy action” as defined in Executive Order 13211, “Actions That Significantly Affect Energy Supply, Distribution, or Use,” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### *I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus

standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This revision to the regulations does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

However, EPA will encourage the Federal agencies to consider the use of such standards, where appropriate, in the implementation of the General Conformity Regulations.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that these proposed revisions to the regulations should not raise any environmental justice issues. The proposed revisions to the regulations would, if promulgated, revise procedures for other Federal agencies to follow. They do not disproportionately affect the health or safety of minority or low income populations. The EPA encourages other agencies to carefully consider and address environmental justice in their implementation of their evaluations and conformity determinations.

**List of Subjects**

*40 CFR Part 51*

Environmental protection, Administrative practice and procedures, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

*40 CFR Part 93*

Environmental protection, Administrative practice and procedures, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: March 31, 2006.

**Stephen L. Johnson,**

*Administrator.*

[FR Doc. 06-3310 Filed 4-4-06; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2006-0153; FRL-8053-9]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised Definition of "Volatile Organic Compound"**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality. This revision amends Virginia regulation 9 VAC 5-10-20 by updating the definition of "volatile organic compound". This action is being taken under the Clean Air Act (CAA or the Act).

**DATES:** Written comments must be received on or before May 5, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2006-0153 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-mail: [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov).

C. Mail: EPA-R03-OAR-2006-0153, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2006-0153. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Helene Drago, (215) 814-5796, or by e-mail at [drago.helene@epa.gov](mailto:drago.helene@epa.gov).

**SUPPLEMENTARY INFORMATION:** On January 12, 2006, the Virginia Department of Environmental Quality submitted a revision to its State Implementation Plan (SIP). The revision updated the definition of "volatile organic compound". The revision consists of amendments to Regulation 9 VAC 5-10-20 "Terms defined".

**I. Background**

The Virginia Register of Regulations defines "volatile organic compound" as