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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R03-OAR-2006-0151; FRL-8051-6]

**Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Revised Definition of Volatile Organic Compounds****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the Maryland State Implementation Plan (SIP) submitted by the Maryland Department of Environment (MDE). The revisions update the SIP's reference to the EPA definition of volatile organic compounds (VOC). EPA is approving these revisions to the State of Maryland's SIP in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on May 30, 2006 without further notice, unless EPA receives adverse written comment by May 1, 2006. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number R03-OAR-2006-0151 by one of the following methods:

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

B. E-mail: [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov).

C. Mail: EPA-R03-OAR-2006-0151, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, 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-2006-0151. 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 Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford at (215) 814-2108, or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Summary of SIP Revisions**

On October 31, 2005, the State of Maryland submitted a formal revision (No. 05-05) to its SIP. The SIP revision consists of a revised reference to the Federal definition of VOC at 40 CFR 51.100(s) which is found at COMAR 26.11.01.01B(53), Maryland's definition

for "volatile organic compounds (VOC)". These regulatory revisions became effective on September 12, 2005.

**II. Description of the SIP Revision**

Maryland has amended COMAR 26.11.01.01B(53) to update the Federal reference for incorporation of the EPA definition of VOC found at 40 CFR 51.100(s) from the 2002 edition (the currently SIP-approved version) to the 2004 edition of the Code of Federal Regulations (CFR).

**III. Final Action**

EPA is approving revisions to COMAR 26.11.01.01B(53) of the Maryland SIP to update the references to the EPA definition of VOC found at 40 CFR 51.100(s) in effect as of 12/31/2004. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment since the revisions are administrative changes to the state regulations. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 30, 2006 without further notice unless EPA receives adverse comment by May 1, 2006. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**IV. Statutory and Executive Order Reviews****A. General Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet

the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

this action must be filed in the United States Court of Appeals for the appropriate circuit by May 30, 2006. 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 to approve Maryland's revised definition of "volatile organic compound (VOC)" 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, Ozone, Volatile organic compounds.

Dated: March 21, 2006.

**William Early**,  
*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 *et seq.*

**Subpart V—Maryland**

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR 26.11.01.01B(53) to read as follows:

**52.1070 Identification of plan.**

*	*	*	*	*
(c) * * *				

**EPA-APPROVED REGULATIONS IN THE MARYLAND SIP**

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
<b>26.11.01.01 General Administrative Provisions</b>				
*	*	*	*	*
26.11.01.01B(53) .....	Definitions-definition of volatile organic compound (VOC).	9/12/05	3/1/06 [Insert page number where the document begins].	Definition reflects the version of 40 CFR 51.100(s) in effect as of 12/31/2004.
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[FR Doc. 06-3107 Filed 3-30-06; 8:45 am]

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**DEPARTMENT OF ENERGY****48 CFR Parts 901 and 970**

RIN 1991-AB64

**Acquisition Regulation: Make-or-Buy Plans****AGENCY:** Department of Energy.**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to revise its requirements for contractor make-or-buy plans. The Department published a Notice of Proposed Rulemaking on December 15, 2004, proposing to eliminate its program requiring make or buy analyses and plans from its management and operating (M&O) contractors.

**DATES:** *Effective Date:* May 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Richard Langston, U.S. Department of Energy, MA-61, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 287-1339 or submit electronically to [Richard.Langston@hq.doe.gov](mailto:Richard.Langston@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Discussion of Public Comments
- III. Section-by-Section Analysis
- IV. Procedural Requirements
  - A. Review Under Executive Order 12866
  - B. Review Under Executive Order 12988
  - C. Review Under the Regulatory Flexibility Act
  - D. Review Under the Paperwork Reduction Act
  - E. Review Under the National Environmental Policy Act
  - F. Review Under Executive Order 13132
  - G. Review Under the Unfunded Mandates Reform Act of 1995
  - H. Review Under the Treasury and General Government Appropriations Act, 1999
  - I. Review Under Executive Order 13211
  - J. Review Under the Treasury and General Government Appropriations Act, 2001
  - K. Review Under the Small Business Regulatory Fairness Act of 1996
  - L. Approval by the Office of the Secretary of Energy

**I. Background**

DOE now has more than eight years of experience with the make-or-buy policy it established in 1997. All M&O contractors have approved make-or-buy plans in place. The Department has evaluated the operation of the make-or-buy policy and the effect that policy has had in achieving the Department's

objectives. The make-or-buy program is not delivering value to the Department commensurate with the costs of its implementation.

The Department conducted a number of assessments since establishing the current make-or-buy plan requirements and implemented a number of actions intended to improve the manner in which DOE and its contractors implemented the make-or-buy requirements. The conclusion drawn from the most recent assessment is that there is little evidence that these plans are producing the efficiencies and cost savings anticipated by the Department. The Department has determined that the lack of measurable progress and costs of complying and monitoring compliance with the make-or-buy policy outweigh any potential benefits to the Department.

There are multiple approaches to achieving cost efficiencies and operational effectiveness under a contract, and the Department has made great strides with its other contract reform initiatives. The make-or-buy plan requirements have not increased efficiency and the Department is amending the DEAR to eliminate the requirement that M&O contractors prepare and maintain formal make-or-buy plans.

**II. Discussion of Public Comments**

Only one comment was received in response to our December 15, 2004 Notice of Proposed Rulemaking. The reviewer suggested that, rather than eliminate the make-or-buy review analysis, the Department introduce a 5-part alternative make-or-buy system which would include consolidation of identified products or services into a DOE-wide plan.

The Department has evaluated the suggested revisions to the make-or-buy process. The make-or-buy process was ideally meant to be a system for categorizing all M&O contract internal work activities as "make" or "buy" activities. "Make" activities are core competencies critical to the mission success that are not available for outsourcing. "Buy" activities are non-core work activities that provide strategic support to core competencies that are available for outsourcing. Contractors use their make-or-buy plans to evaluate subcontracting opportunities and improve in-house performance. The objective of the make-or-buy policy is to require M&O contractors to operate the Department's laboratories, weapons production plants, and other facilities in the most cost effective and efficient manner. The suggested alternative does not appear to offer advantages in

fulfilling those needs. Accordingly, the Department is not pursuing the suggested alternative.

**III. Section-by-Section Analysis**

The Department is amending the DEAR as follows.

1. Sections 901.105 is amended to delete the reference to the Office of Management and Budget, OMB control number for make-or-buy plans.

2. Sections 970.1504-4-1 through 970.1504-4-3 are eliminated.

3. Section 970.1504-5(b) is eliminated.

4. Section 970.5203-1 is amended to include outsourcing of functions as a consideration of efficient and effective operations.

5. Section 970.5203-2 is amended to provide a requirement for contractors to consider outsourcing as a mechanism to increase improvement in the management of the contract.

6. Section 970.5215-2 is eliminated.

7. Section 970.5244-1 is amended to remove and reserve paragraph (n).

**IV. Procedural Requirements***A. Review Under Executive Order 12866*

This regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) within the OMB.

*B. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform, 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6)