ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63
[AD-FRL-5468-1]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments to rule.

SUMMARY: This action proposes amendments to the national emission standards for hazardous air pollutants (NESHAP) for perchloroethylene (PCE) dry cleaning facilities promulgated in the Federal Register on September 22, 1993. The NESHAP was promulgated to minimize emissions of PCE, which has been listed by EPA as a hazardous air pollutant (HAP). The Administrator is proposing to implement a settlement agreement that the EPA has entered into regarding a small number of transfer machines.

ACTION: Proposed amendments to rule.

DATES: Comments. Comments on the proposed amendments must be received by June 17, 1996.

Public Hearing. Persons requesting a public hearing should contact Mr. George Smith at (919) 541-1549 by May 15, 1996. If anyone requests a public hearing by May 15, 1996, a public hearing will be held in Research Triangle Park, North Carolina. Persons wishing to make oral statements at this public hearing must contact Mr. Smith by May 15, 1996 at (919) 541-1549, Emission Standards Division, U.S. EPA, MD–13, Research Triangle Park, NC 27711. Persons interested in attending the public hearing should also contact Mr. Smith for information on the exact location of the public hearing if one is requested.

ADDITIONAL INFORMATION:

Category | Examples of regulated entities
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Perchloroethylene dry cleaning facilities. | Perchloroethylene dry cleaning facilities that installed transfer machines between proposal and promulgation.

The above table is an exhaustive guide for readers regarding entities to be regulated by this action.

The information presented in this preamble is organized as follows:

I. Background, Summary, and Rationale for Rule Changes

II. Administrative Requirements
A. Paperwork Reduction Act
B. Executive Order 12866 Review
C. Unfunded Mandates Act
D. Regulatory Flexibility Act
E. Executive Order 12291

I. Background, Summary, and Rationale for Rule Changes

National emission standards for hazardous air pollutants (NESHAP) for perchloroethylene (PCE) dry cleaning facilities were promulgated on September 22, 1993 (58 FR 49354), and amended on December 20, 1993 (58 FR 66287), as 40 CFR Part 63, subpart M. On December 20, 1993, the International Fabricare Institute (IFI), a trade association representing commercial and industrial dry cleaners nationwide, submitted a statement of issues to the U.S. Court of Appeals for the District of Columbia Circuit challenging the NESHAP. The Agency subsequently entered into a settlement agreement with IFI, notice of which was published prior to being lodged with the court (60 FR 52000, October 4, 1995).

International Fabricare Institute raised the issue of new transfer machines purchased or installed between proposal and promulgation. The IFI’s concern stems from the fact that the Agency did not propose to ban new transfer machines, yet at promulgation did ban such machines. The IFI argued that dry cleaners who installed new transfer machines between proposal and promulgation did so with the understanding that the Agency had not proposed any prohibitions against this. These dry cleaners now have no recourse but to scrap these new transfer machines and replace them with new dry-to-dry machines in order to comply with the NESHAP. The IFI asserted that this is unfair, given these dry cleaners acted in accordance with the law to the best of their knowledge at the time.

At the time of proposal, the Agency believed that no new transfer machines were being sold or installed, and for this reason did not propose to ban purchase of new transfer machines. However, due to new information that the Agency received after proposal that is explained in the preamble to the final rule, the Agency banned the purchase of new transfer machines. The ban was considered reasonable because the Agency’s analysis showed that emissions from clothing transfer could be eliminated by requiring dry-to-dry machines in their place. Emissions from clothing transfer account for about 25 percent of transfer machine emissions.

The Agency’s analysis also showed that in the typical case where a new dry-to-dry machine was installed instead of a new transfer machine, a net savings of $300 per ton of emission reductions would be realized by the dry cleaner. Hence, the Agency decided at promulgation to effectively “ban” new transfer machines from being introduced subsequent to promulgation, by making the emission limit for new transfer machines impossible to achieve. It was believed this decision would have no impact on dry cleaners, since no new transfer machines were being purchased or installed. It was only after promulgation that it became apparent that a few new transfer machines had been sold and installed between proposal and promulgation of the NESHAP.

The Agency agrees with IFI on this issue. Consequently, the Administrator proposes to subcategorize new transfer machines into two types: new transfer machines installed after promulgation (i.e., September 22, 1993) and new transfer machines installed between proposal (i.e., December 9, 1991) and promulgation (i.e., September 22, 1993).

The requirements the Administrator is proposing today for new transfer machines installed after promulgation...
do not affect the information collection
for PCE Dry Cleaning Facilities were submitted to
and approved by the Office of Management and Budget. A copy of this
requirements of the previously
of NESHAP under no circumstances are
new transfer machines installed after
proclamations were to operate. The
requirements the Administrator is
proposing today for the new
subcategory, new transfer machines
installed after proposal and
proclamations, are similar to those for
existing transfer machines.

Creation of the subcategory would recognize differences in the
technologies used at new sources and
the achievability of the emissions limit by these technologies. As noted, at the
time it set the emissions limit, the
Agency failed to recognize that some
owners and operators had installed
transfer machines after the proposal.

Transfer machine technology is fundamentally different than dry-to-dry
technology. In order to stay in business, an
owner or operator that had installed
new transfer machines after proposal
would have to purchase both a transfer
machine system and a dry-to-dry system
in time period between December 9,
1991 (proposal) and September 22, 1996
(final rule compliance date), while an
owner and operator of a new source
built after promulgation would only
have to purchase one dry-to-dry system.
The investment required for parties that
had installed transfer machines would
not be achievable for these parties,
which are mostly small businesses. The proposal would not sacrifice significant
emissions reductions because the
number of affected machines is
approximately one-tenth of one percent
of all dry-cleaning machines. Today’s
proposal would allow for the greatest
achievable emissions reductions by both
those who had installed transfer
machines prior to issuance of the final
rule and all other new sources and
would maintain the prospective
prohibition on new transfer machines.

II. Administrative Requirements
A. Paperwork Reduction Act

The information collection
requirements of the previously
promulgated NESHAP for PCE Dry Cleaning Facilities were submitted to
and approved by the Office of
Management and Budget. A copy of this
Information Collection Request (ICR)
documents (OMB control number 2060-
0234) may be obtained from Sandy
Farmer, Information Policy Branch
(PM-223Y); U.S. Environmental
Protection Agency; 401 M Street, SW;
Washington, DC 20460 or by calling
(202) 260-2740. Today’s changes to the
NESHAP for PCE Dry Cleaning Facilities
do not affect the information collection
burden estimates made previously.

B. Executive Order 12866 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 OMB review and the
requirements of the Executive Order.
The Order defines a “significant
regulatory action” as one that is likely
to result in a rule 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 land 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.

This rule was classified “non-
significant” under Executive Order
12866 and, therefore, was not reviewed
by the Office of Management and
Budget.

C. Unfunded Mandates Act

Under Section 202 of the Unfunded
Mandates Reform Act of 1995
(“Unfunded Mandates Act”), signed
into law on March 22, 1995, EPA must
prepare a statement to accompany any
proposed rule where the estimated costs
to State, local, or tribal governments, or
to the private sector, will be $100
million or more in any one year. Under
Section 205, EPA must select the most
cost-effective and least burdensome
alternative that achieves the objective
of the rule and is consistent with statutory
requirements. Section 203 requires EPA
to establish a plan for informing and
advising any small governments that
may be significantly impacted by the
rule. The unfunded mandates statement
under Section 202 must include:

1. The authority citation for part 63
continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Subpart M—National
Perchloroethylene Air Emission
Standards for Dry Cleaning Facilities

2 Section 63.320 is amended by
revising paragraphs (c), (d), (e), and (f)
to read as follows:

§ 63.320 Applicability.

(c) Each dry cleaning system that
commenced construction or
reconstruction before December 9, 1991
and each new transfer machine system

...
and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993 shall comply with §§ 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) beginning on December 20, 1993 and shall comply with other provisions of this subpart by September 23, 1996.

(d) Each existing dry-to-dry machine and its ancillary equipment located in a dry cleaning facility that includes only dry-to-dry machines, and each existing transfer machine system and its ancillary equipment and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993 as well as each existing dry-to-dry machine and its ancillary equipment, located in a dry cleaning facility that includes both transfer machine system(s) and dry-to-dry machine(s) is exempt from § 63.322, § 63.323, and § 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the total perchloroethylene consumption of the dry cleaning facility is less than 530 liters (140 gallons) per year. Consumption is determined according to § 63.323(d).

(e) Each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993 located in a dry cleaning facility that includes only dry cleaning system(s) is exempt from § 63.322, § 63.323, and § 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the perchloroethylene consumption of the dry cleaning facility is less than 760 liters (200 gallons) per year. Consumption is determined according to § 63.323(d).

(f) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to § 63.323(d) is initially less than the amounts specified in paragraph (d) or (e) of this section, but later exceeds those amounts, the existing dry cleaning system(s) and new transfer machine system(s) and its (their) ancillary equipment installed between December 9, 1991 and September 22, 1993 in the dry cleaning facility must comply with § 63.322, § 63.323, and § 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by September 23, 1996, whichever is later.

3. Section 63.322 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 63.322 Standards.

(a) The owner or operator of each existing dry cleaning system and of each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993 shall comply with either (a)(1) or (a)(2) of this paragraph and shall comply with (a)(3) of this paragraph if applicable.

(b) The owner or operator of each new dry-to-dry machine and its ancillary equipment and of each new transfer machine system and its ancillary equipment installed after September 22, 1993:

List of Subjects

Environmental protection, Administrative practice and procedure, Labeling, Occupational safety and health, Pesticides and pests.