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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7271–1]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Perchloroethylene Air Emission Standards for Dry Cleaning Facilities: Commonwealth of Massachusetts Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA), the Massachusetts Department of Environmental Protection submitted a request for approval to implement and enforce 310 CMR 70.01–04 Environmental Results Program (ERP) Certification and 310 CMR 7.26(10)–(16) Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities in place of National Emissions Standard for Hazardous Air Pollutants (NESHAP) for Perchloroethylene Dry Cleaning Facilities as it applies to area sources. EPA has reviewed this request and found that it satisfies the requirements necessary to qualify for approval. Thus, EPA is hereby granting the Massachusetts Department of Environmental Protection the authority to implement and enforce its perchloroethylene air emissions regulation in place of the Federal dry cleaning NESHAP for area sources. This approval makes the Massachusetts Department of Environmental Protection rule federally enforceable and reduces the burden on area sources within the state of Massachusetts as that they will only have one rule with which they must comply. Major sources remain subject to the Federal dry cleaning NESHAP.

DATES: This action will be effective November 15, 2002, unless EPA receives relevant adverse comments by October 16, 2002. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 15, 2002.

ADDRESSES: Written comments should be mailed concurrently to the addresses below: Steven Rapp, Chief, Air Permits, Toxics and Indoor Programs Unit (CAP), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114. Steven DeGabriele, Director, Business Compliance Division, Massachusetts Department of Environmental Protection, One Winter Street, Boston, MA 02108. Copies of the requests for approval are available for public inspection at EPA's Region I Office, Air Permits, Toxics, and Indoor Programs Unit, during normal business hours.

FOR FURTHER INFORMATION CONTACT: MaryBeth Smuts, Air Permits, Toxics, and Indoor Programs Unit, U.S. EPA Region I, One Congress St., Suite 1100 (CAP), Boston, MA 02114, (617) 918–1512.

SUPPLEMENTARY INFORMATION: This Supplementary Information is organized as follows:

I. Background and Purpose

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (*see* 58 FR 62262, November 26, 1993) and the subsequently amended regulations (*see* 65 FR 55810, September 14, 2000). Under these regulations, a state air pollution control agency has the option to request EPA's approval to substitute a state rule for the applicable Federal rule (*e.g.* the Federal National Emission Standards for Hazardous Air Pollutants (NESHAP)). Upon approval, the state agency is given the authority to implement and enforce its rule in place of the NESHAP.

This ''rule substitution'' option requires EPA to ''make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements'' of 40 CFR 63.93 (*see* 58 FR 62274). A rule will be approved if EPA finds: (1) The State, local and territorial agencies and Indian tribes (S/L/T) are ''no less stringent'' than the corresponding Federal regulation, (2) adequate authorities exist, (3) the schedule for implementation and compliance is ''no less stringent'', and (4) the S/L/T program is otherwise in compliance with Federal guidance.

On September 22, 1993, the Environmental Protection Agency (EPA) promulgated the NESHAP for perchloroethylene dry cleaning facilities (*see* 58 FR 49354), which has been codified in 40 CFR part 63, subpart M, ''National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities'' (dry cleaning NESHAP). On October 24, 2001, EPA received Massachusetts Department of Environmental Protection's (MA DEP) request to implement and enforce its 310 CMR 7.26(10)–(16) Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities and 310 CMR 70.01–04 Environmental Results Program (ERP) Certification known as the ''ERP for dry cleaning facilities in lieu of the dry cleaning NESHAP rule. MA DEP's request for approval was submitted pursuant to the provisions of 40 CFR part 63, subpart E and was found to be complete on January 8, 2002.

The ERP is a multimedia compliance program which requires self certification regarding air, water and hazardous waste requirements while providing extensive compliance assistance to dry cleaners through training programs and workbooks. Inspections and enforcement are part of the air program. Only the air portion of the ERP for dry cleaning facilities is evaluated by this EPA action.

II. EPA's Evaluation of Differences Between the State and Federal Regulations

A. What Major Differences Between the MA DEP Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities and Certification Program Regulations and the Dry Cleaning NESHAP Were Selected for Explanations?

The MA DEP's dry cleaning and certification program rules differ in several ways from the Federal dry cleaning NESHAP. Most of these differences make the MA DEP dry cleaning regulations more stringent than the Federal NESHAP. However, some of the provisions of the State's dry cleaning regulations require further clarification to explain how they are no less stringent than the Federal dry cleaning NESHAP.

In a letter and supplemental material dated October 22, 2001, the MA DEP submitted its application for substitution of its dry cleaning rules with an equivalency demonstration table, narrative, and a summary of its enforcement and compliance measures under its Environmental Results Program. Extracts of the equivalency table and narrative are presented here to provide explanation that provisions in the Massachusetts rules are no less stringent than the Federal dry cleaning NESHAPS. The places where the Massachusetts rules are identical are not cited in this section. The state provided a summary of the status of its enforcement and compliance program for dry cleaners as well as its training and outreach program for dry cleaners. This additional information is available upon request or for public inspection at EPA's Region I Office at the address listed above.

1. How Does the Applicability of Sources Differ?

In 40 CFR 63.320(g), the Federal NESHAP classifies dry cleaning sources as major sources based on either annual perchloroethylene (perc) emissions or annual perc consumption. Major sources are those sources with either 10 tons per year perc emissions or perc consumption greater than 8000 liters (2100 gallons) for dry-to-dry machines or greater than 6800 liters (1800 gallons) for transfer or transfer and dry-to-dry machines. These major sources will remain subject to the Federal dry cleaning NESHAPS.

Under 40 CFR 63.320(d) and (e), the Federal NESHAP provides partial exemptions for certain area sources based on perc consumption. Depending on the types of dry cleaning equipment at the area sources, exemption thresholds are 140 or 200 gallons of perc per year. Additionally, both the Federal NESHAP and the ERP exempt coin-operated machines. The MA DEP applicability provisions for dry cleaners as established in 310 CMR, 7.26 (10)–(16) and the certification requirements of 310 CMR 70.00 do not provide partial exemptions for area sources based on consumption of perc. Therefore, the full ERP applies to more area sources than the area source provisions of the Federal NESHAP.

2. Are There Differences in the Compliance Dates?

The Federal regulations required compliance by September 22, 1993 or immediately upon startup. The MA DEP regulations provide that the compliance date begins at promulgation of the rules or at start up of new dry cleaners in 310CMR 7.26 (10)(b). The state compliance dates have been passed because the state regulations have been in place since 1997. Hence for this rulemaking, the compliance dates are identical to Federal requirements.

3. What Are the Differences in Temperature Requirements for Refrigerated Condensers?

In 40 CFR 63.322(a) and 63.323(a)(1), there are Federal requirements for operating and maintaining refrigerated condensers on a dry-to-dry machine, dryer, or reclaimer. Similar requirements for washers are in 40 CFR 63.322(f) and 63.323(a)(2). Federal rules require a sensor to monitor its gas stream to determine if it is equal to or less than 45 °F. The ERP has an identical monitoring provision. In addition, the ERP includes in the operation and maintenance requirements a temperature limit that makes the standard clearer. *See* 310 CMR 7.26(13)(c) and (d).

4. How Do the Work Practice Standards Differ?

In 40 CFR 63.322(k), there is a Federal work practice requirement for leak detection of large area sources and biweekly leak detection for small area sources. In the MA DEP regulations, there is no distinction between large or small area sources. Leak detection is required weekly for all sources and the use of a leak detection device is required in contrast to the Federal requirement that relied on perceptible detection of leaks. The MA DEP requirements are more stringent in requiring a measuring device rather than just the senses. Further, if perceptible leaks are detected, the Federal regulation 40 CFR 63.322, requires that all leaks be repaired. The MA DEP requirements regulates that both perceptible leaks and leaks detected by monitoring devices be repaired.

5. What Are the Requirement Differences in Compliance Certifications?

The Federal NESHAP requires the owner or operator of a dry cleaning facility constructed or reconstructed after September 22, 1993, to file a compliance certification notification within 30 days of startup. *See* 40 CFR 63.320(b) and 63.324(b). This certification is a one time only requirement for the Federal standard. The MA DEP requirements require not only an initial compliance certification within 60 days of start up but also an additional annual certification of compliance for area source dry cleaners. This annual self certification requirement of the ERP is more stringent than the Federal requirements. While the initial compliance certification for a new source may be filed up to 30 days later than under the Federal NESHAP, on balance the compliance certification requirements of the ERP are at least as stringent as the Federal NESHAP. EPA notes that new sources must be in compliance with the control requirements upon start-up under both rules.

6. Does the Record Retention Requirement Differ?

In 40 CFR 63.324(d), the Federal requirement for retaining records of perchloroethylene purchases is five years on-site. The MA DEP provisions require record retention for a three year period. Although there is a difference in the record retention time, EPA does not consider the ERP to be, on balance, less stringent given the ERP annual certification requirements. The MA DEP provisions impose an annual certification requirement on all dry cleaners, which does not exist under the Federal requirements. Under the MA DEP provisions, a responsible official must sign the certification form, certifying under penalties of perjury that the facility is in compliance with all requirements. By requiring annual certification, the MA DEP can maintain a dry cleaner database containing historical and current information, and measure environmental performance, which meets the needs of the recordkeeping requirements.

B. What Is EPA's Action Regarding the MA ERP for Dry Cleaning Facilities?

After reviewing the request for approval of the Massachusetts Department of Environmental Protection

Environmental Results Program Certification and Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities, EPA has determined that this request meets all of the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93. EPA has determined that the MA DEP's dry cleaning rule is equivalent to or not less stringent than the Federal dry cleaning NESHAP. Therefore, EPA hereby approves MA DEP dry cleaning rules to be implemented and enforced in place of the Federal dry cleaning NESHAP, as it applies to only area sources in Massachusetts. As of the effective date of this action, MA DEP's dry cleaning rule is enforceable by the EPA and citizens under the CAA. Although the MA DEP has primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA, section 112.

C. When Did the Massachusetts Department of Environmental Protection's Authorities To Implement and Enforce Section 112 Standards Become Effective?

Under 40 CFR 63.91(d), the MA DEP must demonstrate that it meets all 112(l) approval criteria and under 63.91(d)(3), final Title V program approval satisfies this approval criteria. On September 28, 2001 EPA granted MA DEP final Title V operating permit approval which became effective November 27, 2001.

III. Opportunities for Public Comments

EPA views the approval of the MA DEP request to use its ERP for dry cleaning facilities as a substitute for the Federal dry cleaning NESHAP as a noncontroversial action, since the state program has been in operation for several years and is more stringent then the NESHAP. EPA anticipates no adverse comments. Therefore, EPA is publishing this direct final rule without prior proposal. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this action should relevant adverse comments be filed. This action will be effective on November 15, 2002, without further notice, unless EPA receives relevant adverse comments by October 16, 2002.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 15, 2002, and no further action will be taken on the proposed rule.

IV. Summary of EPA's Action

Pursuant to section 112(l) of the CAA and 40 CFR 63.91 and 63.93, EPA is approving the Massachusetts Department of Environmental Protection request to implement and enforce its Regulations 310 CMR, Sections 7.26 (10)–(16) Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities and Sections 70.01–04 Environmental Results Program Certification pertaining to dry cleaning facilities in place of 40 CFR part 63, subpart M, National Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities, as it applies to area sources. This approval makes the Massachusetts Department of Environmental Protection rules federally enforceable and reduces the burden on area sources within Massachusetts' jurisdiction such that they only have one rule with which they must comply. Major sources remain subject to 40 CFR part 63, subpart M.

V. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.'' This rule is not subject to Executive Order 13045, entitled, ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. This Federal action allows the Commonwealth of Massachusetts to implement an equivalent regulation to replace pre-existing requirements under Federal law and does not have tribal implications. Thus, Executive Order 13175 does not apply to this rule.

D. Executive Order 13132

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 final rule does not have federalism implications. It 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. This action simply allows Massachusetts to implement equivalent alternative requirements to replace a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the

Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This final rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.93 do not create any new requirements, but simply allows the state to implement and enforce equivalent requirements in place of the Federal requirements that EPA is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

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 budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives 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 or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector.

This Federal action allows Massachusetts to implement equivalent alternative requirements to replace pre-existing requirements under Federal law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. 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).

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and 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 in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. 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 November 15, 2002. 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 63

Environmental protection, Air pollution control, Administrative practice and procedure, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and record keeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: August 13, 2002.

Robert W. Varney,

Regional Administrator, EPA-New England.

40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

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

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

2. Section 63.14 is amended by adding paragraph (d)(4) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(d) * * *

(4) Massachusetts Regulations Applicable to Hazardous Air Pollutants (July 2002). Incorporation By Reference approved for § 63.99(a)(21)(ii) of subpart E of this part.

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Subpart E—Approval of State Programs and Delegation of Federal Authorities

3. Section 63.99 is amended by adding paragraph (a)(21) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(21) Massachusetts.

(i) [Reserved]

(ii) Affected area sources within Massachusetts must comply with the Massachusetts Regulations Applicable to Hazardous Air Pollutants (incorporated by reference as specified in § 63.14) as described in paragraph (a)(21)(ii)(A) of this section:

(A) The material incorporated in the Massachusetts Department of Environmental Protection 310 CMR 72.6 and 310 CMR 70.01 pertaining to dry cleaning facilities in the Commonwealth of Massachusetts jurisdiction, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of the Federal NESHAPs for Perchloroethylene Dry Cleaning Facilities (subpart M of this part) for area sources only, as defined in § 63.320(h).

(B) [Reserved]

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