

collection of information unless the collection of information displays a valid control number.

#### List of Subjects 31 CFR Part 594

Administrative practice and procedure, Banks, Banking, Penalties, Reporting and recordkeeping requirements, Terrorism.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 594 as follows:

#### PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 1. The authority citation for part 594 continues to read as follows:

**Authority:** 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR, 2002 Comp., p. 240; E.O. 13284, 64 FR 4075, 3 CFR, 2003 Comp., p. 161.

#### Subpart C—General Definitions

■ 2. Add a new § 594.317 to subpart C to read as follows:

##### § 594.317 Financial, material, or technological support.

The term *financial, material, or technological support*, as used in § 594.201(a)(4)(i) of this part, means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. “Technologies” as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

Dated: November 18, 2009.

**John E. Smith,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. E9–28066 Filed 11–20–09; 8:45 am]

BILLING CODE 4810–AL–P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R03–OAR–2009–0599; FRL–8982–5]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision to Clean Air Interstate Rule Sulfur Dioxide Trading Program; Withdrawal of Direct Final Rule

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to an adverse comment, EPA is withdrawing the direct final rule to approve the timing change for the first phase of the sulfur dioxide (SO<sub>2</sub>) trading budget under the Commonwealth of Virginia's approved Clean Air Interstate Rule (CAIR) regulations. In the direct final rule published on October 22, 2009 (74 FR 54485), we stated that if we received adverse comment by November 23, 2009, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on October 22, 2009 (74 FR 54534). EPA will not institute a second comment period on this action.

**DATES:** *Effective Date:* The direct final rule is withdrawn as of November 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814–2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

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

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides.

Dated: November 5, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*

■ Accordingly, the addition of an entry for 9 VAC 5 Chapter 140, Part IV, Section 5–140–3400 to the table in paragraph (c) is withdrawn as of November 23, 2009.

[FR Doc. E9–27826 Filed 11–20–09; 8:45 am]

BILLING CODE 6560–50–P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 63

[EPA–R01–OAR–2009–0031; A–1–FRL–8974–5]

#### 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”) and federal regulations promulgated thereunder, the Massachusetts Department of Environmental Protection (“MassDEP”) submitted a request for approval to implement and enforce the amended 310 CMR 70.00 Environmental Results Program (“ERP”) Certification and the amended 310 CMR 7.26(10)–(16) Perchloroethylene (“Perc” or “PCE”) Air Emissions Standards for Dry Cleaning Facilities (together referred to as the “amended Dry Cleaner ERP”) as a partial substitution for the amended National Emissions Standards for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities (“Dry Cleaning NESHAP”), as it applies to area sources. EPA has reviewed this request and has determined that the amended Dry Cleaner ERP satisfies the requirements necessary for partial substitution approval. Thus, EPA is hereby granting MassDEP the authority to implement and enforce its amended Dry Cleaner ERP in place of the Dry Cleaning NESHAP for area sources, but EPA is retaining its authority with respect to major source dry cleaners and dry cleaners installed in a residence between December 21, 2005 and July 13, 2006. This approval makes the amended Dry Cleaner ERP federally enforceable.

**DATES:** This direct final rule will be effective January 22, 2010, unless EPA receives adverse comments by December 23, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 22, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–

R01-OAR-2009-0031 by one of the following methods:

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

2. *E-mail*: [mcdonnell.ida@epa.gov](mailto:mcdonnell.ida@epa.gov).

3. *Fax*: (617) 918-0653.

4. *Mail*: "EPA-R01-OAR-2009-0031", Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAP), Boston, MA 02114-2023.

5. *Hand Delivery or Courier*. Deliver your comments to: Ida McDonnell, Acting Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAP), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions*: Direct your comments to Docket ID No. EPA-R01-OAR-2009-0031. 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 through <http://www.regulations.gov>, or e-mail, information that you consider to be CBI or otherwise protected. 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. EPA will forward copies of all

submitted comments to the Massachusetts Department of Environmental Protection.

*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 at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the Massachusetts Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:**

Susan Lancey, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAP), Boston, MA 02114-2023, telephone number (617) 918-1656, fax number (617) 918-0656, e-mail [lancey.susan@epa.gov](mailto:lancey.susan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. What Requirements Must a State Rule Meet To Substitute for a Section 112 Rule?
- III. How Will EPA Determine Equivalency for State Alternative NESHAP Requirements?
- IV. What Significant Changes Did EPA Make to the Dry Cleaning NESHAP and How Did MassDEP Address Those Changes?
  - A. What Definitions Were Added to the NESHAP and the Amended Dry Cleaner ERP?
  - B. What Control Requirements Were Added for New Dry Cleaners Installed After December 21, 2005?

- C. What Requirements Were Added for Dry Cleaners Installed in a Building With a Residence After December 21, 2005?
- D. What Requirements Were Added for Transfer Machines?
- E. What Monitoring Requirements Were Added?
- F. How Did the Reporting Requirements Change?
- V. What Is EPA's Action Regarding MassDEP's Dry Cleaner ERP?
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  - A. Executive Order 12866: Regulatory Planning and Review
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  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Congressional Review Act

**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), as amended by 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 National Emissions Standards for Hazardous Air Pollutants). Upon approval by EPA, the state agency is authorized to implement and enforce its rule in place of the Federal rule.

EPA promulgated the Dry Cleaning NESHAP on September 22, 1993. See 58 FR 49354 (codified at 40 CFR part 63, subpart M, "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities"). On October 24, 2001, EPA received a request from MassDEP to implement and enforce its Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities, 310 CMR 7.26(10)-(16), and Environmental Results Program (ERP)

Certification, 310 CMR 70.01–04 (together referred to as the “Dry Cleaner ERP”) in lieu of the Dry Cleaning NESHAP rule for area sources. On September 16, 2002, EPA approved Massachusetts’ Dry Cleaner ERP in place of the Dry Cleaning NESHAP for area sources pursuant to the provisions of 40 CFR part 63, subpart E. *See* 67 FR 58339.

Under 40 CFR 63.91(e)(3), if EPA amends or otherwise revises a promulgated CAA section 112 rule or requirement in a way that increases its stringency, EPA will notify any state with a delegated alternative of the need to revise its equivalency demonstration. EPA will consult with the state to set a time frame for the state to submit a revised equivalency demonstration. EPA will then review and approve the revised equivalency demonstration according to the procedures in 40 CFR part 63, subpart E. More stringent NESHAP amendments to a delegated alternative apply to all sources until EPA determines that the approved or revised alternative requirements are equivalent to the more stringent amendments.

On July 27, 2006, September 21, 2006 and July 11, 2008, EPA promulgated amendments to the Dry Cleaning NESHAP. *See* 71 FR 42724, 71 FR 55280 and 73 FR 39871. In a letter dated October 25, 2006, EPA notified MassDEP that EPA had published more stringent amendments to the Dry Cleaning NESHAP and of the need for MassDEP to revise its equivalency demonstration. Accordingly, MassDEP revised 310 CMR 7.26(10)–(16) with an effective date of September 5, 2008. In addition, MassDEP revised 310 CMR 70.00 with an effective date of December 28, 2007. On November 17, 2008, MassDEP submitted a request for approval to implement and enforce the amended Dry Cleaner ERP in place of the amended Dry Cleaning NESHAP. On January 13, 2009, EPA determined that Massachusetts’ submittal was complete. As explained below, EPA has reviewed the State’s submission and determined that the amended Dry Cleaner ERP is no less stringent than the amended Dry Cleaning NESHAP, as applied to area sources.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## II. What Requirements Must a State Rule Meet To Substitute for a Section 112 Rule?

A state must demonstrate that it has satisfied the general delegation/approval criteria contained in 40 CFR 63.91(d). The process of providing “up-front approval” assures that a state has met the delegation criteria in Section 112(l)(5) of the CAA (as codified in 40 CFR 63.91(d)), that is, that the state has demonstrated that its NESHAP program contains adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. Under 40 CFR 63.91(d)(3), interim or final Title V program approval satisfies the criteria set forth in 40 CFR 63.91(d) for “up-front approval.” On September 28, 2001, EPA promulgated full approval of MassDEP’s operating permits program with an effective date of November 27, 2001. *See* 66 FR 49541. Accordingly, MassDEP has satisfied the up-front approval criteria of 40 CFR 63.91(d).

Additionally, the “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 at 62274. A rule will be approved if EPA finds: (1) The state and local rules are “no less stringent” than the corresponding Federal regulations, (2) the state and local government has adequate authorities to implement and enforce the rules, and (3) the schedule for implementation and compliance is “no less stringent” than the deadlines established in the otherwise applicable Federal rule. 40 CFR 63.93(b). After reviewing MassDEP’s amended partial rule substitution request and equivalency demonstration for the Dry Cleaning NESHAP as it applies to area sources, EPA has determined this request meets all the requirements necessary for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93.

## III. How Will EPA Determine Equivalency for State Alternative NESHAP Requirements?

Before we can approve alternative requirements in place of a part 63 emissions standard, the state must submit to us detailed information that demonstrates how the alternative requirements compare with the otherwise applicable Federal standard. Under 40 CFR part 63 subpart E, the level of control in the state rule must be at least as stringent as the level of control in the Federal rule. In addition,

in order for equivalency to be granted, the level of control and compliance and enforcement measures (“MRR”) of the state rule, taken together as a whole, must be equivalent to the level of control and MRR of the Federal rule, taken together as a whole. A detailed discussion of how EPA will determine equivalency for state alternative NESHAP requirements is provided in the preamble to EPA’s proposed Subpart E amendments on January 12, 1999. *See* 64 FR 1908.

## IV. What Significant Changes Did EPA Make to the Dry Cleaning NESHAP and How Did MassDEP Address Those Changes?

The following discussion explains the changes that EPA made to the Dry Cleaning NESHAP and how MassDEP addressed these changes in the amended Dry Cleaner ERP, as well as any additional changes MassDEP made to the Dry Cleaner ERP. The September 16, 2002, **Federal Register** Notice initially approving the Dry Cleaner ERP as a substitute for the Dry Cleaning NESHAP contains a more detailed discussion of the differences between the Dry Cleaning NESHAP and the Dry Cleaner ERP. *See* 67 FR 58339.

### A. What Definitions Were Added to the NESHAP and the Amended Dry Cleaner ERP?

The Dry Cleaning NESHAP added definitions for halogenated hydrocarbon detector, perchloroethylene gas analyzer, residence, vapor leak, and vapor barrier. The amended Dry Cleaner ERP adopted each of these definitions with the exception of vapor barrier. MassDEP has not adopted the definition of vapor barrier into its amended Dry Cleaner ERP because the requirement is not necessary. Specifically, MassDEP’s amended Dry Cleaner ERP specifies that dry cleaning machines installed in a building with a residence between December 21, 2005 and July 13, 2006 (i.e., those facilities which must utilize a vapor barrier under the Dry Cleaning NESHAP) are not within the scope of the State’s rule and thus remain subject to the Dry Cleaning NESHAP.

### B. What Control Requirements Were Added for New Dry Cleaners Installed After December 21, 2005?

The Dry Cleaning NESHAP requires new area source dry cleaners which commence construction after December 21, 2005, to be equipped with a refrigerated condenser and a non-vented carbon adsorber. The carbon adsorber must be desorbed in accordance with the manufacturer’s instruction. *See* 40 CFR 63.322(o)(2). The amended Dry

Cleaner ERP added these control requirements for new dry cleaners installed after December 21, 2005, and added the requirement for the carbon adsorber to be desorbed in accordance with the manufacturer's instructions. See 310 CMR 7.26(12)(a)(3) and 7.26(14)(c). The amended Dry Cleaner ERP is accordingly no less stringent than the corresponding federal rule.

*C. What Requirements Were Added for Dry Cleaners Installed in a Building with Residence After December 21, 2005?*

The Dry Cleaning NESHAP requires a vapor barrier and other control requirements for dry cleaners installed in a building with a residence between December 21, 2005 and July 13, 2006. The Dry Cleaning NESHAP requires that such dry cleaners eliminate perc emissions by July 27, 2009. See 40 CFR 63.322(o)(5)(i)-(ii) and 63.320(b)(2)(ii). MassDEP's amended Dry Cleaner ERP specifies that such dry cleaners are not within the scope of the State's rule and thus remain subject to the Dry Cleaning NESHAP. See 310 CMR 7.26(10)(d). Therefore, EPA is retaining these requirements.

The Dry Cleaning NESHAP does not allow any dry cleaning systems to be installed in a building with a residence as of July 13, 2006. See 40 CFR 63.322(o)(4) and 63.320(b)(3). The Dry Cleaner ERP prohibits the installation of a dry cleaner co-located with a residence as of September 5, 2008, and requires all dry cleaners co-located with a residence installed after July 13, 2006, to cease operation on September 5, 2008. See 310 CMR 7.26(12)(a)(5) and (7). The Dry Cleaner ERP could not prohibit installation of a dry cleaner co-located with a residence prior to the final date of the amendments on September 5, 2008. Therefore, the Dry Cleaner ERP required all dry cleaners co-located with a residence as of July 13, 2006 to cease operation on September 5, 2008. Such dry cleaners were already effectively prohibited from installing in a building with a residence as of July 13, 2006 under the Dry Cleaning NESHAP. In addition, the amended Dry Cleaner ERP prohibits the installation of a co-located dry cleaner as of November 5, 2008. See 310 CMR 7.26(12)(a)(4). A co-located dry cleaner includes dry cleaning facilities located in a building with a residence, licensed day care center, a health care facility, a prison, an elementary school, a middle or high school or a pre-school, a senior center or a youth center. Therefore, MassDEP's Dry Cleaner ERP is more stringent than the Dry Cleaning NESHAP because it prohibits all co-

located dry cleaners as of November 5, 2008, in addition to prohibiting co-located dry cleaners in a building with a residence as of July 13, 2006.

The Dry Cleaning NESHAP requires all dry cleaners located in a building with a residence to eliminate perc emissions by December 21, 2020. See 40 CFR 63.322(o)(5)(ii). The Dry Cleaner ERP requires all co-located dry cleaners to cease operation on or before December 21, 2020. See 310 CMR 7.26(12)(a)(6). MassDEP's Dry Cleaner ERP is more stringent than the Dry Cleaning NESHAP because this provision applies to all co-located facilities in addition to dry cleaners installed in a building with a residence.

*D. What Requirements Were Added for Transfer Machines?*

The Dry Cleaning NESHAP effectively prohibits all transfer machines as of July 28, 2008, by requiring the owner or operator to eliminate emissions of perc during the transfer of articles between the washer and the dryer(s) or reclaimer(s). See 40 CFR 63.320(b)(1) and 63.322(o)(4). The amended Dry Cleaner ERP adds this requirement by requiring the owner or operator to cease operation of their transfer machine on or before September 5, 2008. Facilities in Massachusetts were effectively prohibited from operating transfer machines under the Dry Cleaning NESHAP as of July 28, 2008 and, as of September 5, 2008, were prohibited under the Dry Cleaner ERP. Therefore, upon the effective date of EPA's approval of the Dry Cleaner ERP, facilities in Massachusetts will continue to be prohibited from operating transfer machines. See 310 CMR 7.26(12)(b)(4).

*E. What Monitoring Requirements Were Added?*

The Dry Cleaning NESHAP added a requirement for area source dry cleaners to conduct leak checks monthly using a halogenated hydrocarbon detector or a PCE gas analyzer that is operated according to the manufacturer's recommendation. See 40 CFR 63.322(o)(1). A halogenated solvent hydrocarbon detector means a portable device capable of detecting vapor concentrations of PCE of 25 parts per million ("ppm") by volume and indicating a concentration of 25 ppm by volume or greater by emitting an audible or visual signal that varies as the concentration changes. A PCE gas analyzer means a flame ionization detector, photoionization detector, or infrared analyzer capable of detecting vapor concentrations of PCE of 25 ppm by volume. The amended Dry Cleaner ERP requires vapor leak checks weekly

with a halogenated hydrocarbon detector, a PCE gas analyzer, or an alternate method that is capable of detecting vapor concentrations of PCE of 25 ppm by volume and approved by MassDEP. See 310 CMR 7.26(13)(i). Since the Dry Cleaner ERP specifies that any alternative method approved by MassDEP must be capable of detecting vapor concentrations of PCE of 25 ppm by volume, EPA does not view this as affecting the stringency of the Dry Cleaner ERP. Furthermore, the amended Dry Cleaner ERP is more stringent than the Dry Cleaning NESHAP because it requires leak checks with a detector or analyzer to be conducted weekly.

The Dry Cleaning NESHAP added a requirement that allows facilities using a refrigerated condenser to monitor the refrigeration system high pressure and low pressure as an alternative to monitoring for the temperature of the perc vapor gas vapor-stream. See 40 CFR 63.323(a)(1). Massachusetts added this requirement and is therefore equivalent to the Dry Cleaning NESHAP. See 310 CMR 7.26(14)(a).

*F. How Did the Reporting Requirements Change?*

The Dry Cleaning NESHAP added a requirement for facilities to submit a notification of compliance status by July 28, 2008. See 40 CFR 63.324(f). The Dry Cleaner ERP required a similar compliance status report, including the information required by the NESHAP, to be submitted by September 15, 2008. See 310 CMR 7.26(15)(b). In addition, the Dry Cleaner ERP requires facilities to submit an annual compliance certification. The Dry Cleaning NESHAP does not require an annual compliance certification. Massachusetts amended its ERP regulation to allow less frequent reporting than annually if Massachusetts specifies less frequent reporting based on specific criteria in its ERP regulation. See 310 CMR 70.03(f) and (h). Specifically, MassDEP identifies the following criteria to allow less frequent reporting: (1) The size, composition and activities of the ERP sector; (2) the quantity and types of (toxic) materials used and potential wastes, emissions and discharges of the ERP sector; (3) the degree of compliance with established regulatory requirements by the ERP sector; (4) the degree of control over the environmental and public health aspects of activities by the ERP sector; and (5) any other relevant information regarding the environmental consequences of the periodic compliance certifications and return to compliance response rates and results within the ERP sector. Though the Dry

Cleaning NESHAP does not have an annual reporting requirement, EPA considered the annual compliance certification requirement in approving the Dry Cleaner ERP in 2002.

Nonetheless, the amended Dry Cleaner ERP is more stringent than the Dry Cleaning NESHAP in a number of areas. As discussed above, the amended Dry Cleaner ERP prohibits co-located dry cleaners as of November 5, 2008 and requires weekly monitoring with a detector. In addition, as discussed in EPA's September 16, 2002 approval, the Dry Cleaning NESHAP applies partial exemptions from control requirements based on perc consumption, while the amended Dry Cleaner ERP, however, does not allow for partial exemptions and applies control requirements for all perc dry cleaners. Additionally, the ERP is a multimedia compliance program which requires self certification with air, water and hazardous waste requirements while providing extensive compliance assistance to dry cleaners through training programs and workbooks and includes inspections and enforcement. EPA evaluated the air portion of the ERP for dry cleaning facilities in approving the Dry Cleaner ERP in 2002. Although the amended Dry Cleaner ERP compliance report was allowed to be submitted later than the Dry Cleaning NESHAP notification of compliance status report and although MassDEP may now allow less frequent compliance certifications than annually, EPA has determined that given the more stringent requirements of the amended Dry Cleaner ERP, the requirements of the amended Dry Cleaner ERP are, taken as a whole, more stringent than the requirements of the Dry Cleaning NESHAP.

#### V. What Is EPA's Action Regarding MassDEP's Amended Dry Cleaner ERP?

After reviewing MassDEP's request for approval of the amended Dry Cleaner ERP, EPA has determined that Massachusetts' regulations meet all of the requirements necessary for partial rule substitution under section 112(l) of the CAA and 40 CFR 63.91 and 63.93. The amended Dry Cleaner ERP, taken as a whole, is no less stringent than the Dry Cleaning NESHAP, as applied to area sources. Therefore, EPA hereby approves Massachusetts' request to implement and enforce 310 CMR 70.00 Environmental Results Program, as amended, and 310 CMR 7.26(10)–(16) Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities, as amended, in place of the Dry Cleaning NESHAP for area sources in Massachusetts. The EPA retains the requirements for major source dry

cleaners and dry cleaners installed in a residence between December 21, 2005 and July 13, 2006. As of the effective date of this action, the amended Dry Cleaner ERP is enforceable by EPA and by citizens under the CAA. Although MassDEP has primary responsibility to implement and enforce the amended Dry Cleaner ERP, EPA retains the authority to enforce any requirement of the rule upon its approval under CAA 112. See CAA section 112(l)(7).

#### VI. Final Action

The EPA is approving the Massachusetts Environmental Results Program, 310 CMR 70.00, as amended, and the Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities, 310 CMR 7.26(10)–(16), as amended, as a partial rule substitution for the Dry Cleaning NESHAP for area sources in Massachusetts. The EPA retains the requirements for major source dry cleaners and dry cleaners installed in a residence between December 21, 2005, and July 13, 2006.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the rule revision should relevant adverse comments be filed. This rule will be effective January 22, 2010 without further notice unless the Agency receives relevant adverse comments by December 23, 2009.

If the EPA receives such comments, then EPA will publish a notice withdrawing the direct final rule and informing the public that the 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. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 22, 2010 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### VII. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this

final rule is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit by January 22, 2010. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that “[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.” This section also provides a mechanism for us to convene a proceeding for reconsideration, “[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Regional Administrator, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (RAA), Boston, MA 02114–2023, with a copy to the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Regional Counsel, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (RAA), Boston, MA 02114–2023. Filing a petition for reconsideration by the Administrator of this final rule under CAA section 307(d)(7)(B) does not affect the finality of this rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of the rule.

#### VIII. Statutory and Executive Order Reviews

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

This action approves equivalent state requirements in place of Federal requirements under CAA section 112(l). This type of action is exempt from review under EO 12866.

##### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action

allows the Commonwealth of Massachusetts to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners. Thus, this action does not require any person to submit information.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards found at 13 CFR 121.201 (coin operated laundries and drycleaners as defined by NAICS code 812310 with annual receipts of less than \$7.0 million or drycleaning and laundry services (except coin operated) as defined by NAICS code 812320 with annual receipts of less than \$4.5 million); (2) a small 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. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not have a significant impact on a substantial number of small entities because approvals under CAA section 112(l) and 40 CFR 63.93 do not create any new requirements. Such approvals simply allow a state to implement and enforce equivalent requirements in place of the Federal requirements that EPA is already imposing.

#### D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This

action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action allows the Commonwealth of Massachusetts to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners. Thus, this action does not significantly or uniquely affect small governments.

#### E. Executive Order 13132: Federalism

This action 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 action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action allows the Commonwealth of Massachusetts to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners. This action 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. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it approves a state program such that it allows the Commonwealth of

Massachusetts to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

#### I. 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. 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.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action allows the Commonwealth of Massachusetts to implement equivalent state

requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners. As explained above, the state requirements contain standards that are at least equivalent to the Federal standards; thus, we anticipate only a positive impact from this action.

#### K. Congressional Review Act

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**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 22, 2010.

#### List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping 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: October 15, 2009.

**Ira W. Leighton,**

*Acting 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.*

#### Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (d) introductory text and paragraph (d)(4) to read as follows:

#### § 63.14 Incorporation by reference.

\* \* \* \* \*

(d) *State and Local Requirements.* The following materials listed below are available at the Air and Radiation Docket and Information Center, 1200 Pennsylvania Avenue, NW.,

Washington, DC 20460, telephone number (202) 566-1745.

\* \* \* \* \*

(4) Massachusetts Department of Environmental Protection regulations at 310 CMR 7.26(10)–(16), Air Pollution Control, effective as of September 5, 2008, corrected March 6, 2009, and 310 CMR 70.00, Environmental Results Program Certification, effective as of December 28, 2007. Incorporation By Reference approved for § 63.99(a)(22)(ii) of subpart E of this part.

\* \* \* \* \*

#### Subpart E—[Amended]

3. Section 63.99 is amended by revising paragraph (a)(22) to read as follows:

#### § 63.99 Delegated Federal authorities.

(a) \* \* \*

(2) 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)(22)(ii)(A) of this section:

(A) The material incorporated into the Massachusetts Department of Environmental Protection regulations at 310 CMR 7.26(10)–(16), Air Pollution Control, effective as of September 5, 2008, corrected March 6, 2009, and 310 CMR 70.00, Environmental Results Program Certification, effective as of December 28, 2007, pertaining to dry cleaning facilities in the Commonwealth of Massachusetts jurisdiction, and approved under the procedures in § 63.93 to be implemented and enforced in place of the Federal NESHAP for Perchloroethylene Dry Cleaning Facilities (subpart M of this part), effective as of July 11, 2008, for area sources only, as defined in § 63.320(h).

(1) Authorities not delegated.

(i) Massachusetts is not delegated the Administrator's authority to implement and enforce Massachusetts regulations at 310 CMR 7.26(10)–(16) and 310 CMR 70.00, in lieu of those provisions of subpart M of this part which apply to major sources, as defined in § 63.320(g).

(ii) Massachusetts is not delegated the Administrator's authority to implement and enforce Massachusetts regulations at 310 CMR 7.26(10)–(16) and 310 CMR 70.00, in lieu of those provisions of subpart M of this part which apply to dry cleaning systems installed in a building with a residence between December 21, 2005 and July 13, 2006, as defined in § 63.320(b)(2)(ii) and § 63.322(o)(5)(i)–(ii).

(B) [Reserved]

\* \* \* \* \*

[FR Doc. E9-27820 Filed 11-20-09; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 227 and 252

RIN 0750-AG50

#### Defense Federal Acquisition Regulation Supplement; Government Rights in the Design of DoD Vessels (DFARS Case 2008-D039)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 825 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 825 clarifies the Government's rights in technical data in the designs of DoD vessels, boats, craft, and components thereof. This interim rule also implements the Vessel Hull Design Protection Amendments of 2008 (Pub. L. 110-434).

**DATES:** *Effective date:* November 23, 2009.

*Comment date:* Comments on the interim rule should be submitted to the address shown below on or before January 22, 2010, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments via the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcom>. As an alternative, respondents may e-mail comments to: [dfars@osd.mil](mailto:dfars@osd.mil). Please cite DFARS Case 2008-D039 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-7887. Please cite DFARS Case 2008-D039.

Interested parties may view public comments on the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0328.