to the public interest. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it believes the State has corrected the deficiency that started the sanctions. Therefore, it is not in the public interest to initially apply sanctions or to keep applied sanctions in place when the State has proposed and emergency adopted a measure which will correct the deficiency that triggered the sanctions clock, provided it is not substantially changed prior to full adoption. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. In addition, EPA invokes the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1). For a complete analysis of the application of the good cause exception, the reader is referred to the Federal Register cited above, in which EPA adopted the rule being applied here.

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify 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 government entities with jurisdiction over populations of less than 50,000.

This action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the Clean Air Act. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities.

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated annual costs of $100 million or more to the private sector, or to a State, local and/or tribal government(s) in the aggregate. The EPA must also develop a plan with regard to small governments that would be significantly or uniquely affected by the rule.

Because this interim final determination is estimated to result in the expenditure by State, local and tribal governments or the private sector of less than $100 million in any one year, EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost effective, or least burdensome alternative because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan for small governments. Further, this final determination only defers the imposition of sanctions; it imposes no new requirements.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 29, 1996.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 96–23819 Filed 9–18–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 63

[AD-FRL–5612–2]

RIN 2060–AF90

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final amendments to rule.

SUMMARY: This action promulgates amendments to the national emission standards for hazardous air pollutants (NESHAP) for perchloroethylene (PCE) dry cleaning facilities. These amendments were proposed in the Federal Register on May 3, 1996; the NESHAP was promulgated in the Federal Register on September 22, 1993. The Administrator is promulgating these amendments to implement a settlement agreement that the EPA has entered into regarding a small number of transfer machines.

EFFECTIVE DATE: September 19, 1996.

ADDRESSES: Docket. Docket Number A–95–16, containing supporting information used in developing the proposed amendments, is available for public inspection and copying between the hours of 8 a.m. and 5:30 p.m., Monday through Friday (except for government holidays) at The Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The Air and Radiation Docket and Information Center may be reached at (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. George Smith at (919) 541–1549, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated entities. Entities regulated by this action are dry cleaning facilities that use perchloroethylene. Regulated categories and entities include:

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

The above table provides a guide for readers regarding entities likely to be regulated by this action. However, to determine whether your facility is regulated by this action you should carefully examine the applicability criteria in 40 CFR. 63.320 as amended by today's action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The information presented in this preamble is organized as follows:

I. Background, Summary, and Rationale for Promulgated Changes To Rule

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 November 19, 1993, the International Fabricare Institute (IFI), a trade association representing commercial and industrial dry cleaners nationwide, filed in the U.S. Court of Appeals for the District of Columbia Circuit a petition for judicial review challenging the NESHAP. The Agency subsequently entered into a settlement agreement with IFI, notice of which was published prior to being filed with the court (60 FR 52000, October 4, 1995).

In the litigation, IFI raised the issue of new transfer machines purchased or installed between proposal and promulgation. The IFI's concern stemmed from the fact that the Agency did not propose to ban new transfer machines, yet at promulgation effectively banned 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 would have had 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 was 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 of the NESHAP, the Agency effectively banned the purchase of new transfer machines (58 FR 49,368–49,370). This was considered reasonable because the Agency's analysis showed that emissions from clothing transfer could be eliminated through the use of dry-to-dry machines. 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 by setting an emission limit which new transfer machines could not 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 has agreed with IFI on this issue. Consequently, the Administrator has subcategorized 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 finalizing today for new transfer machines installed after promulgation do not change. The requirements the Administrator is promulgating today for the new subcategory, new transfer machines installed between proposal and promulgation, however, are similar to those for existing transfer machines.

Today's action does not sacrifice significant emissions reductions because the number of affected machines is approximately one-tenth of one percent of all dry cleaning machines (possibly 30 machines). Today's action allows 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 maintains the prospective prohibition on new transfer machines.

II. Comments Received on Proposed Changes to Rule

Four comments were received on the proposed amendments to the NESHAP. Two comments were received from industry trade associations and two comments were received from states. All four commenters were supportive of the proposed amendments for basically the same reasons outlined at proposal (61 FR 19887, May 3, 1996). Therefore, no changes have been made to the proposed amendments to the NESHAP.

III. 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) document (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 Reform 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) A citation of the statutory authority under which the rule is proposed, (2) an

assessment of the costs and benefits of the rule, including the effect of the mandate on health, safety, the environment, and the federal resources available to defray the costs, (3) where feasible, estimates of future compliance costs and disproportionate impacts upon particular geographic or social segments of the nation or industry, (4) where relevant, an estimate of the effect on the national economy, and (5) a description of EPA's prior consultation with State, local, and tribal officials.

The amendments to the NESHAP that the Administrator is proposing today will not cause State, local, or tribal governments, or the private sector to incur costs that will be $100 million or more in any one year. Rather, the costs involved in this rulemaking are relatively insignificant in comparison to the $100 million threshold of the Unfunded Mandates Act. Therefore, the requirements of the Unfunded Mandates Act are not applicable to this rulemaking.

D. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will reduce regulatory burdens on small businesses because it will allow small businesses that own or operate those few transfer machines installed after December 9, 1991, but before September 22, 1993, to keep these machines in use rather than requiring such businesses to replace these machines or stop operations. EPA has determined that this rule will not have an significant adverse economic impact on a substantial number of small businesses.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 11, 1996.

Carol M. Browner,

Administrator.

Title 40, chapter I, part 63, of the Code of Federal Regulations is amended to read as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

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 transfer machine 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 paragraph (a)(1) or (a)(2) of this section and shall comply with paragraph (a)(3) of this section 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:

* * * * *

[FR Doc. 96–23911 Filed 9–18–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 272

[FRL–5601–5]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for New Mexico

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.