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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-R01-OAR-2010-0207; A-1-FRL-9163-2]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Air Emission Standards for Halogenated Solvent Cleaning Machines: State of Rhode Island Department of Environmental Management**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 Rhode Island Department of Environmental Management ("RI DEM") submitted a request for approval to implement and enforce Air Pollution Control Regulation Number 36, Control of Emissions from Organic Solvent Cleaning ("RI Regulation No. 36"), and the Rhode Island Air Pollution Control, General Definitions Regulation ("RI General Definitions Rule"), as a partial substitution for the National Emissions Standards for Halogenated Solvent Cleaning ("Halogenated Solvent NESHAP"), as it applies to organic solvent cleaning machines in Rhode Island, except continuous web cleaning machines, with respect to which the Halogenated Solvent NESHAP shall continue to apply. EPA has reviewed this request and has determined that RI Regulation No. 36 and the RI General Definitions Rule satisfy the requirements necessary for partial substitution approval. Thus, EPA is hereby granting RI DEM the authority to implement and enforce RI Regulation No. 36 and the RI General Definitions Rule in place of the Halogenated Solvent NESHAP for organic solvent cleaning machines, but EPA is retaining its authority with respect to continuous web cleaning machines in Rhode Island. This approval makes RI Regulation No. 36 and the RI General Definitions Rule Federally enforceable.

DATES: This direct final rule will be effective August 17, 2010, unless EPA receives adverse comments by July 19, 2010. 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 August 17, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2010-0207 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.

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

4. *Mail*: "EPA-R01-OAR-2010-0207", Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Air Permits, Toxics and Indoor Programs Unit, Five Post Office Square, Suite 100 (mail code OEP05-2), Boston, MA 02109-3912.

5. *Hand Delivery or Courier*. Deliver your comments to: Ida McDonnell, Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05-2), Boston, MA 02109-3912. 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-2010-0207. 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 Rhode Island Department of Environmental Management.

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, Five Post Office Square, Suite 100, 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 Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, RI, 02908.

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, Five Post Office Square, Suite 100 (OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1656, fax number (617) 918-0656, e-mail 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.

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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 found in 40 CFR part 63, subpart E. 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 Emission 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 National Emissions Standards for Hazardous Air Pollutants for Halogenated Solvent Cleaning Facilities ("Halogenated

Solvent NESHAP") on December 2, 1994. See 40 CFR part 63, subpart T. EPA promulgated several amendments to the Halogenated Solvent NESHAP, with the latest amendments promulgated on May 3, 2007.

On January 8, 2001, EPA received a request from RI DEM to implement and enforce its Air Pollution Control Regulation Number 36, Control of Emissions from Organic Solvent Cleaning ("RI Regulation No. 36") as a substitute for the Halogenated Solvent NESHAP, as it applies to organic solvent cleaning machines in Rhode Island, except continuous web cleaning machines. Upon evaluation, EPA requested that the RI DEM revise its January 8, 2001 submission. On March 11, 2005, RI DEM submitted a revised rule substitution package.

In a letter dated October 9, 2007, EPA requested that RI DEM further revise RI Regulation No. 36 to address new facility-wide emission limits and associated reporting and recordkeeping issued in the May 3, 2007 amendments to the Halogenated Solvent NESHAP, as well as several other requirements. On October 9, 2008, RI DEM finalized amendments to RI Regulation No. 36, as well as to Rhode Island Air Pollution Control General Definitions Regulation ("RI General Definitions Rule"). On April 20, 2009, RI DEM submitted its amended RI Regulation No. 36 and RI General Definitions Rule to be implemented and enforced as a partial rule substitution in place of the Halogenated Solvent NESHAP for all organic solvent cleaning machines, except continuous web cleaning machines. RI DEM provided supplemental information to its April 20, 2009 submission on June 12, 2009.

On September 30, 2009, EPA determined that the RI DEM April 20, 2009 submission, supplemented on June 12, 2009, was complete. As explained below, EPA has reviewed the State's submission and determined that the RI Regulation No. 36 and RI General Definitions Rule are no less stringent than the Halogenated Solvent NESHAP, as applied to all organic cleaning machines in Rhode Island, except continuous web cleaning machines.

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 October 1, 2001, EPA promulgated full approval of RI DEM's operating permits program. See 66 FR 49839. Accordingly, RI DEM 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. A rule will be approved if the State or local government demonstrates: (1) The State and local rules contain applicability criteria that are no less stringent than the corresponding Federal rule; (2) the State and local rule requires levels of control and compliance and enforcement measures that would achieve emission reductions from each affected source that are no less stringent than would result from the otherwise applicable Federal standard; (3) the schedule for implementation and compliance is consistent with the deadlines established in the otherwise applicable Federal rule; and (4) the State requirements include additional compliance and enforcement measures as specified in 40 CFR 63.93(b)(4). See 40 CFR 63.93(b). After reviewing RI DEM's amended partial rule substitution request and equivalency demonstration for the Halogenated Solvent NESHAP, 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. EPA Determination of Rule Equivalency

A. What are the major differences between Rhode Island Regulation No. 36 and the Halogenated Solvent NESHAP?

Rhode Island Regulation No. 36 differs in several ways from the Halogenated Solvent NESHAP. Most of these differences make RI Regulation No. 36 more stringent than the Halogenated Solvent NESHAP. However, some of the provisions require explanation and clarification to explain how they are no less stringent than the Halogenated Solvent NESHAP. The provisions of RI Regulation No. 36 that are the same as the Halogenated Solvent NESHAP are not discussed in this section.

i. How do the applicability requirements differ?

The Halogenated Solvent NESHAP applies to each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform, or any combination of these Hazardous Air Pollutant ("HAP") solvents, in a total concentration greater than five percent by weight, as a cleaning and/or drying agent. See 40 CFR 63.460(a). RI Regulation No. 36 applies to any organic solvent cleaning machine using any volatile organic compound ("VOC") or any volatile HAP, including all types of solvent cleaning machines specified in the Halogenated Solvent NESHAP for cleaning or drying parts, except any cold cleaning machine that uses a solvent which contains no more than 5% VOC or volatile HAP by weight. See RI Regulation 36.2 and 36.1. RI Regulation No. 36 is more stringent than the Halogenated Solvent NESHAP

because it applies to all organic solvent cleaning machines using any organic solvent of any concentration, except cold cleaning machines using less than 5% VOC or volatile HAP by weight.

ii. How do the compliance schedules differ?

The Halogenated Solvent NESHAP requires existing sources constructed or reconstructed before November 29, 1993 to be in compliance with their requirements, except for the facility-wide emission limits, by December 2, 1997, and new sources must be in compliance with their requirements, except for the facility-wide emission limits, immediately upon startup or by December 2, 1994, whichever is later. See 40 CFR 63.460(c) and (d). The Halogenated Solvent NESHAP requires new sources to comply with the facility-wide emission limits by May 3, 2007 or immediately upon startup, whichever is later, and existing sources must comply by May 3, 2010. See 40 CFR 63.460(i). RI Regulation No. 36 requires existing sources constructed or reconstructed before November 29, 1993 to be in compliance by January 1, 1997 and new or reconstructed sources constructed after November 29, 1993 must be in compliance immediately upon startup or by April 8, 1996, whichever is later. RI Regulation No. 36 facility-wide emission limits became effective on October 9, 2008. See RI Regulation 36.3 and 36.4.17. RI Regulation No. 36 compliance dates for existing sources are earlier than the Halogenated NESHAP and new sources must already be in compliance or must comply immediately upon startup. Therefore, the RI Regulation No. 36 compliance deadlines are consistent with the deadlines established in the Halogenated Solvent NESHAP.

iii. What provisions apply to continuous web cleaning machines?

EPA amended the Halogenated Solvent NESHAP on December 3, 1999, to include provisions for continuous web cleaning machines. See 64 FR 67793. Continuous web cleaning machines are solvent cleaning machines in which parts such as film, coils, wire, and metal strips are cleaned at speeds typically in excess of 11 feet per minute, and EPA determined that these types of cleaning machines warranted additional review following the original promulgation of the Halogenated Solvent NESHAP. RI Regulation No. 36 does not include specific provisions for continuous web cleaning machines. RI DEM informed EPA that there are no continuous web cleaning machines currently operating in Rhode Island and

that any new continuous web cleaning operations would be required by Rhode Island Air Pollution Control Regulation No. 9, Air Pollution Control Permits, to obtain a preconstruction permit prior to installation. Under the provisions of subsection 9.3 of Regulation No. 9, a preconstruction permit is issued only if the process is determined to employ Best Available Control Technology (BACT) and is in compliance with all applicable State and Federal requirements. Under the Federal rule substitution requirements in Section 63.93(a), "permits must already be issued to be used under this section." See 40 CFR 63.93(a)(4). Because RI DEM's rule does not include specific provisions for continuous web cleaning machines and because EPA can only review permits that are already issued for determining equivalency, EPA cannot rely on any potential future permits issued under RI Air Pollution Control No. 9 to demonstrate equivalency for continuous web cleaning machines. Therefore, EPA is retaining the Federal requirements for continuous web cleaning machines.

iv. How are the requirements for batch cold cleaning machines different?

The Halogenated Solvent NESHAP requires batch cold cleaning machines, except remote-reservoir machines, to employ a tightly-fitting cover, and either: (1) A freeboard ratio of 0.75 or greater or (2) a water layer of a minimum thickness of 1 inch on the surface of the solvent cleaning machine. See 40 CFR 63.462(a). RI Regulation No. 36 requires batch cold cleaning machines to be equipped with a cover and a freeboard ratio of greater than or equal to 0.75. See RI Regulation 36.5.2 and 36.5.3. RI does not allow the option of a water layer. All other batch cold cleaning requirements are the same. See RI Regulation 36.5 and 36.4. RI's batch cold cleaning machine requirements are equivalent to the Halogenated Solvent NESHAP.

v. How are the requirements for batch vapor and in-line cleaning machines different?

The Halogenated Solvent NESHAP requires each cleaning machine to be equipped with either: (1) An idling and downtime mode cover or (2) a reduced room draft. See 40 CFR 63.463(a)(1)(i) and (ii). RI Regulation No. 36 does not allow the use of reduced room drafts but does require the use of a cover. See RI Regulation 36.6.1 and 36.7.1. This is equivalent to the Halogenated Solvent NESHAP.

The Halogenated Solvent NESHAP requires each cleaning machine to have

an automated parts handling system operated at 11 feet per minute (ft/min) or less. *See* 40 CFR 63.463(a)(3). RI Regulation No. 36 requires an automated parts handling system operated at 10 ft/min. *See* RI Regulation 36.6.3 and 36.7.3. RI Regulation No. 36 is more stringent than the Halogenated Solvent NESHAP.

The Halogenated Solvent NESHAP requires in-line cleaning machines and batch vapor machines with a solvent air interface to operate using either: (1) The control combinations specified in the appropriate Tables or (2) an idling emission limit. *See* 40 CFR 63.463(b) and (c). RI regulation No. 36 does not allow idling emission limits as an option for compliance and specifies fewer control combination options than the Halogenated Solvent NESHAP, but all control combinations allowed by RI Regulation No. 36 are at least as stringent as the Halogenated Solvent NESHAP control combinations. *See* RI Regulation 36.6.6, 36.6.7, 36.7.7, and 36.7.8.

vi. How do the requirements for the alternative standards differ?

The Halogenated Solvent NESHAP allows facilities to meet a 3-month rolling average monthly emission limit as an alternative to the control technology standards for machines with or without a solvent/air interface. *See* 40 CFR 63.464. RI Regulation No. 36 does not allow an alternative emission limit standard for machines with a solvent/air interface. RI Regulation No. 36 does allow an alternative emission limit standard for machines without a solvent/air interface, which is equivalent to the Halogenated Solvent NESHAP. *See* RI Regulation 36.8.

vii. How do the requirements for the facility-wide emission limits differ?

The Halogenated Solvent NESHAP was amended on May 3, 2007 to include new facility-wide emission limits and associated reporting and recordkeeping requirements. For major sources, the facility-wide emission limits apply to all solvent cleaning machines, except solvent cleaning machines used in the manufacture and maintenance of aerospace products, solvent cleaning machines used in the manufacture of narrow tubing and all continuous web cleaning machines. For area sources, the facility-wide emission limits apply to all solvent cleaning machines except cold batch cleaning machines. *See* 40 CFR 63.471. RI Regulation No. 36 includes a monthly halogenated HAP solvent emission limit for all organic solvent cleaning operations, calculated on a 12-month rolling average basis, unless RI

approves a greater quantity of HAP emissions in an operating permit. In no case shall emissions exceed the facility-wide limit in 40 CFR 63.471. *See* RI Regulation 36.4.17. The RI facility-wide emission limits are equivalent to or more stringent than the Halogenated Solvent NESHAP.

viii. How are the monitoring requirements different?

The Halogenated Solvent NESHAP requires facilities operating a carbon adsorber to maintain an exhaust concentration of 100 parts per million (“ppm”) or less and conduct weekly monitoring using a colorimetric detector tube. *See* 40 CFR 63.463(e)(2)(vii) and 63.466(e). RI Regulation No. 36 requires that the solvent concentration in the carbon adsorber exhaust shall not exceed 25 ppm and requires weekly monitoring with a colorimetric detector tube. RI Regulation No. 36 also requires an initial performance test using EPA Test Method 25 within 60 days of startup of the carbon adsorber. *See* RI Regulation 36.9.5. The RI rule is more stringent than the Halogenated Solvent NESHAP.

ix. How do the reporting requirements differ?

RI Regulation No. 36 includes several differences in reporting requirements. The Halogenated Solvent NESHAP requires new sources to submit an initial notification as soon as practicable before startup. *See* 40 CFR 63.468(b). RI Regulation No. 36 requires new sources to submit the initial notification report 120 days before the startup of the cleaning machine. *See* RI Regulation 36.11.1. The Halogenated Solvent NESHAP requires a compliance report including certain information to be submitted for new sources 150 days after startup. The compliance report must include, among other requirements, the results of the first 3 month average emission calculation for sources complying with the alternative standard. *See* 40 CFR 63.468(c), (d) and (e). RI Regulation No. 36 requires the compliance report be submitted 60 days after startup of the cleaning machine and sources complying with the alternative standard must only submit a calculation of emissions for the first month. RI Regulation No. 36 cannot require a 3-month average calculation because the report is due 60 days after startup. However, the RI regulation does require sources to keep records of each 3-month average calculation and to report this information annually. *See* RI Regulation 36.10.3, 36.11.2 and 36.11.4.

The Halogenated Solvent NESHAP requires certain incidences to be

reported as exceedances. *See* 40 CFR 63.463(e). RI Regulation No. 36 includes these requirements, except for the following differences. The Halogenated Solvent NESHAP requires the following incidences to be reported as an exceedance, if the incidence is not corrected within 15 days: (1) Temperature monitoring exceedances; (2) a cover with cracks, holes or other defects; and (3) carbon adsorber monitoring exceedances. *See* 40 CFR 63.463(e)(3)(ii). RI Regulation No. 36 requires each of these incidences to be reported as an exceedance regardless of whether the incidence is corrected within 15 days. *See* RI Regulation 36.9.1, 36.9.3, 36.9.4, 36.9.5. The RI Regulation is more stringent for these exceedance report provisions. The Halogenated Solvent NESHAP requires an exceedance report if an idling mode cover is not in place when parts are not in the solvent cleaning machine or if the cover is located above the lip exhaust. *See* 40 CFR 63.463(e)(3)(i). RI does not require an exceedance report for these incidences but the RI rule prohibits these incidences and requires a record to be kept if these incidences occur. *See* RI Regulation 36.10.2(h), 36.6.1, 36.7.1.

The Halogenated Solvent NESHAP includes reporting and recordkeeping requirements associated with the facility-wide emission limits in 40 CFR 63.471. RI does not require all of the reporting and recordkeeping associated with the facility-wide emission limits, so long as the source emits less than 50% of the facility-wide emission limit in 40 CFR 63.471. If a facility emits more than 50% of the facility-wide emission limit in 40 CFR 63.471, it becomes subject to all of the reporting and recordkeeping in 40 CFR 63.471. *See* RI Regulation 36.11.4(b). Specifically, RI does not require sources to maintain a log of additions and deletions from the machine, and fill the machine on the first day of each month to calculate the facility-wide emission limit (except batch vapor machines). But, RI does require sources to keep a record of the amount of perchloroethylene, trichloroethylene, and methylene chloride used each month. *See* RI Regulation 36.10.2(b) and 36.10.4(d). RI does not require all of the information in the initial notification and statement of compliance due to EPA by May 3, 2010 under 40 CFR 63.471. However, RI Regulation No. 36 does require sources to submit an annual report of solvent cleaning emissions by April 15 of each year starting April 15, 2009. *See* RI Regulation 36.11.4(b). Also, RI has required the information in the May 3, 2010 report to be submitted

previously (e.g., date of installation of the machine and controls used). See RI Regulation 36.11.1(a) and (b).

Although RI Regulation No. 36 includes several reporting and recordkeeping differences, RI Regulation No. 36 is more stringent than the Halogenated Solvent NESHAP in a number of areas. As discussed above, RI Regulation No. 36 includes more stringent applicability, more stringent monitoring requirements, and the control requirements are at least equivalent to or more stringent than the Halogenated Solvent NESHAP requirements. In addition, certain reporting requirements are more stringent than the Halogenated Solvent NESHAP. Although RI Regulation No. 36 includes some reporting and recordkeeping differences from the Halogenated Solvent NESHAP, EPA has determined that the requirements of RI Regulation No. 36 are, taken as a whole, equivalent to the requirements of the Halogenated Solvent NESHAP.

V. What is EPA's action regarding Rhode Island Regulation No. 36?

After reviewing Rhode Island's request for approval of RI Regulation No. 36, EPA has determined that Rhode Island's 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 Rhode Island Regulation No. 36, taken as a whole, is no less stringent than the Halogenated Solvent NESHAP, as applied to all solvent cleaning machines, except continuous web cleaning machines. Therefore, EPA hereby approves Rhode Island's request to implement and enforce Rhode Island Air Pollution Control Regulation No. 36, Control of Emissions from Organic Solvent Cleaning and Rhode Island Air Pollution Control, General Definitions Regulation, in place of the Halogenated Solvent NESHAP for all halogenated solvent cleaning machines in Rhode Island, except continuous web cleaning machines. EPA retains the requirements for continuous web cleaning machines. As of the effective date of this action, RI Regulation No. 36 and RI General Definitions Rule are enforceable by EPA and by citizens under the CAA. Although Rhode Island has primary responsibility to implement and enforce RI Regulation No. 36 and RI General Definitions Rule, 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 Rhode Island Air Pollution Control Regulation

No. 36, Control of Emissions from Organic Solvent Cleaning, and Rhode Island Air Pollution Control General Definitions Regulation as a partial rule substitution for the Halogenated Solvent NESHAP for halogenated solvent cleaning machines in Rhode Island, except continuous web cleaning machines. The EPA retains the requirements for continuous web cleaning machines.

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 August 17, 2010 without further notice unless the Agency receives relevant adverse comments by July 19, 2010.

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 August 17, 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 August 17, 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, Five Post Office Square, Suite 100 (ORA01-4), Boston, MA 02109-3912, 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, Five Post Office Square, Suite 100 (ORA01-4), Boston, MA 02109-3912. 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 Executive Order (“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 State of Rhode Island to implement equivalent State requirements *in lieu of* pre-existing Federal requirements as applied only to halogenated solvent cleaning machines. 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, (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 State of Rhode Island to implement equivalent State requirements *in lieu of* pre-existing Federal requirements as applied to halogenated solvent cleaning machines. Such approvals simply allow a State to implement and enforce equivalent requirements in place of the Federal requirements that EPA is already imposing. 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 Rhode Island 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 State of Rhode Island to implement equivalent State requirements *in lieu of* pre-existing Federal requirements as applied only to halogenated solvent cleaning machines. 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 State of Rhode Island to implement equivalent State requirements *in lieu of* pre-existing Federal requirements as applied only to halogenated solvent cleaning machines.

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 the Office of Management and Budget (“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 State of Rhode Island to implement equivalent State requirements *in lieu of* pre-existing Federal requirements as applied only to halogenated solvent cleaning machines. 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 August 17, 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 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: June 8, 2010.

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 adding paragraph (d)(9) to read as follows:

§ 63.14 Incorporation by reference.

(d) * * *

(9) Rhode Island Department of Environmental Management regulations at Air Pollution Control Regulation No. 36, Control of Emissions from Organic Solvent Cleaning, effective April 8, 1996, last amended October 9, 2008, and Rhode Island Air Pollution Control, General Definitions Regulation, effective July 19, 2007, last amended October 9, 2008. Incorporation By Reference approved for § 63.99(a)(40)(ii) of subpart E of this part.

* * * * *

Subpart E—[Amended]

■ 3. Section 63.99 is amended by adding paragraph (a)(40) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(40) Rhode Island.

(i) [Reserved]

(ii) Affected area sources within Rhode Island must comply with the Rhode Island Regulations Applicable to Hazardous Air Pollutants (incorporated by reference as specified in § 63.14) as described in paragraph (a)(40)(ii)(A) of this section:

(A) The material incorporated into the Rhode Island Department of Environmental Management regulations at Air Pollution Control Regulation No. 36, Control of Emissions from Organic Solvent Cleaning, effective April 8, 1996, last amended October 9, 2008, and Rhode Island Air Pollution Control, General Definitions Regulation, effective July 19, 2007, last amended October 9, 2008, pertaining to organic solvent cleaning facilities in the State of Rhode Island jurisdiction, and approved under the procedures in § 63.93 to be implemented and enforced in place of

the Federal NESHAP for Halogenated Solvent Cleaning Facilities (subpart T of this part), effective as of May 3, 2007, except for continuous web cleaning machines as defined in § 63.461.

(1) Authorities not delegated.

(i) Rhode Island is not delegated the Administrator's authority to implement and enforce Rhode Island regulations at Air Pollution Control Regulation No. 36 and Rhode Island General Definitions Regulation in lieu of those provisions of subpart T of this part which apply to continuous web cleaning machines as defined in § 63.461.

(ii) [Reserved]

(2) [Reserved]

(B) [Reserved]

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1065

Engine-Testing Procedures

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 1000 to End, revised as of July 1, 2009, on page 587, in § 1065.340, reinstate paragraph (f)(6)(iii) to read as follows:

§ 1065.340 Diluted exhaust flow (CVS) calibration.

* * * * *

(f) * * *

(6) * * *

(iii) The mean temperature at the venturi inlet, \bar{T}_{in} .

* * * * *

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