

## 2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

## 3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

## 4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

## 5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

## VII. List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 3, 1995.

**Charles E. Sandberg,**

*Acting Assistant Director, Western Support Center.*

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

### PART 936—OKLAHOMA

1. The authority citation for part 936 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended by adding paragraph (o) to read as follows:

#### § 936.15 Approval of regulatory program amendments.

\* \* \* \* \*

(o) Revisions to the following provisions of the Oklahoma Coal Rules and Regulations concerning the small operator assistance program, as submitted to OSM on September 14, 1994, and as revised on December 20, 1994, are approved effective March 10, 1995:

Oklahoma Administrative Code (OAC) 460:20-35-1, definitions;

OAC 460:20-35-3 (a)(2), (a)(2) (A), (B), and (D), and (b), eligibility for assistance;

OAC 460:20-35-6 (a), (b) (1) through (6), and (d), program services and data requirements; and

OAC 460:20-35-7 (a), (a) (2) and (3), applicant liability.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IL 12-36-6669; FRL-5167-9]

#### Approval and Promulgation of Implementation Plan; Illinois

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On June 29, 1990, the United States Environmental Protection Agency (USEPA) promulgated a Federal Implementation Plan (FIP) which contains stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for

emission sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry and Will. Included in USEPA's rules was a requirement that major non-Control Technique Guideline (CTG) sources be subject to 40 CFR 52.741 (s), (u), (v), (w), or (x). The major non-CTG limits in 40 CFR 52.741(x) (would, if not for this rule) apply to the hot and cold aluminum rolling operations at the Reynolds Metals Company's (Reynolds) McCook Sheet & Plate Plant in McCook, Illinois (in Cook County). On August 19, 1991, Reynolds requested that USEPA reconsider the application of 40 CFR 52.741(x) to its facility in McCook, Illinois, and on October 17, 1991, Reynolds requested that USEPA promulgate site-specific RACT limits for its hot and cold rolling mills. USEPA agreed to reconsider the RACT control requirements for Reynolds' aluminum rolling operations and, on September 22, 1993, proposed site-specific RACT control requirements for these operations. In this rule the USEPA is promulgating these site-specific RACT limits.

**EFFECTIVE DATE:** This rule is effective April 10, 1995.

**ADDRESSES:** The docket for this action (Docket No. A-92-67), which contains the public comments, is located for public inspection and copying at the following addresses. A reasonable fee may be charged for copying. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Rachel Romine (202/245-3639) before visiting the Washington, D.C. location.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 18th Floor, Southwest, 77 West Jackson Blvd., Chicago, Illinois 60604.

Office of Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, Docket No. A-92-67, Room M1500, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Steven Rosenthal, Regulation Development Branch, USEPA Region 5, (312) 886-6052, at the Chicago address indicated above.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Part D of the Clean Air Act (Act), 42 U.S.C. 7401 *et seq.*, requires that states adopt rules for major non-CTG<sup>1</sup> sources.

<sup>1</sup> Control techniques guideline documents have been prepared by USEPA to assist States in defining RACT for the control of VOC emissions from

This requirement is discussed in the April 4, 1979, General Preamble for Proposed Rulemaking (44 FR 20372). On July 21, 1988, Illinois submitted a rule which covered major (100 tons per year or more) non-CTG VOC sources. This rule was disapproved by USEPA on June 29, 1990 (55 FR 26814), primarily because its applicability provisions were inconsistent with USEPA requirements. Among other defects, Illinois' non-CTG rule did not regulate the rolling operations at Reynolds' McCook facility.

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin against USEPA and sought a judgment that USEPA, among other requested actions, be required to promulgate revisions to the Illinois ozone SIP for northeastern Illinois. *Wisconsin v. Reilly*, No. 87-C-0395, E.D. Wis.

On May 25, 1988, USEPA released a guidance document titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (the "Blue Book"). The purpose of this VOC guidance document was to identify deficiencies which must be removed from existing State Implementation Plans (SIP) and disapproved in any proposed SIPs. This document specifies USEPA's non-CTG RACT requirements.

On January 18, 1989, the District Court in *Wisconsin v. Reilly* ordered that USEPA promulgate an ozone implementation plan for northeastern Illinois within 14 months of the date of that order. On September 22, 1989, USEPA and the States of Illinois and Wisconsin signed a settlement agreement in an attempt to substitute a more acceptable schedule for promulgation of a plan for the control of ozone in the Chicago area. On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed, pending the performance of the settlement agreement.

The settlement agreement called for the use of a more sophisticated air quality model, allowed more time for USEPA to promulgate a FIP using the model,<sup>2</sup> and requires interim emission

existing stationary sources. Each individual CTG recommends a presumptive norm of control considered reasonably available to a specific source category.

<sup>2</sup> USEPA is no longer required to promulgate a FIP using the modeling results because the settlement agreement relieves USEPA of such responsibility in the event that amendments to the Act establish new deadlines for States to achieve attainment of the ozone standard. The primary responsibility for developing any remaining revisions to Illinois' SIP belongs to Illinois because

reductions while the modeling study is being performed. The interim emission reductions consist of Federal promulgation of required VOM<sup>3</sup> RACT rules for Illinois to remedy deficiencies in its State regulations.

On December 27, 1989, USEPA proposed major non-CTG rules consistent with its May 25, 1988, VOC guidance (54 FR 53080). The non-CTG rules proposed for promulgation by USEPA covered Reynolds' aluminum rolling operations. On June 29, 1990, USEPA took final action to promulgate major non-CTG rules. 55 FR 26814.

On August 29, 1990, Reynolds filed a petition for review of USEPA's June 29, 1990, rulemaking in the United States Court of Appeals for the Seventh Circuit. Nine other parties filed petitions for review, which were ultimately consolidated by the Court as *Illinois Environmental Regulatory Group ("IERG") et al. v. Reilly*, No. 90-2778.

On August 19, 1991, Reynolds requested that USEPA reconsider the FIP rule as it applies to its aluminum rolling operations and on October 17, 1991, Reynolds requested the adoption of site-specific RACT limits for its hot and cold rolling mills. On November 20, 1991, USEPA announced its intention to reconsider its non-CTG rules as they apply to Reynolds, and issued a three-month stay of the applicable rule pending reconsideration, pursuant to section 307(d)(7)(B) of the Act, 42 U.S.C. 7607(d)(7)(B). 56 FR 58501. In addition, on November 20, 1991, USEPA proposed to extend the three-month stay, but only as long as necessary to complete reconsideration. 56 FR 58528. On June 23, 1992, USEPA extended the stay beyond the 3-month period, for as long as necessary to complete reconsideration of its non-CTG rules for Reynolds' aluminum rolling operations. 57 FR 27935.

As a result of USEPA's decision to reconsider the Federal rules as applied to Reynolds, USEPA reviewed information regarding Reynolds' rolling operations and, on September 22, 1993 (58 FR 49254), proposed to promulgate site-specific RACT control requirements for Reynolds' aluminum rolling operations. On October 20, 1993, Reynolds submitted comments in response to the proposed rule.

the Clean Air Act Amendments of 1990 establish such new deadlines.

<sup>3</sup> The State of Illinois uses the term "VOM" in its regulations. For the purposes of this RACT analysis, this term is considered equivalent to USEPA's term "VOC."

## II. Discussion of Reynolds' Comments

Reynolds stated in its comments on the proposal that it supports USEPA's promulgation of the site-specific RACT control requirements for its aluminum rolling operations. However, it requested "the following minor changes to the proposed rule to better reflect our current operations." These comments were clarified in a July 20, 1994, discussion with the author of Reynolds' comments. Reynolds' comments and USEPA's analysis of these comments follow.

A. Reynolds stated that the preamble should be made consistent with the regulatory language regarding lubricant cooling requirements. Reynolds requested that the part of the preamble titled "RACT Demonstration for Cold Rolling Operations" be modified by stating that "\* \* \* RACT should reasonably require that sump oil temperatures be maintained at 150 degrees F or less." instead of "\* \* \* RACT should reasonably require that sump oil temperatures be maintained at 150 degrees F." USEPA agrees with the point of Reynolds' comment and clearly intended for 150 degrees F to be a maximum temperature because VOC emissions are reduced at lower temperatures. The regulation that USEPA is promulgating for Reynolds is consistent with a maximum temperature requirement of 150 degrees F.

B. In its notice of proposed rulemaking (NPR), USEPA specified the use of "severely hydrotreated mineral seal oil" (a lubricant) for Reynolds' cold rolling mills. USEPA further specified that the initial and final boiling points of the lubricant must be between 460 degrees F and 635 degrees F, as determined by a distillation range test using ASTM method D86-90.

Reynolds requested that it be allowed some flexibility in the specification of the cold rolling lubricant type that is allowed in case improved lubricants become available. More specifically, it requested the ability to use a low vapor pressure (as determined by the distillation range test discussed above) organic lubricant and not be limited to the use of "severely hydrotreated mineral seal oil." Reynolds' request is reasonable because the lubricant emissions are a function of the initial boiling point and it has not requested that the initial boiling point of 460 degrees F be changed. This lubricant RACT control requirement is, therefore, revised in this final rule, consistent with Reynolds' request.

C. The proposed rule limits the inlet sump rolling lubricant temperature to 150 degrees F for Reynolds' cold rolling

mills and 200 degrees F for its hot rolling mills. In its comments Reynolds states that, in some cases, the lubricant is heated or cooled after the sump but prior to the lubricant nozzles. Thus, measuring temperature in the inlet sump may not always be representative.

USEPA agrees with Reynolds that the temperature of the inlet lubricant supply measured after the inlet sump would be more reflective of the as-applied lubricant temperature and, therefore, the final rule allows temperature measurement after the inlet sump.

D. The proposed rule requires chart recorders for coolant temperature monitoring and coolant temperature recording charts to satisfy recordkeeping requirements. Although Reynolds has installed chart recorders, it would like the option of moving to an electronic data system in the future. USEPA agrees that the use of electronic temperature recorders is an acceptable alternative, and could greatly facilitate data review. Therefore, the final rule allows use of electronic data recorders.

### III. Specific RACT Control Requirements and Test Methods

#### A. Cold Rolling Mills

RACT for the aluminum sheet cold rolling mills Nos. 1 and 7 at the McCook Sheet & Plate plant is the use of a low vapor pressure (as determined by distillation range testing) organic lubricant and a maximum inlet supply rolling lubricant temperature of 150°F. Compliance shall be demonstrated by a monthly distillation range analysis of a grab rolling lubricant sample from each operating mill and daily rolling lubricant temperature readings in the inlet supply feeding each mill.

All incoming shipments of lubricant for the Nos. 1 and 7 cold mills must be sampled and each sample must undergo a distillation range test using ASTM method D86-90, "Standard Test Method for Distillation of Petroleum Products." The initial and final boiling points of the lubricant must be between 460°F and 635°F. Also, for the cold mills, samples of the as-applied lubricants must be taken on a monthly basis to verify, using ASTM method D86-90, that the boiling points are between 460°F and 635°F.

#### B. Hot Rolling Mills

RACT for the aluminum sheet and plate hot rolling mills, 120 inch, 96 inch, 80 inch and 145 inch mills, at the McCook Sheet & Plate plant is the use of an oil/water emulsion (rolling lubricant) not to exceed 15% by weight of petroleum-based oil and additives

and a maximum inlet supply rolling lubricant temperature of 200°F. Compliance shall be demonstrated by a monthly analysis of a grab rolling lubricant sample from each operating mill and daily temperature readings in the inlet supply feeding each mill.

The lubricants at each hot mill must be sampled and tested, for the percentage of oil and water, on a monthly basis. ASTM Method D95-83 (Reapproved 1990), "Standard Test Method For Water in Petroleum Products and Bituminous Materials by Distillation", shall be used to determine the percent by weight of petroleum-based oil and additives.

#### C. Coolant Temperature Monitoring

Coolant temperatures shall be monitored at all of the rolling mills by use of thermocouple probes and chart recorders or electronic data recorders. The probes sense the coolant temperatures at the supply side to the mills.

#### D. Recordkeeping

All distillation test results for cold mill lubricants, all percent oil test results for hot mill lubricants, all coolant temperature recording charts and/or temperature data obtained from electronic data recorders, and all oil/water emulsion formulation records shall be kept on file, and be available for inspection by USEPA, for three years.

### IV. Compliance Date

A compliance date of four months from promulgation is required so that Reynolds has adequate time to comply with revised recordkeeping requirements.

### V. Summary and Conclusions

This rule establishes site-specific RACT requirements, revised recordkeeping requirements, and revised test methods for Reynolds' aluminum rolling mills. These requirements are consistent with USEPA's notice of proposed rulemaking as modified by Reynolds' comments. The use of lower VOC emitting lubricants and lubricant temperature control has been previously approved by USEPA as RACT for another aluminum rolling mill (55 FR 33904). Compliance with the revised emission limits and recordkeeping requirements must be achieved four months from USEPA's publication of this rule. Also, as proposed, the USEPA is withdrawing the June 23, 1992, stay.

USEPA is taking this action pursuant to its authority under section 110(k)(6) of the Act to correct through rulemaking

any plan or plan revision.<sup>4</sup> The USEPA is interpreting this provision to authorize USEPA to make corrections to a promulgated regulation when it is shown to USEPA's satisfaction that the information made available to USEPA at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and other information persuasively supports a change in the regulation. See 57 FR 6762 at 6763 (November 30, 1992). In this case, the information made available to USEPA during the rulemaking for Reynolds was clearly inadequate for the development of a site-specific RACT determination.<sup>5</sup>

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA 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, USEPA may certify that the rule will not have a significant 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 involves only one source, Reynolds Metals Company. (Reynolds is not a small entity.) Therefore, USEPA certifies that this RACT promulgation does not have a significant impact on a substantial number of small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of

<sup>4</sup> Since USEPA is taking this action pursuant to section 110(k)(6), USEPA believes that section 193 of the Act (the savings clause) is inapplicable. By its terms, section 110(k)(6) does not require any additional submission or evidence. Section 193 requires an assurance of equivalency for any revision. In order to provide for equivalency, the State would need to provide for compensating reductions. USEPA believes that this conflict should be resolved concluding that section 110(k)(6) is not constrained by the savings clause requirement of equivalent reductions. USEPA believes that the state and the sources within the state should not have to bear the burden of additional reductions where USEPA lacked important site-specific information at the time of an initial promulgation. This is particularly true in the case of FIPs, where USEPA takes the lead in developing the regulations and is not merely acting on state-submitted regulations.

<sup>5</sup> As discussed earlier, USEPA was required to promulgate the June 29, 1990 FIP regulations under the tight timeframe ordered by the Court in *Wisconsin v. Reilly*.

judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: February 28, 1995.

**Carol M. Browner,**  
Administrator.

For the reasons set out in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

#### Subpart O—Illinois

Section 52.741 is amended by adding a new paragraph (x)(7) and revising paragraph (z)(4) as follows:

**§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry, and Will Counties.**

\* \* \* \* \*

(x) \* \* \*

(7) The control, recordkeeping, and monitoring requirements in this paragraph apply to the aluminum rolling mills at the Reynolds Metals Company's McCook Sheet & Plate Plant in McCook, Illinois (Cook County) instead of the control requirements and test methods in the other parts of paragraph (x), and the recordkeeping requirements in paragraph (y) of this section. All of the following requirements must be met by Reynolds on and after July 7, 1995.

(i) Only organic lubricants with initial and final boiling points between 460 degrees F and 635 degrees F, as determined by a distillation range test using ASTM method D86–90, are allowed to be used at Reynolds' aluminum sheet cold rolling mills numbers 1 and 7. All incoming shipments of organic lubricant for the number 1 and 7 mills must be sampled and each sample must undergo a distillation range test to determine the initial and final boiling points using ASTM method D86–90. A grab rolling lubricant sample shall be taken from each operating mill on a monthly basis and each sample must undergo a distillation range test, to determine the

initial and final boiling points, using ASTM method D86–90.

(ii) An oil/water emulsion, with no more than 15 percent by weight of petroleum-based oil and additives, shall be the only lubricant used at Reynolds' aluminum sheet and plate hot rolling mills, 120 inch, 96 inch, 80 inch, and 145 inch mills. A grab rolling lubricant sample shall be taken from each operating mill on a monthly basis and each sample shall be tested for the percent by weight of petroleum-based oil and additives by ASTM Method D95–83.

(iii) The temperature of the inlet supply of rolling lubricant for aluminum sheet cold rolling mills numbers 1 and 7 shall not exceed 150 °F, as measured at or after (but prior to the lubricant nozzles) the inlet sump. The temperature of the inlet supply of rolling lubricant for the aluminum sheet and plate hot rolling mills, 120 inch, 96 inch, 80 inch, and 145 inch mills shall not exceed 200 °F, as measured at or after (but prior to the lubricant nozzles) the inlet sump. Coolant temperatures shall be monitored at all the rolling mills by use of thermocouple probes and chart recorders or electronic data recorders.

(iv) All distillation test results for cold mill lubricants, all percent oil test results for hot mill lubricants, all coolant temperature recording charts and/or temperature data obtained from electronic data recorders, and all oil/water emulsion formulation records, shall be kept on file, and be available for inspection by USEPA, for three years.

\* \* \* \* \*

(z) \* \* \*

(4) 40 CFR 52.741(e), only as it applies to Riverside Laboratories Incorporated, is stayed from June 12, 1992, until USEPA completes its reconsideration for Riverside.

\* \* \* \* \*

[FR Doc. 95–6002 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–P

#### 40 CFR Part 63

[FRL–5170–1]

#### Approval of Delegation of Authority; National Emission Standards for Hazardous Air Pollutants; Coke Oven Batteries; Utah

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is granting delegation of authority to the State of Utah to implement and enforce the National

Emission Standards for Coke Oven Batteries. The Governor of Utah requested delegation from EPA Region VIII in a letter dated August 18, 1994. EPA has reviewed the application and has reached a decision that the State of Utah has satisfied all of the requirements necessary to qualify for approval of delegation. The effect of this action allows the State of Utah to implement and enforce Clean Air Act standards for coke oven batteries.

**DATES:** This action is effective May 9, 1995 unless adverse comments are received by April 10, 1995. If the effective date is delayed due to comments, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be submitted to Patricia D. Hull, Director, Air, Radiation & Toxics Division, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 and concurrently to Russell A. Roberts, Director, Division of Air Quality, Department of Environmental Quality, 1950 West North Temple, Salt Lake City, Utah 84114–4820. A docket containing State of Utah's submittal is available for public inspection during normal business hours at the above locations.

**FOR FURTHER INFORMATION CONTACT:** T. Scott Whitmore at (303) 293–1758.

#### SUPPLEMENTARY INFORMATION:

##### Background

The 1990 Amendments to the Clean Air Act provide a congressional mandate to establish emission standards regulating coke oven emissions. Under section 112(d)(8), the EPA must promulgate standards based on specified minimum requirements and work practice regulations. On October 27, 1993, the EPA met this requirement by promulgating in the **Federal Register** (58 FR 57534) the national standards for coke oven emissions. The standard applies to all existing coke oven batteries, including by-product and nonrecovery coke oven batteries, and to all new coke oven batteries constructed on or after December 4, 1992.

On August 18, 1994 the Governor of Utah requested delegation of authority to implement and enforce 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries. Prior to this request, the State of Utah implemented the criteria for delegation as described in 40 CFR 63.91(b), *Criteria common to all approval options*. Criteria for approval to delegate include a written finding by the State Attorney General that the State has the necessary legal authority to implement and