

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2005-IL-0001; FRL-8290-5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving volatile organic compound (VOC) rules for Formel Industries, Inc. (Formel) as a revision to the Illinois State Implementation Plan (SIP) for ground level ozone. On December 12, 2001 EPA approved an adjusted standard for Formel. At that time Formel, a flexographic printer in Cook County, Illinois, was given an adjusted standard because Illinois determined it was not technically feasible or economically reasonable for Formel to meet the VOC control requirements for flexographic printers. Illinois is now withdrawing the adjusted standard because Formel has installed a catalytic oxidizer that allows it to meet the VOC control requirements. This control device will reduce VOC emissions from Formel. VOC is an ozone precursor, so the VOC emissions reduction from Formel should help reduce ozone levels in Cook County, Illinois.

DATES: This direct final rule will be effective May 22, 2007, unless EPA receives adverse comments by April 23, 2007. 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.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2005-IL-0001, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: mooney.john@epa.gov.
3. *Fax*: (312) 886-5824.
4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special

arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2005-IL-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *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 *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.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886-6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR 18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, *rau.matthew@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Is EPA Approving?
- II. What Is the Background for This Action?
- III. What Is EPA's Analysis of the State Submission?
- IV. What Are the Environmental Effects of This Action?
- V. What Action Is EPA Taking Today?
- VI. Statutory and Executive Order Reviews

I. What Is EPA Approving?

EPA is approving a revision of the Illinois State Implementation Plan (SIP). This SIP revision removes an adjusted standard for Formel from 35 Illinois Administrative Code (IAC) Section 218.401(a), (b), and (c), VOC control requirements for Chicago area printers. Formel has installed a catalytic oxidizer. Now that Formel has a control device installed, it can comply with the VOC control requirements. As a result, Illinois withdrew the adjusted standard for Formel and EPA is approving the withdrawal of the adjusted standard. Formel is required to operate a capture system and a control device that provides an overall VOC reduction of at least 60 percent. The control device must reduce captured VOC emissions by 90 percent or more.

II. What Is the Background for This Action?

Formel is a flexographic printer in Cook County, Illinois. Formel has potential VOC emissions of 80 tons per year making it subject 35 IAC 218.401(a), (b), and (c). The VOC rules, 35 IAC 218.401, require printers to either use water-based compliant inks or to use a capture system and a control device. Formel prints food packaging on high slip plastic which precluded the use of compliant inks. In 2000, adding a control device was determined to not be economically reasonable. Formel requested and was granted an adjusted standard because it could not practically comply with the flexographic printing rule. Conditions in the adjusted standard require that the adjusted standard must be revised or withdrawn if Formel determines that it is feasible to use compliant inks or a control device. Formel has installed a catalytic oxidizer and is now complying with the flexographic printing rules. Formel must

reduce VOC emissions by at least 60 percent. The control device must destroy at least 90 percent of captured VOC emissions. The adjusted standard required Formel to buy allotments from other companies to offset its emissions. The VOC emission reductions from the control device at a minimum will be the same as achieved by buying allotments. Catalytic oxidizers operate more efficiently as the VOC concentration increase. Thus, Formel has incentive to maximizing its capture efficiency. The adjusted standard for Formel was terminated on April 15, 2004 by the Illinois Pollution Control Board.

III. What Is EPA's Analysis of the State Submission?

Illinois provided the adjusted standard withdrawal notice. The state also provided background documents on the adjusted standard. Formel will comply with 35 IAC 218.401 with the adjusted standard being removed. This rule applies to flexographic printers in the Chicago ozone nonattainment area. The catalytic oxidizer Formel is now using should control the VOC emissions at least as much as the reductions from other sources that produced the allotments Formel purchased.

IV. What Are the Environmental Effects of This Action?

The Formel facility is located in Cook County, Illinois, which is part of the Chicago Moderate 8-hour ozone nonattainment area.

Formel will now comply with the flexographic printing rule with its installed control device. Formel is reducing its VOC emissions, a precursor to ozone formation, with the control device.

Ozone decreases lung function, causing chest pain and coughing. It can aggravate asthma, reduce lung capacity, and increase risk of respiratory diseases like pneumonia and bronchitis. Children playing outside and healthy adults who work or exercise outside also may be harmed by elevated ozone levels. Ozone also reduces vegetation growth in economically important agricultural crops and wild plants. VOC emissions will not increase, so ozone formation should not increase due to the Formel revision.

V. What Action Is EPA Taking Today?

EPA is approving revisions to the Illinois SIP that remove the adjusted standard for Formel. Formel has installed a control device and is complying with the flexographic printing rule.

We are publishing this action without prior proposal because we view this as

a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective May 22, 2007 without further notice unless we receive relevant adverse written comments by April 23, 2007. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective May 22, 2007.

VI. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies 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.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as

described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: February 28, 2007.

Steve Rothblatt,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of 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 *et seq.*

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(176) to read as follows:

§ 52.720 Identification of plan.

* * * * *
(c) * * *

(176) On June 14, 2004, Illinois submitted revisions to volatile organic compound rules for Formel Industries, Incorporated in Cook County, Illinois. The revisions consist of withdrawing an adjusted standard to the Flexographic Printing Rule. Formel Industries has installed a control device and is complying with the Flexographic Printing Rule.

(i) Incorporation by reference.

An April 15, 2004, Supplemental Opinion and Order of the Illinois Pollution Control Board AS 00-13, terminating Formel's previously issued (January 18, 2001) adjusted standard from the Flexographic Printing Rule, effective April 15, 2004.

[FR Doc. E7-5359 Filed 3-22-07; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 411 and 424

[CMS-1810-RCN]

RIN 0938-AK67

Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relations (Phase II); Continuation of Effectiveness and Extension of Timeline for Publication of Final Rule

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule; continuation of effectiveness and extension of timeline for publication of final rule.

SUMMARY: This notice announces the continuation of effectiveness of a Medicare interim final rule and the extension of the timeline for publication of the final rule. This notice is issued in accordance with section 1871(a)(3)(C) of the Social Security Act (the Act), which allows an interim final rule to remain in effect after the expiration of the timeline specified in section 1871(a)(3)(B) of the Act if the Secretary publishes a notice of continuation prior to the expiration of the timeline.

DATES: *Effective Date:* This notice is effective on March 23, 2007.

FOR FURTHER INFORMATION CONTACT: Lisa Ohrin, (410) 786-4565.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1871(a)(3)(A) of the Social Security Act (Act) requires the

Secretary, in consultation with the Director of the Office of Management and Budget (OMB), to establish a regular timeline for the publication of a final rule based on the previous publication of a proposed rule or an interim final rule. In accordance with section 1871(a)(3)(B) of the Act, such regular timeline may vary among different final rules, based on the complexity of the rule, the number and scope of the comments received, and other relevant factors. The timeline for publishing the final regulation; however, cannot exceed 3 years from the date of publication of the proposed or interim final rule, unless there are exceptional circumstances. After consultation with the Director of OMB, we published a notice in the **Federal Register** on December 30, 2004 (69 FR 78442) establishing a general 3-year timeline for publishing final rules after the publication of a proposed or interim final rule.

Section 1871(a)(3)(C) of the Act states that a Medicare interim final rule shall not continue in effect if the final rule is not published before the expiration of the regular timeline, unless the Secretary publishes at the end of the regular timeline a notice of continuation that includes an explanation of why the regular timeline was not met. Upon publication of such a notice, the timeline for publishing the final rule is extended for 1 year.

II. Notice of Continuation

On March 26, 2004, we published an interim final rule with comment period (the "Phase II" rule), which set forth the physician self-referral prohibition and applicable definitions, interpreted various statutory exceptions to the prohibition, and created additional regulatory exceptions for arrangements that do not pose a risk of program or patient abuse (69 FR 16054). Phase II also responded to comments received from an earlier interim final rule (the "Phase I" rule) regarding the physician self-referral prohibition, which was published on January 4, 2001 (66 FR 856). Under the previously established regular timeline for the publication of a final rule, we must respond to public comments on the Phase II rule in a final rule (the "Phase III" rule) published no later than March 26, 2007.

This notice announces an extension of the timeline for publication of the Phase III physician self-referral final rule and the continuation of effectiveness of the Phase II interim final rule. We are not able to meet the 3-year timeline for publication because we received extensive public comments requesting clarification of and revisions to the