

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[FRL-7225-4]

RIN 2060-AJ09 and 2060-AJ11

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a previously published proposed rule to stay the national emission standards for hazardous air pollutants (NESHAP) for secondary aluminum production, as applied to aluminum die casters and aluminum foundries. This document also announces that we do not intend to take any further action with respect to an advance notice of proposed rulemaking in which we announced our intention to remove aluminum die casters and aluminum foundries from the secondary aluminum NESHAP and to promulgate a separate NESHAP for these facilities. We published these actions pursuant to a settlement agreement with the petitioners in *American Foundrymen's Society et al. v. EPA*, Civ. No. 00-1208 (D.C. Cir.), a case seeking judicial review of the secondary aluminum NESHAP. That settlement agreement has now been entirely supplanted by a new agreement to propose certain amendments to the existing standards.

DATES: The proposed rule to stay the applicability of 40 CFR part 63, subpart RRR, is withdrawn as of June 14, 2002.

ADDRESSEES: *Docket.* Docket No. A-2000-31, containing information pertaining to the advance notice of proposed rulemaking, and Docket No. A-2000-35, containing information pertaining to the proposed rule to stay the applicability of subpart RRR, are available for public inspection between 8:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays, at the following address: U.S. EPA, Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, DC 20460, telephone (202) 260-7548. The dockets are located at the above address in room M-1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. John Schaefer, U.S. EPA, Minerals and

Inorganic Chemicals Group, Emission Standards Division (Mail Code C504-05), Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone number (919) 541-0296, electronic mail address, schaefer.john@epa.gov.

SUPPLEMENTARY INFORMATION: On March 23, 2000 (65 FR 15690), we promulgated the NESHAP for secondary aluminum production (40 CFR part 63, subpart RRR) under the authority of section 112(d) of the Clean Air Act (CAA).

After promulgation of the NESHAP for secondary aluminum production, a petition for judicial review of the standards was filed in the D.C. Circuit Court of Appeals by the American Foundrymen's Society, the North American Die Casting Association, and the Non-Ferrous Founders' Society (*American Foundrymen's Society et al. v. U.S. EPA*, Civ. No. 00-1208 (D.C. Cir.)).

The *Foundrymen's* case presented issues concerning the applicability of subpart RRR to aluminum die casters and aluminum foundries which were considered during the initial rulemaking development. Because aluminum die casters and foundries sometimes conduct the same type of operations as other secondary aluminum producers, we originally intended to apply the standards to these facilities, but only in those instances where they conduct such operations. However, representatives of the affected facilities argued that they should not be considered to be secondary aluminum producers and should be wholly exempt from the rule. During the rulemaking development, we decided to permit die casters and foundries to melt contaminated internal scrap without being considered to be secondary aluminum producers, but their representatives insisted that too many facilities would still be subject to the NESHAP. After promulgation, we announced that we would withdraw the standards as applied to die casters and foundries and develop separate MACT (maximum achievable control technology) standards for these facilities.

After the *Foundrymen's* case was filed, we negotiated an initial settlement agreement which established a process to effectuate our commitment to develop new MACT standards. In that first settlement, EPA agreed that it would stay the current standards for these facilities, collect comprehensive data to support alternate standards, and promulgate alternate standards. We then

published a proposed rule to stay the applicability of the standards for aluminum die casters and aluminum foundries (65 FR 55491, September 14, 2000) and an advance notice of proposed rulemaking (ANPR) announcing our intent to develop new standards for these facilities (65 FR 55489, September 14, 2000).

During the subsequent process of preparing for information collection, the petitioners concluded that the present rule was not as sweeping in applicability as they had feared, and the parties then agreed to explore an alternate approach to settlement based on clarifications of the current standards. We subsequently reached agreement with the *Foundrymen's* petitioners on a new settlement which entirely supplants the prior settlement. The current settlement requires us to propose certain amendments clarifying and modifying the existing secondary aluminum standards, rather than developing and promulgating new standards for aluminum die casters and aluminum foundries.

As required by section 113(g) of the CAA, we provided notice and an opportunity for comment concerning the *Foundrymen's* settlement (67 FR 9972, March 5, 2002). We received three adverse comments on the settlement. After reviewing these comments, we decided to proceed with settlement. A copy of these comments and of our responses to them is available in Docket No. A-2002-06 for proposed rule amendments to the existing standards, and in Docket No. A-2002-05 for a direct final rule and parallel proposal to effectuate the new settlement, all of which are being publishing elsewhere in today's **Federal Register**.

Pursuant to the new settlement agreement, we are today withdrawing the proposed rule to stay the applicability of 40 CFR part 63, subpart RRR, for aluminum die casting facilities and aluminum foundries which we published on September 14, 2000. In addition, we are announcing that we will take no further action with respect to the ANPR announcing our intention to develop separate NESHAP for aluminum die casters and foundries, which we also published on September 14, 2000.

Dated: May 31, 2002.

Christine Todd Whitman,
Administrator.

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