

October 17, 2002, and January 22, 2003. Indiana has replaced this rule with another regulation which incorporates by reference current Federal requirements into the Indiana Administrative Code. The rule being removed applies to a single source, Aluminum Company of America (ALCOA), located in Warrick County. Because ALCOA remains subject to more stringent Federal requirements, EPA approval should not result in an adverse impact on air quality.

**DATES:** This direct final rule is effective on May 12, 2003, without further notice unless EPA receives adverse written comments by April 10, 2003. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the plan revision request is available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph Cano at (312) 886-6036 before visiting the Region 5 Office.)

**FOR FURTHER INFORMATION CONTACT:** Randolph Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR-18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886-6036.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we”, “us”, or “our” is used we mean EPA.

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### I. What Is the background for This Action?

On October 17, 2002, Lori F. Kaplan, Commissioner of the Indiana Department of Environmental Management, submitted to EPA a requested amendment to the Indiana plan. Indiana's request was clarified in a January 22, 2003, letter to EPA. This amendment consisted of revisions to title 326 of the Indiana Administrative Code (326 IAC) in which the Indiana Air Pollution Control Board repealed 326

IAC 11-5, regulating fluoride emissions from existing aluminum plants. Indiana repealed this rule on June 5, 2002, and filed that action with the Secretary of State on August 28, 2002. It became effective on September 27, 2002, and was published in the *Indiana Register* on October 1, 2002 (26 IR 10).

The State originally adopted the rule regulating fluoride emissions from aluminum plants in 1981 as a standard of performance for existing sources under section 111(d) of the Clean Air Act (Act). Indiana submitted the rule to EPA for approval on January 21, 1981. EPA approved the State submittal as satisfying section 111(d) requirements and incorporated it into the Plan on November 27, 1981 (46 FR 57893).

On October 7, 1997, EPA adopted a more stringent rule controlling emissions from primary aluminum plants, under its National Emission Standards for Hazardous Air Pollutants (NESHAP) program. See 40 CFR part 63, subpart LL. (62 FR 52384) The State adopted these newer, more stringent NESHAP requirements using Incorporation by Reference procedures on May 21, 2002. See 326 IAC 20-24. Because some of the control and monitoring requirements in 326 IAC 11-5 are different from those in the Federal NESHAP rules, the State repealed 326 IAC 11-5 on June 5, 2002. In a January 22, 2003, letter, the State clarified that it intended to replace 326 IAC 11-5 the control strategy in the original plan with the NESHAP requirements it incorporated by reference in the IAC as 326 IAC 20-24.

### II. What Changes Are Being Made to the State Rule?

Rule 326 IAC 11-5 is being removed from the Indiana plan. As a result, ALCOA, the only source which had been subject to this State rule, will continue to be subject to 326 IAC 20-24, which incorporates the Federal NESHAP into the Indiana Administrative Code. On January 22, 2003, the State clarified its intent to replace rule 326 IAC 11-5 as the control strategy in its 111(d) plan for controlling fluoride emissions from existing aluminum plants with the NESHAP for controlling fluoride emissions from primary aluminum plants which was promulgated by EPA on October 7, 1987 (62 FR 52384).

### III. What Is EPA's Rulemaking Action?

EPA is approving the removal of 326 IAC 11-5 from the Indiana plan and the replacement of this Rule as the emissions control strategy with the Federal NESHAP promulgated October 7, 1997 (62 FR 52384). Because the only

subject source remains obligated to comply with more stringent NESHAP requirements, EPA approval of this change should not result in an adverse impact on air quality.

EPA is publishing this action without prior proposal because we view this as a noncontroversial revision and we anticipate no adverse comments.

However, in a separate document in this *Federal Register* publication, EPA is proposing to approve the State's Plan revision request should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by April 10, 2003. Should EPA receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective on May 12, 2003.

### IV. 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*

For this reason, 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 regulations as meeting Federal requirements and imposes no additional requirements beyond those imposed by state regulations. 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 (Public Law 104-4).