

address them the first time that it reopens the rules.

The Federal definition of "major modification" excludes from a physical change or a change in the method of operation the use by a stationary source of an alternative fuel or raw material which the source was capable of accommodating before January 1, 1975, unless the change is prohibited under any permit condition established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 40 CFR 51.166. 40 CFR Subpart I contains requirements pertaining to minor new source review permits. Indiana's rule 326 IAC 2-2-1(x)(2)(E)(i) provides that the use of an alternative fuel or raw material is a change in the method of operation if prohibited by a condition of a permit issued pursuant to the authority of the PSD or major new source review programs, but does not address other new source review provisions. The omission of the reference to minor new source review provisions in 326 IAC 2-2-1(x)(2)(E)(i) was inadvertent. Indiana is not aware of any new source review permits that were not issued pursuant to PSD or major new source review authority that contain restrictions on the use of an alternative fuel or raw material; however, Indiana agrees to address this inadvertent omission within one year of the effective date of this conditional approval.

II. 326 IAC 2-2-6: Increment Consumption

326 IAC 2-2-6(a) only allows a source or major modification to consume 80% of the maximum increase allowed in the 40 CFR 51.166(c). The State's increment consumption requirements are more stringent than the Federal rule, and are therefore approvable.

III. 326 IAC 2-2-12: Permit Rescission

326 IAC 2-2-12 provides that sources may request that IDEM rescind requirements in permits issued prior to January 1, 2002. The comparable federal rule, 40 CFR 52.21(w)(2), provides for rescission of terms from permits issued prior to August 7, 1987. The Federal provision relates to the transition between Total Suspended Particulate (TSP) and particulate matter with an aerodynamic diameter of 10 microns or less (PM-10). IDEM has informed EPA that it interprets 326 IAC 2-2-12 to be consistent with 40 CFR 52.21(w) in that it would only consider use of this subsection to rescind conditions related to TSP. Therefore, EPA believes that these provisions are approvable.

E. What Is Today's Final Action?

EPA is conditionally approving the following rules because with the exception of the inadvertent omission of minor new source review permits from the exemption to the definition of "major modification," the following sections of the State's Rules are consistent with EPA's regulations at 40 CFR 51.166: 326 IAC 2-2-2, Applicability; 326 IAC 2-2-3, Control technology; 326 IAC 2-2-4, Air quality analysis; 326 IAC 2-2-5, Air quality impact; 326 IAC 2-2-7, Additional analysis; 326 IAC 2-2-8, Source obligation; 326 IAC 2-2-9, Innovative control technology; 326 IAC 2-2-10, Source information; 326 IAC 2-2-11, Stack height provisions; 326 IAC 2-2-13, Area designation and redesignation; 326 IAC 2-2-14, Sources impacting Federal Class I areas; Additional requirements; 326 IAC 2-2-15, Public participation; 326 IAC 2-2-16, Ambient air ceilings; 326 IAC 2-1.1-6, Public notice, and 326 IAC 2-1.1-8, Time periods for determination on permit applications. Because it is unlikely that Indiana has limited the ability of any sources to use alternative fuels or raw materials through a minor new source review permit, and because Indiana has committed in a December 12, 2002 letter to correct this minor deficiency within one year of the effective date of this approval, EPA believes that it is appropriate to grant conditional approval. However, should Indiana fail to correct this deficiency within a year of this action, EPA will initiate withdrawal of this approval. Although EPA is approving Indiana's PSD SIP, EPA emphasizes that it has a responsibility to insure that all states properly implement their preconstruction permitting programs. EPA's approval of Indiana's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Indiana are consistent with the requirements of the CAA, EPA regulations and the SIP.

Today's approval of Indiana's SIP revision submission is limited to existing rules. EPA is taking no position on whether Indiana will need to make changes to its new source review rules to meet any requirements that EPA may promulgate as part of new source review reform.

EPA is publishing this direct final conditional approval of the Indiana PSD SIP submitted on February 1, 2002. We view this action as noncontroversial, and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is

proposing to withdraw the State Plan should adverse or critical written comments be filed. This approval action will be effective without further notice unless EPA receives relevant adverse written comment by February 14, 2003. Should EPA receive such comments, it 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 such comments are received, the public is advised that this action will be effective on March 3, 2003.

F. Regulatory Assessment Requirements

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. 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). 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.*). 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).

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 (65 FR 67249, November 9, 2000). 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