

*Response:* This comment relates to maximum allowable increases and baseline dates, which do not apply to the nonattainment rules we are approving. They apply, instead, to the Ohio attainment rules which were conditionally approved on October 10, 2001 (66 FR 51570). Offsets, not maximum allowable increases, govern nonattainment areas.

(12) OEPA's definition for "net emissions increase" fails to specify that only PM-10 emissions can be used to evaluate the net increases for PM-10.

*Response:* We believe that it is inherent in this rule, OAC 3745-31-01(Y), that only PM-10 emissions can be used to evaluate net PM-10 increases. Ohio's rules distinctly set out the definitions and measuring procedures of particulate matter and PM-10 at OAC 3745-17. (The rules use the term "total suspended particulates" for PM-10.) The distinctions drawn in those rules apply to the definition of "net emissions increase." Therefore, we do not believe that the definition needs further clarification.

(13) OEPA's definition for "emissions unit" is made unclear by the sentence "This term does not include operations or activities that emit air pollutants regulated under State law but are not regulated under the Clean Air Act."

*Response:* We disagree that the definition for "emissions unit" is unclear at OAC 3745-31-01(AA). Under the submitted rule, any operation or activity that emits air pollutants regulated under the CAA is an "emissions unit." The clarifying sentence serves to distinguish CAA-regulated emissions units from those regulated only under State laws.

(14) The Federal definition of Best Available Control Technology specifically includes "fuel cleaning or treatment or innovative fuel combustion techniques," but OEPA's definition lists only "fuel combustion techniques."

*Response:* We interpret Best Available Control Technology (BACT) requirements to apply to any aspect of fuel combustion, cleaning, or treatment that affects emissions, and do not feel that the clause "including fuel combustion techniques" at OAC 3745-31-01(M) excludes any aspect of BACT. The clause does not preclude technologies beyond fuel combustion techniques because it is not all-inclusive. Therefore, the submitted rule is not limiting.

(15) The Federal definition of "clean coal technology" restricts it to the generation of electricity or process steam. Ohio's definition includes, in addition, "industrial products," which

is an expansion beyond the Federal standard.

*Response:* We do not anticipate that Ohio's definition at OAC 3745-31-01(O) will be applied to any product or process that the Federal definition was not intended to cover. Nevertheless, we will advise OEPA to change its definition to match the Federal definition. We do not feel that the minor difference between the definitions warrants disapproval.

#### E. What Is Today's Action?

In this rule, EPA approves OEPA's requests for additions and revisions to OAC 3745-31-21 to 3745-31-27 submitted on March 1, 1996, April 16, 1997, September 5, 1997, December 4, 1997, and April 21, 1998. EPA also approves OEPA's August 19, 1999, request for additions to OAC 3745-47-01, 3745-47-02, 3745-47-03, 3745-05, 3745-47-07, and 3745-47-08 (D). EPA will take action on any subsequently submitted revision requests at a later time.

Today's action will take effect immediately upon publication as provided for by the good cause exemption of section 553 (d)(1) of the Administrative Procedure Act. This approval is a substantive rule that relieves a restriction on Ohio: sanctions would be imposed on Ohio if the SIP continued to lack nonattainment NSR provisions.

Recently, EPA announced new regulations regarding changes to the New Source Review Program through efforts under "New Source Review Reform". See <http://www.epa.gov/nsr/>. Today's approval of Ohio's NSR SIP submission does not address EPA's new rules but is limited to portions of Ohio's program under prior existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any new requirements that EPA may promulgate as part of New Source Review Reform.

#### 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 and responsibilities established in the Clean Air Act. 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 is not economically significant.

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. 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement