

Call. Ohio's rules are patterned directly from the USEPA model rule and Ohio EPA included in the rules all of the requirements needed for approval by USEPA. The plan includes a budget trading program, and addresses all of the components of the emissions budget listed in the USEPA technical amendment. Ohio's analysis indicates that additional NO<sub>x</sub> control strategies will not be necessary to meet the NO<sub>x</sub> budget for the State. USEPA has previously determined, on August 5, 2002 (67 FR 50600), that Ohio had satisfied the requirements for submittal of a complete plan to address NO<sub>x</sub> controls on major sources of emission.

#### *G. What Deficiencies Were Noted in the Ohio EPA NO<sub>x</sub> Plan?*

USEPA found a small deficiency in Ohio's submittal regarding the trigger date for flow control. In reviewing Ohio's July 11, 2002, NO<sub>x</sub> SIP Call submittal, USEPA found that the State's rule triggers flow control in 2006. (See OAC chapter 3745-14-06(E)(6)) The NO<sub>x</sub> SIP Call model rule requires flow control to be triggered in the second year of the program. This means Ohio's rule should require flow control to be triggered in 2005. Flow control is a mechanism to limit the excessive use of banked allowances. It is more of an insurance policy, rather than a provision that is routinely expected to be carried out. Furthermore, we do not believe it is appropriate to delay implementation of flow control beyond 2005.

Ohio used the model rule (63 FR 57356, dated October 27, 1998) to develop its plan. The State also used language from elements of the section 126 rule (65 FR 2674, dated January 18, 2000) in place of some of the language from the model rule. An amendment to the section 126 rule dated April 30, 2002, (see 67 FR 21522) extended the flow control date to 2006. This one year extension corresponds to the extension of the compliance date noted earlier. While the extension by one year of flow control to 2006 is appropriate for section 126, it is not appropriate for Ohio's rule in the NO<sub>x</sub> SIP Call. A detailed discussion regarding the difference in the trigger dates for flow control between section 126 program and the NO<sub>x</sub> SIP Call can be found in 65 FR 2674, dated January 18, 2000. We do not expect there will be any States subject to section 126. All affected States are expected to implement an NO<sub>x</sub> SIP Call plan by the compliance date of May 2004. In order for flow control to be universally applied to all sources in the NO<sub>x</sub> SIP Call region, the flow control trigger date must be the

same for all of the States in the ozone transport region.

USEPA believes the 2006 date in the Ohio rule is a deficiency which can be cured by Ohio via the submittal of a State rule to revise the flow control date at the soonest possible time before the NO<sub>x</sub> compliance date.

USEPA also found a deficiency in OAC chapter 3745-14-09(G)(7) entitled NO<sub>x</sub> Budget Opt-in Units. The Ohio rule states that opt-in units that have withdrawn from the program can reapply for a permit after 2 years. A previous version of the Ohio rule had this time period as 4 years, which is the time period found in both the NO<sub>x</sub> SIP Call model rule and the section 126 rule. The purpose of the 4 year period in the model rule is to discourage these opt-in sources from coming in and out of the budget trading program at a frequency that would be disruptive to the operation of the trading program. USEPA recommends Ohio change this time period from 2 years to 4 years.

#### **III. USEPA Action**

We are approving, in this direct final rule, the Ohio NO<sub>x</sub> SIP because it meets the requirements of the USEPA NO<sub>x</sub> trading program by meeting Ohio's NO<sub>x</sub> budget. Ohio's rule mirrors the USEPA model rule for the NO<sub>x</sub> SIP Call and the State adequately responded to all of the concerns of stakeholders during the public process. Ohio's plan is approved with the understanding that it will take action to change the date (the flow control trigger date) in OAC 3745-14-06(E) (6) from 2006 to 2005. If this date is not changed from 2006 to 2005, and Ohio fails to submit the change as a revision to its plan by May 31, 2004, USEPA will remove the approval of Ohio's NO<sub>x</sub> SIP and take subsequent rulemaking action, as necessary. USEPA 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, USEPA is proposing to approve the State's NO<sub>x</sub> plan should adverse written comments be filed. This action will be effective without further notice unless USEPA receives relevant adverse written comment by February 18, 2003. Should USEPA 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 March 17, 2003.

#### **IV. Administrative 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 (Public Law 104-4). This rule also does 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), nor will it 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), because it 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, USEPA'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 USEPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise