

or better than EPA's program regardless of the fact that some specific changes might not be subject to NSR in Oregon that would be under EPA's program.

EPA has evaluated the changes to the ODEQ program and determined they would improve the implementation and enforcement of the current ODEQ approach and that they would not result in any relaxation that could impair the ability of the program to protect NAAQS, PSD increments, and visibility in Class I areas. EPA is therefore approving the changes. Note that, with respect to Oregon's rules relating to new source review, EPA is taking no position on whether Oregon will need to make changes to its new source review rules to meet requirements that EPA promulgates as part of new source review reform.

a. Nonattainment Area (Part D) NSR

Under ODEQ's rules, all new major sources or major modifications in nonattainment areas must comply with the Lowest Achievable Emission Rate (LAER). Because the ODEQ definition of major modification accumulates emission increases and decreases since the baseline date or last NSR permit, emission units that were constructed or modified in the past as minor changes are subject to major NSR when the accumulated increases exceed the SER. As such, the ODEQ rule includes special provisions for applying LAER retroactively to these new or modified emission units, including the consideration of whether the retrofit controls are technically feasible. Because EPA's regulations would not require LAER to be required retroactively for minor changes that were not part of the current permitting action, the additional ODEQ criteria for applying LAER to these changes does not conflict with the CAA or EPA's requirements.

Under ODEQ's rules, all new major sources and major modifications in nonattainment areas must also provide emissions offsets and demonstrate that a net air quality benefit will be achieved. Under ODEQ's rules, however, only Federal major sources in nonattainment areas must evaluate alternative sites, sizes, production process and environmental control techniques and demonstrate that the benefits of the proposed source or modification will significantly outweigh the environmental and social costs (*see* section 173(a)(5) of the Act). Similarly, only Federal major sources must demonstrate that all major sources owned or operated with Oregon are in compliance or on a compliance schedule (*see* section 173(a)(3) of the

Act). Finally, only Federal major sources must comply with the requirements for visibility protection (*see* 40 CFR 51.307(b)(2) and (c)).

The rule also includes a special exemption for the Salem ozone nonattainment area which exempts new major sources and major modifications from the offset requirement. The Salem ozone nonattainment area is considered to be a rural ozone nonattainment area under EPA's policy in effect in 1978 when the area was designated nonattainment.

Finally, the revisions to the definition of significant emission rate changed the size threshold for major sources in the Klamath Falls Urban Growth Area and the Lakeview PM-10 Nonattainment Area. EPA is approving these revisions because they only affect future permitting and the revised major source size thresholds are still lower than the Federal major source size thresholds.

b. Maintenance Area NSR

The ODEQ rules also include provisions for new major sources and major modifications in maintenance areas (areas that were designated nonattainment for particulate matter, carbon monoxide, or ozone, but have been redesignated to attainment). This provision essentially merges several of the concepts of PSD and nonattainment area NSR for use in maintenance areas. All new major sources and major modifications must apply the Best Available Control Technology (BACT) for the maintenance pollutant. The scheme for the application of BACT is similar to the scheme for the application of LAER in nonattainment areas with respect to retroactive application of BACT to emission units that have already been constructed or modified.

All new major sources and major modifications must either obtain emission offsets and provide for a net air quality benefit, or must obtain an allocation of the growth allowance (for carbon monoxide or ozone areas only) established in the approved maintenance plan (if one was established). However, a carbon monoxide major source which demonstrates that it would have an insignificant impact at all locations is exempt from the requirement to obtain offsets or a growth allowance allocation. Similarly, a PM-10 major source is exempt from the requirement to obtain offsets if it demonstrates that it would not cause or contribute to a cumulative air quality impact greater than certain ambient ceilings specified in the rules. Importantly, the rules require all Federal major sources to comply with

the PSD requirements in addition to the maintenance area provisions.

The maintenance area provisions also include a contingency plan component. If the contingency plan in an applicable maintenance plan is implemented due to a violation of an ambient air quality standard, the requirements of the maintenance area NSR program become more stringent until a revised maintenance plan is approved by EPA. Instead of BACT, new major sources and major modifications are required to apply LAER; growth allowances may no longer be used to meet the offset requirement; and the exemption for carbon monoxide sources would no longer apply. Finally, the rule clarifies that the nonattainment area provisions continue to apply in areas with pending redesignation requests until the area is formally redesignated to attainment by EPA.

c. Attainment Area PSD/NSR

The ODEQ rules include provisions for new major sources and major modifications in attainment and unclassifiable areas. However, these provisions are applicable only to "Federal major sources" as that term is defined in the ODEQ rules. The definition of "Federal major sources" is essentially the same as the EPA definition of major stationary source in 40 CFR 51.166(a)(1) (the PSD definition) with one significant difference. Because the ODEQ rules specifically require that fugitive emissions be counted in determining major source status for all sources, the ODEQ PSD rules will potentially require more sources to be subject to PSD than required by EPA's rules.

Note that the provisions applicable to new major sources and major modifications that are not Federal major sources are found in the provisions for standard ACDP's and PSEL's. All new major stationary sources and major modifications need to obtain an ACDP and comply with the applicable requirements of those Divisions. For ODEQ major sources located in attainment or unclassifiable areas, the ACDP and PSEL rules require that the owner or operator demonstrate that the new source or modification would not cause or contribute to a violation of the ambient standards and applicable PSD increments.

New major sources and major modifications must apply BACT for each pollutant emitted in significant amounts. The scheme for the application of BACT is similar to the scheme for the application of LAER in nonattainment areas with respect to retroactive application of BACT to