

**TITLE 252. OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL RULES**

RULE IMPACT STATEMENT

**Subchapter 1. General Provisions**

**252:100-1-3. Definitions [AMENDED]**

**252:100-1-4. Units, abbreviations and acronyms [AMENDED]**

**Subchapter 8. Permits for Part 70 Sources**

**Part 5. Permits for Part 70 Sources**

**252:100-8-2. Definitions [AMENDED]**

**Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas**

**252:100-8-31. Definitions [AMENDED]**

Before the Air Quality Advisory Council, October 27, 2010, and January 19, 2011

Before the Environmental Quality Board, February 25, 2011

1. **DESCRIPTION:** Greenhouse gases (GHG), an aggregate group of six gases (carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride), will become subject to regulation as an air pollutant on January 2, 2011, when the U.S. Environmental Protection Agency (EPA) and the federal Department of Transportation joint light-duty vehicle GHG emission standards become effective. At that time, the PSD construction permit program and the Part 70 operating permit program would have applied to stationary sources that emit or have the potential to emit more than 100 or 250 tons per year (TPY) of GHG, increasing the number of PSD and Part 70 permits to the point that the Department would be unable to deal with them in a timely fashion. Air quality permits would have been required for commercial sources, agricultural sources, and residential sources that have not previously been subject to air quality permitting. In order to relieve this overwhelming permitting burden, EPA promulgated the GHG tailoring rule (75 FR 31514, June 3, 2010). The proposed modification to Parts 5 and 7 of Subchapter 8 clarifies that the State rule mirrors the GHG tailoring rule in the change in pollutants subject to regulation and the PSD and Part 70 applicability thresholds for GHG. As with the GHG tailoring rule, the proposed modification does not require any source to obtain either a PSD or a Part 70 permit. Instead it makes clear that a large number of smaller GHG emission sources that are exempted from PSD and Part 70 permitting by EPA are also exempted from the State's PSD and Part 70 programs. The modification consists primarily of adding the definition of "subject to regulation" to OAC 252:100-8-2 for Part 70 sources and to 252:100-8-31 for PSD sources. Among other things, these definitions raise the PSD and Part 70 permitting thresholds for GHG emissions to 100,000 TPY CO<sub>2</sub>e and set a significant level of 75,000 TPY CO<sub>2</sub>e for PSD modifications. The higher applicability thresholds should reduce the number of PSD and Part 70 permits required by the inclusion of GHG emissions as a regulated air pollutant to a more manageable level and prevent the State's PSD and Part 70 programs from being perceived to be more stringent than the corresponding federal rules. In light of the litigation challenging EPA's decision to regulate GHG under the Clean Air Act, the Department has added "sunsetting" or "rescission" language to the definitions of "subject to regulation." The "rescission" language provides

that if federal legislation or a federal court stays, invalidates, delays the effective date, or otherwise renders unenforceable by the EPA, in whole or in part, the EPA's tailoring rule, endangerment finding, or light-duty vehicle GHG emission standard, the definition of "subject to regulation" shall be enforceable only to the extent that it is enforceable by EPA. The modification to deal with permitting GHG emissions also includes the addition of the definition of "greenhouse gas" or "GHG" to OAC 252:100-1-3. At this time the Department is also proposing to add the abbreviation of carbon dioxide equivalent (CO<sub>2</sub>e) to OAC 252:100-1-4(a) and the acronym of greenhouse gas (GHG) to 252:100-1-4(b). In addition some scrivener's errors in OAC 252:100-1-4 relating to units of measure, abbreviations, and acronyms will be corrected.

2. **CLASSES OF PERSONS AFFECTED:** Classes of persons affected by the proposed modification are the owners and operators of new and modified sources of GHG who would experience regulatory relief due to the deferred applicability of the PSD and Part 70 applicability thresholds. These owners and operators will potentially be spared the expense of applying for PSD and Part 70 permits.
3. **CLASSES OF PERSONS WHO WILL BEAR COSTS:** There are no direct economic burdens or costs as a result of the proposed modification since it merely clarifies that the State's PSD and Part 70 programs mirror the EPA GHG tailoring rule insofar as permitting sources of GHG emissions is concerned. The requirements for a new source or modification to obtain a PSD construction permit or a Part 70 operating permit are not imposed by this modification or by the GHG tailoring rule, but are already contained in the federal Clean Air Act (CAA) and in existing Department rules. The modification clarifies the exemption of a large number of smaller sources of GHG from the PSD and Part 70 permitting programs by deferring the applicability threshold for GHG for these two programs. This will potentially spare the owners and operators of these smaller sources the expense of applying for PSD and Part 70 permits for GHG emissions.
4. **INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** The Department has received no information on cost impacts from private or public entities.
5. **CLASSES OF PERSONS BENEFITTED:** This modification will benefit the owners and operators of a large number of smaller sources of GHG that are excluded from the PSD and Part 70 permitting programs. They will potentially be spared the expense of unnecessarily applying for PSD and Part 70 permits for GHG emissions.
6. **PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** There are no direct economic burdens or costs as a result of the proposed modification. Enforceable requirements to obtain a Part 70 operating permit or to adhere to PSD requirements are already required by the federal CAA and by existing Department rules. This modification clarifies the exemption of a large number of smaller sources of GHG from the PSD and Part 70 permitting programs by deferring the applicability thresholds for GHG. The owners and operators of the sources that are excluded from the PSD and Part 70 permitting programs will be spared the unnecessary expense of applying for PSD and Part 70 permits. In the preamble to the GHG tailoring rule, EPA estimates (in 2007 dollars) that

the cost for owners and operators to obtain a PSD permit for a new GHG industrial source would be \$84,530; the cost of obtaining a PSD permit for a new GHG commercial/residential source would be \$59,152; the cost of obtaining a Part 70 permit for a new GHG industrial source would be \$46,350; the cost of obtaining a Part 70 permit for a new GHG commercial/residential source would be \$23,175; and the cost of revising an existing Part 70 permit to include GHG would be \$1,677.

7. **PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** The Department anticipates no economic impact on political subdivisions.
8. **POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** The proposed modification does not impose regulatory requirements but rather clarifies a reduction in the regulatory burden of the federal CAA requirements to smaller sources of GHG by deferring the applicability thresholds for the PSD and Part 70 programs. The modification clarifies the exemption of all small sources of GHG from PSD and Part 70 GHG permitting. During Steps 1 and 2 of the proposed phase-in approach, EPA anticipates that virtually all small business not already subject to PSD and Part 70 would remain excluded from PSD and Part 70. Therefore, this modification should impose no economic costs upon smaller sources of GHG and should not have a significant economic impact on a substantial number of these small entities. The owners and operators of these sources will potentially be spared the expense of unnecessarily applying for PSD and Part 70 permits.
9. **LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** No fee changes are included in the proposed amendment.
10. **PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** There should be no direct economic burdens or costs to the Department as a result of this proposed modification. Enforceable requirements to obtain a Part 70 operating permit or to adhere to PSD requirements that are already required by the federal CAA and by existing Department rules will automatically take effect for GHG independent of this modification. This modification merely clarifies the exemption of a large number of smaller sources of GHG from the PSD and Part 70 permitting programs by deferring the applicability thresholds for GHG. This modification will insure that the Department will not incur the costs dealing with unnecessary permit applications from owners or operators of smaller sources of GHG that are exempted from the PSD and Part 70 permit programs by the GHG tailoring rule.
11. **PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** None. No other agencies will be implementing or enforcing this rule.
12. **SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** Federal grants, fees, and state appropriations will continue to be used to implement and enforce the rule.
13. **PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** The proposed modification should have no effect on net revenues for DEQ and other agencies.

14. **COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** Cooperation of political subdivisions will not be required to implement or enforce the rule.
15. **EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** The proposed rule modification will minimize compliance costs by clarifying the exclusion of a large number of smaller GHG sources from the requirement to obtain PSD and/or Part 70 permits. Without this modification, a large number of smaller sources of GHG, excluded by the federal GHG tailoring rule, may interpret the current Department rules to subject them to PSD and Part 70 permitting requirements. This would negate the relief afforded by the GHG tailoring rule. It would be costly to the small sources that must prepare and submit these permit applications and to the Department which must evaluate and respond to these applications. The Department's PSD and Part 70 permitting programs could be interpreted to be more stringent than the corresponding federal programs.
16. **DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** There are no less costly or nonregulatory methods of achieving the purpose of the proposed rule.
17. **DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** Since this modification is a clarification of an existing exemption, there should be no effect on public health, safety, and environment.
18. **IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** The proposed modification is not designed to reduce significant risks to the public health, safety, and environment, but to clarify the deferred GHG applicability thresholds for the PSD and Part 70 programs.
19. **DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** The proposed modification clarifies the regulatory relief from permitting requirements for a large number of smaller GHG emission sources and for permitting authorities. In the preamble to the GHG tailoring rule, EPA expressed the opinion that without the GHG tailoring rule, PSD and Part 70 requirements would apply at the 100 or 250 TPY levels, greatly increasing the number of required permits, imposing undue costs on small sources, overwhelming the resources of permitting authorities, and severely impairing the functioning of the programs. This would mean that the benefits of these programs would be delayed and this could result in detrimental effects on the public health, safety, and environment.
20. **PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** There are no

direct economic burdens or costs as a result of this proposed modification, because it does not require any new or modified source to obtain a PSD or a Part 70 permit. Enforceable requirements to obtain a Part 70 operating permit or to adhere to PSD requirements already required by the federal CAA and by existing Department rules will automatically take effect for GHG independent of this modification. This modification clarifies that a large number of smaller sources of GHG are exempted from the PSD and Part 70 permitting programs by raising the applicability thresholds for GHG, thereby sparing the owners and operators of these small sources the expense of obtaining PSD and Part 70 permits and of applying BACT to new or modified PSD sources.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** September 13, 2010

**MODIFIED ON:** November 29, 2010 and December 15, 2010