

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

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 2. Incorporation By Reference

252:100-2.1 Purpose [AMENDED]

252:100-2-2.1. Incorporation by reference [NEW]

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees

252:100-5-2.3. Annual operating fees for toxics emissions [NEW]

Subchapter 7. Permits for Minor Facilities

Part 1. General Provisions

252:100-7-2.1. Minor permits for greenhouse gas (GHG) emitting facilities [NEW]

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]

252:100-8-33. Exemptions [AMENDED]

252:100-8-35. Air quality impact evaluation [AMENDED]

252:100-8-36. Source impacting Class I areas [AMENDED]

Part 9. Major Sources Affecting Nonattainment Areas

252:100-8-50.1. Incorporation by reference [AMENDED]

252:100-8-51. Definitions [AMENDED]

252:100-8-51.1. Emissions reductions and offsets [AMENDED]

252:100-8-52. Applicability determination for sources in attainment areas causing or contributing to NAAQS violation [AMENDED]

Subchapter 31. Control of Emission of Sulfur Compounds

Part 1. General Provisions

252:100-31-1. Purpose [AMENDED]

252:100-31-2. Definitions [AMENDED]

252:100-31-4. Excess emission reporting and alternative reporting schedule [NEW]

Part 2. Ambient Air Concentration Limits or Impacts for New and Existing Equipment, Sources, or Facilities

252:100-31-7. Allowable sulfur dioxide (SO₂) and hydrogen sulfide (H₂S) ambient air concentrations for new and existing sources [AMENDED]

Part 3. Existing Equipment Standards

252:100-31-13. Requirements for existing sulfuric acid plants [AMENDED]

252:100-31-15. Requirements for existing kraft pulp mills [AMENDED]

252:100-31-16. Requirements for existing fuel-fired steam generator units [AMENDED]

Part 5. New Equipment Standards

252:100-31-25. Requirements for new fuel-burning equipment [AMENDED]

252:100-31-26. Requirements for new petroleum and natural gas processes [AMENDED]

252:100-31-27. Requirements for new pulp mill process equipment [AMENDED]

Appendix Q. Incorporation By Reference [REVOKED]

Appendix Q. Incorporation By Reference [NEW]

SUMMARY:

The Department is proposing to clarify language in Subchapter 2, Incorporation By Reference, and to update OAC 252:100, Appendix Q, Incorporation By Reference, to incorporate the latest changes to U.S. Environmental Protection Agency regulations. Included are changes or additions to 40 CFR Part 61, New Source Performance Standards (NSPS), and Part 63, National Emissions Standards for Hazardous Air Pollutants (NESHAP).

The Department is proposing to add a new section OAC 252:100-5-2.3 to Subchapter 5 of the air pollution control rules that will alter the Air Quality Division's current fee structure. The new

section would allow the agency to invoice for emissions of hazardous air pollutants, lead, and lead compounds at a rate different from other regulated air pollutants and would require area sources subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) to pay an annual operating fee. The changes are designed to offset legislative budgetary shortfalls and cover current and anticipated staffing requirements in administering the Department's air pollution control programs.

The Department is proposing to modify Subchapters 7 and 8 to assure that State rules affected by recent changes to the U.S. Environmental Protection Agency's (EPA's) policies and programs for greenhouse gas emissions are not more stringent than the corresponding federal requirements. Greenhouse gases (GHGs), 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 EPA and the U.S. Department of Transportation joint light-duty vehicle GHG emission standards become effective. At that time and absent any rule change, the PSD construction permit program and Part 70 operating permit program would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year. If GHG emission sources are required to obtain PSD and Part 70 permits at the current applicability thresholds, the number of PSD and Part 70 permits would increase to the point that the Department would be unable to deal with them in a timely fashion. These requirements could be interpreted to include commercial and residential sources. In order to relieve this overwhelming permitting burden, EPA promulgated its final GHG Tailoring Rule in the *Federal Register* on June 3, 2010 (75 FR 31514). EPA's rule tailors the applicability criteria that determine which GHG emission sources become subject to the PSD and Part 70 programs by defining the term "subject to regulation" to establish thresholds of 100,000 tpy CO₂ equivalent (CO₂e) for PSD and Part 70 applicability and the new significant level of 75,000 tpy CO₂e for PSD. The Department is proposing to modify Parts 5 and 7 of Subchapter 8 to raise the applicability thresholds for GHG for the PSD permitting program and the Part 70 permitting program to match those contained in the federal GHG Tailoring Rule in order to reduce the number of permits required by the inclusion of GHG emissions as a regulated pollutant to a manageable level and to prevent the State rule from being more stringent than the corresponding federal rule.

The Department is also proposing to add a new section to Subchapter 7 to exclude GHG from the minor facility permitting program except if necessary to set enforceable limits to keep GHG emission levels at a facility below the applicability threshold levels for the PSD construction permit program and/or the Part 70 operating permit program. At this time, EPA does not have a GHG permitting program for minor facilities.

The Department is proposing modifications to Parts 7 and 9 of Subchapter 8 to implement the New Source Review program (PSD and Nonattainment NSR) for the fine particulate matter (PM-2.5) National Ambient Air Quality Standards (NAAQS) which were published on July 18, 1997 (62 FR 38652) and revised on October 17, 2006 (71 FR 61144). In the May 16, 2008 *Federal Register* (73 FR 28321), EPA finalized applicability of NSR to PM-2.5 and its precursors. The proposed rule changes will establish provisions for a major source threshold, significant emissions rate, offset ratios for PM-2.5 NAAQS, and interpollutant trading for offsets that are consistent with those in the federal regulations set forth in 40 CFR §51.166 (b).

The Department also proposes to correct an error in the definition of "major stationary source" in OAC 252:100-8-31. The current definition relating to municipal incinerators is more stringent than the federal definition set forth in 40 CFR.

The Department is proposing changes to Subchapter 31, Control of Emission of Sulfur Compounds, to clarify the language and to bring the allowable sulfur dioxide (SO₂) ambient air limits set forth in OAC 252:100-31-7 into line with the requirements of the recently-enacted change to the SO₂ NAAQS. In addition, the Department is proposing to add requirements for fuel-burning equipment that use an alternative fuel.

AUTHORITY:

Generally, Environmental Quality Board powers and duties, 27A O.S. § 2-2-101, and 27A O.S. §§ 2-5-106; Air Quality Advisory Council powers and duties, 27A O.S. § 2-2-201 and 27A O.S. §§ 2-5-107; and Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 through -117, and specifically 27A O.S.

§§ 2-5-105 (Subchapter 2, Subchapter 8, Subchapter 31, and Appendix Q), -112 (Subchapter 5, Subchapter 8, and Subchapter 31), -113 (Subchapter 5), and -114 (Appendix Q).

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on October 27, 2010. For comments received at least five (5) business days prior to the Council meeting, staff will post written responses on the Department's web page at least one (1) day prior to the Council meeting. Copies of the written responses will be provided to the Council and the public at that Council meeting. Oral comments may be made at the October 27, 2010 hearing and at the November 16, 2010 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, October 27, 2010, at the DEQ headquarters, 707 N. Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on Tuesday, November 16, 2010, at the OSU Alumni Center, 201 ConocoPhillips, Oklahoma State University, Stillwater, OK 74078-7043.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 C.F.R. § 51.102 of the U.S. Environmental Protection Agency regulations and 27A O.S. § 2-5-107(6)(c).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities or any other members of the public affected by these rules provide the Department, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

The proposed rules are available for review 30 days prior to the hearing on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm. Copies also may be obtained from the Department by calling the contact person listed below.

RULE IMPACT STATEMENT:

The rule impact statement is available for review 30 days prior to the hearing on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm. Copies also may be obtained from the Department by calling the contact person listed below.

CONTACT PERSON:

The contact person for this proposal is Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100. Please send written comments on the proposed rule changes to Ms. Bradley at cheryl.bradley@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, ATTN: Cheryl E. Bradley. The Air Quality Division FAX number is (405)702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405)702-4216. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.