

**TITLE 252. OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL RULES
SUBCHAPTER 1
SUBCHAPTER 8**

RULE IMPACT STATEMENT

EMERGENCY RULE

Subchapter 1. General Provisions

252:100-1-3. Definitions [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

Before the Environmental Quality Board, November 16, 2010

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 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 will apply to stationary sources that emit or have the potential to emit more than 100 or 250 tons per year (TPY) of GHG. If GHG emission sources are required to obtain PSD and Part 70 permits at the current applicability thresholds of 100 or 250 TPY, the number of PSD and Part 70 permits will increase to the point that the Department will be unable to deal with them in a timely fashion and permits would be 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 its final GHG Tailoring Rule in the *Federal Register* on June 3, 2010. The proposed modification to Parts 5 and 7 of Subchapter 8 of the Air Pollution Control Rules is based on the GHG Tailoring Rule. The modification does not require any source to obtain either a PSD or a Part 70 permit. Instead it provides regulatory relief for a large number of smaller GHG emission sources and for permitting authorities by raising the PSD and Part 70 permitting thresholds for GHG emissions to 100,000 TPY CO₂ equivalent (CO₂e) and setting a significant level of 75,000 TPY CO₂e for PSD modifications. This proposed modification provides a phase-in program of two steps and will provide regulatory relief to a large number of smaller sources of GHG. The Department proposes to modify Parts 5 and 7 of Subchapter 8 to raise the applicability thresholds for GHG for the PSD and the Part 70 permitting programs to match those contained in the GHG Tailoring Rule by defining the term "subject to regulation" in OAC 252:100-8-2 for the Part 70 program and in OAC 252:100-8-31 for the PSD program. This 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 it will prevent the State PSD and Part 70 programs from being more stringent than the corresponding federal rules. The modification to deal with permitting GHG emissions also includes the addition of the definition of "greenhouse gas" or "GHG" to Subchapter 1 at OAC 252:100-1-3. This modification cannot be effective as a permanent rule change under the State's rulemaking process until sometime after the joint light-duty vehicle GHG emission standards become effective. Because of this, a large number of smaller sources of GHG that will be excluded by the federal GHG Tailoring Rule will still be subject to the lower thresholds of the PSD and Part 70 programs contained in the current State rule, thus negating the relief from the overwhelming permitting burden afforded by the GHG Tailoring Rule. This could be costly to the small sources that must prepare and submit these permit applications and to the Department which must evaluate and issue these permits, and result in little reduction of GHG emissions. This also means that the State's PSD and Part 70 permitting programs will be more stringent than the corresponding federal programs until the proposed modifications become effective as permanent changes. EPA proposed the GHG Tailoring Rule in the *Federal Register* on October 27, 2009 and promulgated the final rule in the *Federal Register* on June 3, 2010, making it impossible for the Department to promulgate a permanent modification incorporating the higher GHG thresholds for PSD and Part 70 permits before the January 2, 2011, deadline. For this reason, the Department is asking that these proposed changes to Subchapter 1 and Subchapter 8 be approved as emergency rule changes.

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 higher PSD and Part 70 applicability thresholds and deferred applicability. These owners and operators will be spared the expense of obtaining PSD and Part 70 permits and of applying Best Available Control Technology (BACT) to new PSD sources or modifications. The proposed modification could potentially affect the citizens of Oklahoma by allowing higher GHG emissions because BACT will not be applied to the sources that are not required to obtain a PSD permit. EPA estimates that these consequences will be limited because the sources emitting between 100/250 and 100,000 TPY CO₂e of GHG account for only about 11 percent of the directly emitted GHG nationally from industrial, commercial, and residential source categories, while representing over 95 percent of the total number of sources potentially requiring PSD or Part 70 permits for GHG under current permitting thresholds in Subchapter 8.
3. **CLASSES OF PERSONS WHO WILL BEAR COSTS:** There are no direct economic burdens or costs as a result of the proposed modification, because 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. Requirements to obtain a Part 70 operating permit or to adhere to PSD requirements are already contained in the federal Clean Air Act (CAA) and in existing Department rules. The modification exempts a large number of smaller sources of GHG from the PSD and Part 70 permitting programs by raising the applicability threshold for GHG for these two programs. This will spare the owners and operators of these smaller sources the expense of obtaining PSD and Part 70 permits for GHG emissions and of applying BACT for GHG to new PSD sources or modifications.

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 be spared the expense of obtaining PSD and Part 70 permits for GHG emissions and of applying BACT for GHG to new PSD sources or modifications.
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 exempts a large number of smaller sources of GHG from the PSD and Part 70 permitting programs by raising their applicability thresholds for GHG. 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. The owners and operators of the sources that are excluded from the PSD and Part 70 permitting programs by this modification will be spared the expense of obtaining PSD and Part 70 permits and of applying BACT to new PSD sources or modifications.
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 reduces the regulatory burden of the federal CAA requirements to smaller sources of GHG by raising the applicability thresholds for the PSD and Part 70 programs. The modification exempts 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 be spared the expense of obtaining PSD and Part 70 permits and of applying BACT to new PSD sources or modifications.
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 exempts a large number of smaller sources of GHG from the PSD and Part 70 permitting programs by raising their applicability thresholds for GHG. In the preamble to the GHG Tailoring Rule EPA estimates (in 2007 dollars) that the cost to the permitting authorities of issuing a PSD permit for a new industrial GHG source would be \$23,243; the cost of issuing a PSD permit for a new GHG commercial/residential source would be \$16,216; the cost of issuing a Part 70 permit for a new GHG industrial source would be \$19,688; the cost of issuing a Part 70 permit for a new GHG commercial/residential source would be \$9,844; and the cost of revising a Part 70 permit to include GHG would be \$1,840. This modification will insure that the Department will not incur the costs of issuing PSD and Part 70 permits to the large number of smaller sources that are excluded from the PSD and Part 70 permitting programs and will not have to undergo the increase in staff that would be necessary to process such a large number of permits in the time frame provided by Department rules.

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:** Absent this change, net revenues from permit fees would substantially increase due to the large number of smaller sources that would be required to obtain PSD and Part 70 permits. However, the proposed revision would more closely maintain current revenues from permit fees for the Department. The proposed modification should have no effect on net revenues for 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 excluding a large number of smaller GHG sources from the requirement to obtain PSD and/or Part 70 permits. The Department is proposing the modification to Subchapter 1 and Subchapter 8 as emergency rule changes because they cannot be effective as permanent rule changes until sometime after the joint light-duty vehicle GHG emission standards become effective. If the proposed modification is not in effect when GHG becomes a pollutant subject to regulation on January 2, 2011, a large number of smaller sources of GHG, excluded by the federal GHG Tailoring Rule and by this proposed modification, will become subject to PSD and Part 70 permitting requirements due to the Department's existing lower thresholds for these programs until a permanent modification becomes effective. 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 issue these permits, while resulting in very little reduction of GHG emissions. During this time period, the Department's PSD and Part 70 permitting programs would be more stringent than the corresponding federal programs. For this reason, the Department has proposed that these changes to Subchapter 1 and Subchapter 8 be approved as emergency rule changes.

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 revision.
17. **DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The proposed modification does potentially have environmental consequences in the form of higher emissions because BACT will not be applied to the exempted sources. In the preamble to the GHG Tailoring Rule, EPA states that these consequences would be limited because the sources emitting between 100/250 and 100,000 TPY CO₂e account for only an estimated 11 percent of the GHG emissions nationally from industrial, commercial, and residential source categories, while representing over 95 percent of the total number of sources potentially requiring a PSD or Part 70 permit for GHG under current permitting thresholds.
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 relieve an overwhelming regulatory burden of the PSD and Part 70 programs brought about by GHG becoming an air pollutant subject to regulation.
19. **DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** The proposed modification provides regulatory relief from permitting requirements for a large number of smaller GHG emission sources that will become subject to the PSD and Part 70 permitting programs on January 2, 2011, and for permitting authorities who must issue these permits. In the preamble to the GHG Tailoring Rule, EPA expressed their 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 the requirements for a new source or modification to obtain a PSD construction permit or a Part 70 operating permit are not imposed as a result of this modification. 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 exempts a large number of smaller sources of GHG 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 PSD sources or modifications. The Department is proposing the modification to Subchapter 1 and Subchapter 8 as emergency rule changes because they cannot be effective as permanent rule changes until sometime after the joint light-duty vehicle GHG emission standards become effective. If the proposed modification is not in effect when GHG becomes a pollutant subject to regulation on January 2, 2011, a large number of smaller sources of GHG, excluded by the federal GHG Tailoring Rule and by this proposed modification, will become subject to PSD and Part 70 permitting requirements due to the Department's existing lower thresholds for these programs until a permanent modification becomes effective. 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 issue these permits, while resulting in very little reduction of GHG emissions. During this time period, the Department's PSD and Part 70 permitting programs would be more stringent than the corresponding federal programs. For this reason, the Department has proposed that these changes to Subchapter 1 and Subchapter 8 be approved as emergency rule changes.

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