

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

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

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

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

Subchapter 2. Incorporation By Reference

252:100-2.1. Purpose [AMENDED]

252:100-2-3. ~~Reference to Title 40, Code of Federal Regulations (40 CFR)~~ Incorporation by reference [AMENDED]

Subchapter 3. Air Quality Standards and Increments

252:100-3-4. Significant deterioration increments [AMENDED]

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]

Part 2. Permit Application Fees

252:100-7-3. Permit application fees [AMENDED]

Subchapter 8. Permits for Part 70 Sources

Part 3. Permit Application Fees

252:100-8-1.7. Permit application fees [AMENDED]

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]

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]

Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [REVOKED]

Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [NEW]

Appendix E. Primary Ambient Air Quality Standards [REVOKED]

Appendix E. Primary Ambient Air Quality Standards [NEW]

Appendix Q. Incorporation By Reference [REVOKED]

Appendix Q. Incorporation By Reference [NEW]

SUMMARY:

The Department is proposing to modify Subchapters 7 and 8 to ensure that State rules affected by recent changes to the U.S. Environmental Protection Agency's (EPA's) policies and programs for greenhouse gas (GHG) emissions are not perceived to be more stringent than the corresponding federal requirements. 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 EPA and the U.S. Department of Transportation joint light-duty vehicle GHG emission standards become effective. If GHG emission sources are required to obtain Prevention of Significant Deterioration (PSD) and Part 70 permits at the current applicability thresholds of 100 or 250 tons per year, 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 agricultural, commercial, and residential sources

that have not previously been subject to air quality permitting. In order to avoid this, EPA promulgated its GHG Tailoring Rule in the *Federal Register* on June 3, 2010 (75 FR 31514). EPA's rule defines the term "subject to regulation" to establish thresholds of 100,000 tons per year CO₂ equivalent (CO₂e) for PSD and Part 70 applicability and a significant level of 75,000 tons per year CO₂e for PSD. Although the Department accepts EPA's mechanism for implementing the GHG tailoring rule's higher GHG thresholds by accepting EPA's definition of "subject to regulation," the federal modification to the applicability of these permitting thresholds is not directly reflected in the Department's current rules. Consequently, the general public and many smaller sources not familiar with the interdependence of State Clean Air Act requirements and federal Clean Air Act requirements may interpret the lower PSD and Part 70 applicability thresholds set forth in the Department's rules to apply to sources emitting lower levels of GHG. The proposed modification to Parts 5 and 7 of Subchapter 8 of the Air Pollution Control Rules clarifies the change in pollutants subject to regulation and the applicability thresholds for GHG based on the GHG Tailoring Rule. This should prevent smaller sources of GHG from expending resources in preparing unnecessary permit applications for GHG emissions. This will also prevent the State rule from being perceived to be more stringent than the corresponding federal rule.

The Department is also proposing to add a new section to Subchapter 7 to clarify that GHG is excluded 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.

In conjunction with the proposed changes to Subchapters 7 and 8 to address the federal Greenhouse Gas Tailoring Rule, the Department is proposing to modify Subchapter 1, General Provisions, by the addition of the definition of "greenhouse gas" or "GHG" to OAC 252:100-1-3. Also, modifications are proposed to OAC 252:100-1-4, relating to units, abbreviations, and acronyms, to correct scriveners' errors that inadvertently resulted in removal of superscripts and subscripts from the terms in subsection (a) of that Section.

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 the major source threshold, significant emissions rate, and offset ratios for PM_{2.5}, interpollutant trading for offsets and applicability of NSR to PM_{2.5} precursors. In the October 20, 2010 *Federal Register* (75 FR 64864), EPA finalized the PSD increments, the Significant Impact Levels (SILs), and the Significant Monitoring Concentration (SMC) for PM_{2.5}. The proposed rule changes will establish provisions for a major source threshold, significant emissions rate, offset ratios for PM_{2.5} NAAQS, interpollutant trading for offsets, SILs, and SMC that are consistent with those in the federal regulations set forth in 40 CFR § 51.165 and 40 CFR § 51.166.

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 § 51.166(b)(1).

The Department is proposing to modify Subchapter 3, Air Quality Standards and Increments, by the addition of the annual and 24-hour PM_{2.5} increments to OAC 252:100-3-4, Significant deterioration increments. In the October 20, 2010 *Federal Register* (75 FR 64864), EPA finalized the PSD increments for PM_{2.5}.

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 EPA 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 NESHAP to pay an annual operating fee. In addition, the Department is considering an increase to permit application fees for both minor facilities and Part 70 sources by amending OAC 252:100-7, Part 2 and OAC 252:100-8, Part 3. 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 amend Appendix A of OAC 252:100-17, Incinerators, to correct inaccuracies in Appendix A.

The Department proposes changing Appendix E to maintain consistency with the NAAQS.

Specifically, the nitrogen dioxide (NO₂) and sulfur dioxide (SO₂) primary standards would be modified to reflect recent changes made by the EPA.

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 (OAC 252:100, Subchapters 1, 2, 3, 5, 7, 8, and Appendices A and E), -112 (Subchapters 1, 2, 3, 7, 8, and 31, and Appendices A and Q), -113 (Subchapters 5, 7, and 8), and -114 (Subchapter 5 and Appendix Q).

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on January 19, 2011. 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. Oral comments may be made at the January 19, 2011 hearing and at the February 25, 2011 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, January 19, 2011, at the DEQ headquarters, 707 N. Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on Friday, February 25, 2011, at the DEQ headquarters, 707 N. Robinson, Oklahoma City, Oklahoma.

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 CFR § 51.102 and 27A O.S. § 2-5-107(6)(c), and to the State Title V (Part 70) Implementation Plan under the requirements of 40 CFR Part 70 and 27A O.S. § 2-5-107(3).

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 STATEMENTS:

The rule impact statements 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.

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 the public hearing 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.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 110. LEAD-BASED PAINT MANAGEMENT**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

252:110-1-1. Purpose [AMENDED]

252:110-1-2. Basis and authority [AMENDED]

252:110-1-7. Reference to 40 CFR [REVOKED]

Subchapter 5. Incorporation by Reference

252:110-5-1. Incorporation by reference [AMENDED]

Subchapter 15. Additional Renovation, Repair, and Painting (RRP) Requirements [NEW]

252:110-15-1. Definitions [NEW]

252:110-15-2. Scope [NEW]

252:110-15-3. Applicable dates [NEW]

252:110-15-4. Training programs accredited by other states or agencies [NEW]

252:110-15-5. Renovator certification requirements [NEW]

252:110-15-6. Certification of firms conducting renovation services [NEW]

252:110-15-7. Fees [NEW]

SUMMARY:

The Department is proposing to amend OAC 252:110, Lead-Based Paint Management, to add a new Subchapter 15, Additional Renovation, Repair, and Painting (RRP) Requirements. The proposed rule would establish state requirements that are consistent with those established by the U.S. Environmental Protection Agency (EPA) in 40 CFR Part 745 and affect contractors who perform renovation, repair, and painting projects in homes, child-care facilities, and schools built before 1978. This rule revision is essential to the Department's efforts to obtain EPA authorization to administer the Lead-Based Paint Renovation Program in Oklahoma. The proposal would establish fees for obtaining and renewing firm certifications and other associated services, which would be assessed after EPA has delegated the Department authority for the program. This proposed state rule is no more stringent than the federal rule and would incorporate changes to be consistent with the Department's current rules. In addition, the proposal includes amending OAC 252:110-5, Incorporation by Reference, to be consistent with the new subchapter.

The Department is proposing to revoke OAC 252:110-1-7, General Provisions, Reference to 40 CFR because it is a duplication of language already included in Subchapter 5, Incorporation by Reference. It is also proposing to amend OAC 252:110-1-1, Purpose, and OAC 252:110-1-2, Basis of Authority, to clarify regulatory language.

AUTHORITY:

Environmental Quality Board and Air Quality Advisory Council powers and duties, 27A O.S. §§ 2-2-101 and 2-2-201; and Oklahoma Lead-Based Paint Management Act, 27A O.S. §§ 2-12-101 and 2-12-201.

COMMENT PERIOD:

Written comments on the proposed rulemaking will be accepted prior to and at the hearing on January 19, 2011. 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. Oral comments may be made at the January 19, 2011 hearing and at the February 25, 2011 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on January 19, 2011 at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board at 9:30 a.m. on February 25, 2011, at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

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 at the Air Quality Division of the Department at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm, or copies may be obtained from the Department by calling Cheryl E. Bradley, Environmental Programs Manager at (405)702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained by contacting Cheryl E. Bradley, Environmental Programs Manager at (405)702-4100.

CONTACT PERSON:

Please send written comments on the proposed rule changes to Cheryl E. Bradley, Environmental Programs Manager 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.

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