

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda # III.B.1.

Agenda Item Summary: The department requests that the board initiate rulemaking to amend the air quality incorporation by reference (IBR) rules to adopt updated editions of Montana rules and federal statutes and regulations.

List of Affected Rules: This rulemaking would amend Administrative Rules of Montana (ARM) 17.8.102 and 103.

Affected Parties Summary: The proposed rule amendments would affect sources of air pollution subject to regulation under the air quality rules in ARM Title 17, Chapter 8.

Background: Annually, the department requests that the board update its rules incorporating by reference federal air quality statutes and regulations and state administrative rules. The IBR update is accomplished by amending the dates of the editions and the website addresses of the CFR, U.S. Code, and ARM set forth in ARM 17.8.102(1), and by providing the website address to the online annual versions of the CFR and the U.S. Code sources in ARM 17.8.103. Failure to adopt the most recent edition of the CFR may result in the issuance of a federal implementation plan (FIP) for some of the requirements, with the federal Environmental Protection Agency becoming the regulatory in Montana for those requirements. If the failure continued, loss of state primacy for administering the air program could result. A summary of the updates made to the CFR since the previous version incorporated by reference is provided in the table attached as Enclosure 2.

Hearing Information: The department recommends that the matter be noticed with no public hearing contemplated.

Board Options: The board may:

1. Initiate rulemaking and issue the attached draft Notice of Proposed Amendment (no public hearing contemplated);
2. Modify the Notice and initiate rulemaking; or
3. Determine that the amendment of the rules is not appropriate and deny the department's request to initiate rulemaking.

DEQ Recommendation: The department recommends that the board initiate rulemaking as described in the attached draft Notice of Public Hearing on Proposed Amendment.

Enclosures:

1. Draft Notice of Proposed Amendment
2. Summary of updates to the Code of Federal Regulations

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.102 and 17.8.103 pertaining to)
incorporation by reference--publication)
dates and incorporation by reference)
and availability of referenced documents)

NOTICE OF PROPOSED
AMENDMENT

(AIR QUALITY)

NO PUBLIC HEARING
CONTEMPLATED

TO: All Concerned Persons

1. On _____, 2016, the Board of Environmental Review proposes to amend the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Denise Hartman, Administrative Rules Coordinator, no later than 5:00 p.m., _____, 2016, to advise us of the nature of the accommodation that you need. Please contact Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) In this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2014~~ 2015, edition of the Code of Federal Regulations (CFR), as it is published on the web site of the U.S. Government Printing Office at ~~http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2014&go=Go~~https://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2015&go=Go;

(b) adopted a section of the United States Code (USC) by reference, the reference is to the ~~2013~~ 2014 edition of the USC as it is published on the web site of the U.S. Government Printing Office at ~~http://www.gpo.gov/fdsys/browse/collectionUScode.action?selectedYearFrom=2013&go=Go~~https://www.gpo.gov/fdsys/browse/collectionUScode.action?selectedYearFrom=2014&go=Go;

(c) adopted a rule of the state of Montana from another chapter of the Administrative Rules of Montana (ARM), the reference is to the rule in effect on September 30, ~~2014~~ 2015.

(2) through (2)(b) remain the same.

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

REASON: See reason statement below.

17.8.103 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) through (3) remain the same.

(4) Copies of the CFR may be obtained from the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2014&go=Go> as set forth in ARM 17.8.102. When printed versions are available, they may be obtained as described in (3)(c).

(5) Copies of the U.S. Code may be obtained from the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collectionUSCode.action?selectedYearFrom=2013&go=Go> as set forth in ARM 17.8.102. When printed versions are available, they may be obtained as described in (3)(c).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: The board adopts and incorporates by reference, federal regulations to ensure that Montana's air quality rules are at least as stringent as air quality regulations adopted by the Environmental Protection Agency to maintain primacy and federal delegation of Montana's air quality program, and to implement federal emission standards according to a federal program of emissions control.

The board is proposing to amend the air quality rules to update editions of federal and state statutes, rules, and regulations, available online, that are incorporated by reference. The Board is proposing to amend ARM 17.8.102(1), 103(4) and (5) to adopt revisions to federal regulations published in the July 1, 2015, edition of the Code of Federal Regulations (CFR) as it is published on the website of the U.S. Government Printing Office (U.S. GPO); the 2014 edition of the U.S. Code, as it is published on the website of the U.S. GPO; and the September 30, 2015, edition of the ARM. The reason for the reference to a specific webpage of the CFR is that the CFR is published in a new codified version every year. For Title 40, which contains most of the federal regulations adopted by reference by the board for air quality regulation, the official version is dated July 1 of each year. However, the online version is not available by that date, and the printed version is not available for more than four months after that date. The board adopts the July 1 edition after the online version has been made available. The reason for the reference to a specific webpage for the U.S. Code is that the U.S. Code is published in a new codified, printed version every six years. The most recent printed version is 2012. It is updated online by the U.S. Law Revision Counsel, which is associated with the U.S. House of Representatives, as new laws are enacted. It then takes approximately eight months before all titles of the U.S. Code are updated on the website of the U.S. GPO with the changes enacted into law by the previous session of Congress. It takes about another ten months for a printed annual supplement to be distributed. The U.S. GPO publishes the printed versions, and its website is the most authoritative site for the official online version of the U.S. Code. It is this website that the board is proposing to use as the version of the updated U.S. Code referred to in its rules in ARM Title 17, chapter 8 every year.

The only Montana administrative rules not contained in the air quality rules in

ARM Title 17, chapter 8, that are incorporated by reference in those rules are Title 17, chapter 53, subchapters 5 and 10, which pertain to hazardous waste. These are referenced in ARM 17.8.103, 17.8.302, and 17.8.602. Neither of those hazardous waste subchapters has been modified since April 1, 2005. Even though they have not been modified, the board is proposing to update the reference to them to the September 30, 2015, version of the ARM because that more recent version is more readily available for the use of the regulated community, public, and the Department of Environmental Quality in researching and determining the applicable requirements of the rules.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or email dhartman2@mt.gov, no later than _____, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or email dhartman2@mt.gov, no later than _____, 2016.

6. If the board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25, based on the more than 250 persons who potentially could wish to appeal air quality permits and therefore could be affected by this rulemaking.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Denise Hartman, Administrative Rules Coordinator, Department of Environmental

Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Denise Hartman at dhartman2@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH
Rule Reviewer

BY: _____
JOAN MILES
Chairman

Certified to the Secretary of State, _____, 2016.

Changes to the Code of Federal Regulations (CFR) (July 1, 2014 - June 30, 2015)

Sections Incorporated by Reference into the Administrative Rules of Montana

	Year/Vol	Part/Subpart/Section*	Change	FR Page	Summary	ARM Reference	Topic
1	2015/80	50.10	Revised	12263	In this rule, the Environmental Protection Agency (EPA) revoked the 1997 Ozone National Ambient Air Quality Standards (NAAQS). The designations and classifications associated with designations are no longer in effect, and the sole designations that remain in effect are those for the 2008 ozone NAAQS.	17.8.202	2008 O3 NAAQS Implementation
2	2015/80	51 Subpart A	Revised, Removed	8787	Final rule revised the emissions inventory reporting requirements in 40 CFR part 51, subpart A, and in 40 CFR 51.122. Importantly, the revisions aligned the point source reporting threshold for lead with the NAAQS and associated monitoring requirements. The rule also eliminated the requirement for reporting emissions from wildfires and prescribed fires, and replaced a requirement for reporting mobile source emissions with a requirement for reporting the input parameters to be used to run EPA models to generate emissions estimates. The rule also removed the requirements to report daily and seasonal emissions, and clarified the requirement to report these emissions under pollutant-specific regulations.		Air Emissions Reporting Requirements
3	2015/80	51 Subpart F	Revised	7340	EPA final action that revised the Clean Air Act Section 110 submission requirements and provide notice of an electronic reporting option. The action provided an option to submit State Implementation Plans (SIPs) using the new electronic SIP (eSIP) system.	17.8.802	eSIP
4	2015/80	51 Subpart G	Revised	8787	Revisions to Air Emissions Reporting Requirements. Included "ozone season emissions" and "summer day emissions" relating to NOx emissions in 51.122.		Air Emissions Reporting Requirements
5	2014/79	51 Subpart G 52.35 / 52.36 / 52.38 / 52.39	Revised	71671	EPA issued the Cross-State Air Pollution Rule (or CSAPR) in 2011 to address interstate transport of air pollution and replace the Clean Air Interstate Rule (or CAIR), which was remanded by the courts in 2008. Several revisions followed the original publication of CSAPR. Under the revised rule, 28 states are required to limit statewide emissions of SO2 and NOx to reduce their impact on particulate matter and ozone pollution in other states. This rulemaking revised the CFR to reflect correct compliance deadlines. Montana is not a state that is covered by CSAPR.		Cross-State Air Pollution Rule (CSAPR)
6	2015/80	51.165 (Subpart I)	Revised	12263	<p>All areas designated attainment for the 2008 ozone NAAQS will be subject to Prevention of Significant Deterioration (PSD) requirements. The rule clarified that interprecursor trading (trading emission reduction offsets of different precursor pollutants) continues to be an option for the ozone precursors volatile organic compounds (VOC) and nitrogen oxides (NOx), as long as such trades are consistent with existing policy and legal requirements. For example, NOx emission reductions could satisfy VOC offset requirements and vice versa.</p> <p>The rule also added new paragraph (a)(12) containing anti-backsliding requirements for nonattainment New Source Review (NSR). Anti-backsliding, in this case, means that the nonattainment NSR requirements (major source thresholds and emission offset ratios) for the revoked 1997 ozone NAAQS, to the extent they are more stringent than under the 2008 NAAQS, will continue to serve as a backstop in issuing nonattainment NSR permits, ensuring states maintain an equivalent or better level of protection.</p>	17.8.767	2008 O3 NAAQS Implementation

	Year/Vol	Part/Subpart/Section*	Change	FR Page	Summary	ARM Reference	Topic
7	2015/80	51.166 (Subpart I)/ 52.21	Revised	12263	Clarified that historical designations for a revoked NAAQS should not be considered in determining whether PSD requirements apply for the pollutant once the revocation becomes effective in an area.	17.8.767	2008 O3 NAAQS Implementation
8	2015/80	51.372 (Subpart S)	Revised	12263	Aligned the vehicle I/M (inspection and maintenance) program SIP due date with the due date for the attainment demonstration SIP for the area. Montana has no I/M program.		2008 O3 NAAQS Implementation
9	2015/80	51 Subpart X	Added	8787	Revisions to Air Emissions Reporting Requirements. Sections 51.900 and 51.915 revised to add a definition of "summer day emissions" and update reporting requirements for such emissions of NOx and VOC from all point sources		Air Emissions Reporting Requirements
10	2015/80	51.1100 - 1119 (Subpart AA)	Added	12263	Added Subpart AA - Provisions for implementation of the 2008 Ozone NAAQS. The provisions of Subpart AA replace Subpart X (40 CFR 51.900-918) as of April 6, 2015. Also revised Appendix S to Part 51 to address anti-backsliding issues, ensuring states maintain an equivalent or better level of protection when issuing nonattainment NSR permits.		2008 O3 NAAQS Implementation
11	2014/79	52.1370	Revised	69374	Correction of final rules pertaining to Montana rule revisions addressing Administrative Rules of Montana (ARM) subchapter 7 exclusion for de minimis changes (submitted by the state on 6/25/2010 and 5/28/2003).		De Minimis
12	2015/80	52.1370	Added	4795	This action concerned Montana's rule amendments to address NOx as an ozone precursor pollutant as required by the Phase 2 Ozone Implementation Rule, correcting a deficiency identified by EPA and removing federal implementation plan (FIP) obligations.		NOx as a Precursor
13	2015/80	52	Revised	22911	Montana Notebook - EPA updated the organization and formatting of the "Identification of Plan" section by adding a table to 52.1370 and moving the original history of state SIP submittals to 52.1397.		Notebook
14	2015/80	52.1373	Revised	16571	EPA approved the revised Billings Maintenance Plan and Alternative Monitoring Strategy for Carbon Monoxide (CO). The revised plan provides for maintenance of the CO NAAQS over the course of the second 10-year maintenance period - to 2022.		Billings CO Maintenance Area
15	2015/80	52.1373	Revised	17331	EPA approved the revised Great Falls Maintenance Plan and Alternative Monitoring Strategy for Carbon Monoxide (CO). The revised plan provides for maintenance of the CO NAAQS over the course of the second 10-year maintenance period - to 2022.		Great Falls CO Maintenance Area
16	2014/79	60.4	Revised	60995	Public notification of automatic delegation of New Source Performance Standards (NSPS) that are incorporated into state rules, including Montana's delegation. Also replaced CFR delegation table with a website showing current delegations: http://www2.epa.gov/region8/air-program	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Automatic Delegation of NSPS
17	2015/80	60.17 (a) and (g)	Revised	13671	Revisions related to the residential wood heater NSPS.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Wood Heater NSPS
18	2015/80	60.17 (g)(202)-(206), (s), (t)	Added	13671	The final rule added new provisions related to the revised residential wood heater NSPS. New test methods added.	17.8.302, 17.8.767, 17.8.802, 17.8.902	Wood Heater NSPS
19	2014/79	60 Subpart Da	Revised	68788	Revision clarified that industrial boilers and Electric Generating Units (EGUs) have the same particulate matter startup and shutdown work practice standards for both the NSPS and the Mercury and Air Toxics Standards (MATS). Related to 40 CFR Part 60 subpart Da and Part 63 subparts DDDDD and UUUUUU.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Startup/Shutdown PM Standards for MATS and Utility NSPS

	Year/Vol	Part/Subpart/Section*	Change	FR Page	Summary	ARM Reference	Topic
20	2015/80	60.530-539b	Revised	13671	40 CFR part 60 subpart AAA revised to incorporate updates to the residential wood heater NSPS.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Wood Heater NSPS
21	2014/79	60.5360 - 5430	Revised	79017	The action finalized the July 17, 2014, proposed revisions to 40 CFR part 60 subpart OOOO - the NSPS for the oil and natural gas sector. The revisions addressed issues related to well completion and storage vessel provisions.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	40 CFR 60 subpart OOOO
22	2015/80	60.5472-5483	Added	13671	40 CFR 60 Subpart QQQQ added to address wood-fired hydronic heaters and forced-air furnaces.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Wood Heater NSPS
23	2015/80	60 Appendix A-8	Revised	13671	Revised test methods 28R for certification of wood heaters, 28WHH related to measuring particulate emissions from hydronic heaters, 28WHH for certification of cord wood-fired hydronic heaters	17.8.103, 17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Wood Heater NSPS
24	2015/80	60 Appendix I	Revised	13671	Revisions related to owner's manuals and temporary labels for heaters under subparts AAA and QQQQ	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Wood Heater NSPS
25	2015/80	62.6640	Added	10608	Added section addressing existing sewage sludge incineration units - negative declaration from Montana on 12/10/2013. Montana does not have any affected sources.		SSI Negative Declaration
26	2015/80	63 Subpart DD	Revised	14247	Final residual risk and technology review related to the Off-Site Waste and Recovery Operations (OSWRO) source category regulated under National Emission Standards for Hazardous Air Pollutants (NESHAP).	17.8.103, 17.8.302, 17.8.1502	Off-Site Waste and Recovery Operations
27	2014/79	63 Subpart YY	Revised	60897	Final residual risk and technology review related to the Acrylic and Modacrylic Fibers Production and Polycarbonate Production source categories regulated under NESHAP in the Generic Maximum Achievable Control Technology (MACT) Standards in Subpart YY.	17.8.103, 17.8.302, 17.8.1502	Acrylic and Modacrylic Fibers Production and Polycarbonate Production
28	2014/79	63 Subpart III	Revised	48073	Final residual risk and technology review related to the Flexible Polyurethane Foam (FPUF) Production source category regulated under NESHAP in Subpart III.	17.8.103, 17.8.302, 17.8.1502	Flexible Polyurethane Foam (FPUF) Production
29	2014/79	63 Subpart OOO	Revised	60897	Final residual risk and technology review related to the Amino/Phenolic Resins Production source category regulated under NESHAP in Subpart OOO.	17.8.103, 17.8.302, 17.8.1502	Amino/Phenolic Resins Production
30	2015/80	63 Subpart XXX	Added	37365	Final residual risk and technology review related to Ferroalloys Production source category regulated under NESHAP in Subpart XXX. Promulgated MACT-based limits for previously unregulated Hazardous Air Pollutants (HAP).	17.8.103, 17.8.302, 17.8.1502	Ferroalloys Production
31	2014/79	63 Subpart UUUUU	Revised	68777	Reconsideration of certain startup/shutdown issues in the MATS and the Utility NSPS in 40 CFR Part 60 subpart Da and Part 63 subpart UUUUU, respectively.	17.8.103, 17.8.302, 17.8.1502	Startup/Shutdown PM Standards for MATS and Utility NSPS
32	2015/80	63 Subpart DDDDDD	Revised	5938	Revised the NESHAP for Polyvinyl Chloride and Copolymers Production Area Sources. "This direct final rule withdraws the total non-vinyl chloride organic hazardous air pollutant (TOHAP) process wastewater emission standards for new and existing polyvinyl chloride and copolymers (PVC) area sources."	17.8.103, 17.8.302, 17.8.1502	Polyvinyl Chloride and Copolymers Production Area Sources
33	2015/80	70.2	Revised	12263	2008 Ozone Implementation - definition of "Major Source" revised in state operating permit programs. EPA agreed with comments that the major source threshold for title V should be the same as the major source threshold for NSR and Reasonably Available Control Technology (RACT).		2008 Ozone Implementation

	Year/Vol	Part/Subpart/Section*	Change	FR Page	Summary	ARM Reference	Topic
34	2014/79	70.6(c)(5)(iii)(B)	Revised	43661	EPA revised compliance certification content requirements for state and federal operating permit programs. Added back a sentence that was removed inadvertently in a 2003 action. The sentence is: "If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information."		Compliance Certification Content Requirements
35	2015/80	71.2	Revised	12263	2008 Ozone Implementation - definition of "Major Source" revised in federal operating permit programs. EPA agreed with comments that the major source threshold for title V should be the same as the major source threshold for NSR and RACT.		2008 Ozone Implementation
36	2014/79	71.6(c)(5)(iii)(B)	Revised	43661	EPA revised compliance certification content requirements for state and federal operating permit programs. Added back a sentence that was removed inadvertently in a 2003 action. The sentence is: "If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information."		Compliance Certification Content Requirements
37	2015/80	81.327	Revised	2251	Added table, "Montana - 2012 Annual PM2.5 NAAQS (Primary)." All counties listed as unclassifiable/attainment.	17.8.302, 17.8.802, 17.8.902, 17.8.1002, 17.8.1102	2012 PM2.5 Designations

* All Parts/Subparts/Sections are found in Title 40 of the Code of Federal Regulations