

ENVIRONMENTAL QUALITY

CHAPTER 8

AIR QUALITY

Subchapter 12

Operating Permit Program

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Subchapter 12

Operating Permit Program

17.8.1201 DEFINITIONS In this subchapter, unless indicated otherwise, the following definitions apply:

(1) "Administrative permit amendment" means an air quality operating permit revision that:

(a) corrects typographical errors;

(b) identifies a change in the name, address, or phone number of any person identified in the air quality operating permit, or identifies a similar minor administrative change at the source;

(c) requires more frequent monitoring or reporting by the permittee;

(d) allows for a change in ownership or operational control of a source if the department has determined that no other change in the air quality operating permit is necessary, consistent with ARM 17.8.1225; or

(e) incorporates any other type of change which the department and EPA have determined to be similar to those revisions set forth in (1)(a) through (d).

(2) "Affected source" means a source that includes one or more affected units under Title IV of the FCAA.

(3) "Affected states" means all states that are:

(a) contiguous to Montana and whose air quality may be affected by a source requiring an air quality operating permit, permit modification, or permit renewal; or

(b) within 50 miles of a source requiring an air quality operating permit, permit modification, or permit renewal.

(4) "Affected unit" means a unit that is subject to emission reduction requirements or limitations under Title IV of the FCAA.

(5) "Air quality operating permit" or "permit" means any permit or group of permits issued, renewed, revised, amended, or modified pursuant to this subchapter.

(6) "Air quality operating permit modification" or "permit modification" means a revision to an air quality operating permit that does not meet the definition of an administrative permit amendment under this subchapter.

(7) "Air quality operating permit renewal" or "permit renewal" means the process by which an air quality operating permit is reissued at the end of its term.

(8) "Air quality permit revision" or "permit revision" means any air quality operating permit modification or administrative permit amendment.

(9) "Montana air quality permit" means a permit issued, altered, or modified pursuant to subchapters 7, 8, 9, or 10 of this chapter.

(10) "Applicable requirement" means all of the following as they apply to emissions units in a source requiring an air quality operating permit (including requirements that have been promulgated or approved by the department or the administrator through rulemaking at the time of issuance of the air quality operating permit, but have future-effective compliance dates, provided that such requirements apply to sources covered under the operating permit):

(a) any standard, rule, or other requirement, including any requirement contained in a consent decree or judicial or administrative order entered into or issued by the department, that is contained in the Montana State Implementation Plan approved or promulgated by the administrator through rulemaking under Title I of the FCAA;

(b) any federally enforceable term, condition or other requirement of any Montana air quality permit issued by the department under subchapters 7, 8, 9, and 10 of this chapter, or pursuant to regulations approved or promulgated through rulemaking under Title I of the FCAA, including parts C and D;

(c) any requirement under section 111 of the FCAA;

(d) any requirement under section 112 of the FCAA, including any requirement concerning accident prevention under section 112(r)(7), but excluding the contents of any risk management plan required under section 112(r);

(e) any standard or other requirement of the acid rain program under Title IV of the FCAA or regulations promulgated thereunder;

(f) any requirements established pursuant to section 504(b) or section 114(a)(3) of the FCAA;

(g) any requirement governing solid waste incineration, under section 129 of the FCAA;

(h) any requirement for consumer and commercial products, under section 183(e) of the FCAA;

(i) any requirement for tank vessels, under section 183(f) of the FCAA;

(j) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, unless the administrator determines that such requirements need not be contained in an air quality operating permit;

(k) any national ambient air quality standard, increment, or visibility requirement under part C of Title I of the FCAA, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the FCAA; or

(l) any federally enforceable term or condition of any air quality open burning permit issued by the department under subchapter 6.

(11) "Designated representative" means a responsible person or official authorized by the owner or operator of an affected source and of all affected units at the source, to represent and legally bind each owner and operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a source, and the submission of and compliance with permits, permit applications, and compliance plans for the unit and all other matters pertaining to Title IV of the FCAA. Proof of such status shall be evidenced by a certificate of representation submitted pursuant to subpart B of 40 CFR Part 72, specifically 40 CFR 72.24 (58 FR 3590, January 11, 1993).

(12) "Draft air quality operating permit" or "draft permit" means the version of an air quality operating permit which the department offers for public participation under ARM 17.8.1232 or affected state review under ARM 17.8.1233.

(13) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the air quality operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of reasonable preventative maintenance, careless or improper operation, or operator error.

(14) "Emissions allowable under the permit" means a federally enforceable air quality operating permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(15) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(16) "FCAA" means the Federal Clean Air Act, as amended.

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana State Implementation Plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana State Implementation Plan and expressly requires adherence to any permit issued under such program.

(18) "Final air quality operating permit" or "final permit" means the version of an air quality operating permit issued by the department that has completed all review procedures required by ARM 17.8.1220 through 17.8.1228, and 17.8.1231 through 17.8.1233.

(19) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(20) "General air quality operating permit" or "general permit" means an air quality operating permit that meets the requirements of ARM 17.8.1222, covers multiple sources in a source category, and is issued in lieu of individual permits being issued to each source.

(21) "Hazardous air pollutant" means any air pollutant listed as a hazardous air pollutant pursuant to section 112(b) of the FCAA.

(22) The following apply to the definition of the term "insignificant emissions unit":

(a) "insignificant emissions unit" means any activity or emissions unit located within a source that:

(i) has a potential to emit less than five tons per year of any regulated pollutant;

(ii) has a potential to emit less than 500 pounds per year of lead;

(iii) has a potential to emit less than 500 pounds per year of hazardous air pollutants listed pursuant to section 112(b) of the FCAA; and

(iv) is not regulated by an applicable requirement, other than a generally applicable requirement that applies to all emission units subject to this subchapter.

(b) Fugitive sources associated with an emissions unit are to be quantified with that emissions unit and are not considered insignificant emission units.

(23) "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in (23)(a) through (c). For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) A major source under section 112 of the FCAA, which is defined as:

(i) for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the FCAA, 25 tons per year or more of any combination of such hazardous air pollutants, or such lesser quantity as the board may establish by rule.

Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station are not aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) for radionuclides, "major source" shall have the meaning specified by the department by rule.

(b) A major stationary source of air pollutants that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

- (i) coal cleaning plants (with thermal dryers);
- (ii) kraft pulp mills;
- (iii) Portland cement plants;
- (iv) primary zinc smelters;
- (v) iron and steel mills;
- (vi) primary aluminum ore reduction plants;
- (vii) primary copper smelters;
- (viii) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) hydrofluoric, sulfuric, or nitric acid plants;
- (x) petroleum refineries;
- (xi) lime plants;
- (xii) phosphate rock processing plants;
- (xiii) coke oven batteries;
- (xiv) sulfur recovery plants;
- (xv) carbon black plants (furnace process);
- (xvi) primary lead smelters;
- (xvii) fuel conversion plant;
- (xviii) sintering plants;
- (xix) secondary metal production plants;
- (xx) chemical process plants;
- (xxi) fossil-fuel boilers (or combination thereof) totalling more than 250 million British thermal units per hour heat input;
- (xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) taconite ore processing plants;
(xxiv) glass fiber processing plants;
(xxv) charcoal production plants;
(xxvi) fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
(xxvii) any other stationary source category, which as of August 7, 1980, is being regulated under section 111 or 112 of the FCAA.

(c) For particulate matter (PM-10) nonattainment areas classified as "serious" under Title I of the FCAA or regulations promulgated thereunder, sources with the potential to emit 70 tons per year or more of PM-10.

(24) The following apply to the definition of the term "nonfederally enforceable requirement":

(a) "nonfederally enforceable requirement" means, as applicable to emissions units in a source requiring an air quality operating permit, any requirement, including any requirement contained in a consent decree, or judicial or administrative order entered into or issued by the department, that is not contained in the Montana State Implementation Plan approved or promulgated by the administrator through rulemaking under Title I of the FCAA;

(b) "nonfederally enforceable requirement" does not include any Montana ambient air quality standard contained in subchapter 2 of this chapter.

(25) "Permittee" means the owner or operator of any source subject to the permitting requirements of this subchapter, as provided in ARM 17.8.1204, that holds a valid air quality operating permit or has submitted a timely and complete permit application for issuance, renewal, amendment, or modification pursuant to this subchapter.

(26) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation is federally enforceable. As used in this subchapter, this definition does not alter the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in Title IV of the FCAA or rules promulgated thereunder.

(27) "Proposed air quality operating permit" or "proposed permit" means the version of an air quality operating permit that the department proposes to issue and forwards to the administrator for review in compliance with ARM 17.8.1233. This includes any final permit which has been appealed to the Board of Environmental Review, if the board has directed the department to issue a permit that differs from the proposed permit previously forwarded to the administrator for review in compliance with ARM 17.8.1233.

(28) "Regulated air pollutant" means the following:

- (a) nitrogen oxides or any volatile organic compounds;
- (b) any pollutant for which a national ambient air quality standard has been promulgated;
- (c) any pollutant that is subject to any standard promulgated under section 111 of the FCAA;
- (d) any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or
- (e) any pollutant subject to a requirement established or promulgated under section 112 of the FCAA including, but not limited to, the following:
 - (i) any pollutant subject to requirements under section 112(j) of the FCAA. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the FCAA, any pollutant for which a subject source would be major is considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the FCAA; and
 - (ii) any pollutant for which the requirements of section 112(g)(2) of the FCAA have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement.

(29) "Responsible official" means one of the following:

- (a) For a corporation:
 - (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function;
 - (ii) any other person who performs similar policy or decision-making functions for the corporation; or
 - (iii) a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - (A) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 - (B) the delegation of authority to such representative is approved in advance by the department.
- (b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
- (c) For a municipality, state, federal, or other public agency:
 - (i) a ranking elected official; or
 - (ii) a principal executive officer. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of the Environmental Protection Agency).
- (d) For affected sources, the designated representative concerning actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder, and the designated representative for any other purposes under this subchapter.

(30) "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(31) "Source requiring an air quality operating permit" means any source subject to the permitting requirements of this subchapter, as provided in ARM 17.8.1204.

(32) "State" means any nonfederal air quality permitting authority, including any local agency, interstate association, or statewide program. Where such meaning is clear from the context, "state" shall have its conventional meaning.

(33) "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. (History: 75-2-217, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1998 MAR p. 350, Eff. 1/30/98; AMD, 2000 MAR p. 838, Eff. 3/31/00; AMD, 2002 MAR p. 2195, Eff. 8/16/02; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2004 MAR p. 724, Eff. 4/9/04; AMD, 2007 MAR p. 1663, Eff. 10/26/07; AMD, 2008 MAR p. 2267, Eff. 10/24/08.)

17.8.1202 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR 70.3, pertaining to those sources and source categories designated by the administrator as requiring an operating permit pursuant to Title V of the FCAA;

(b) 40 CFR Part 72, pertaining to the operating permit requirements for acid rain sources subject to Title IV of the FCAA;

(c) 40 CFR Part 75, pertaining to the continuous emission monitoring requirements for acid rain sources subject to Title IV of the FCAA and sources subject to mercury monitoring requirements;

(d) 40 CFR Part 76, pertaining to the nitrogen oxides emission reduction requirements for acid rain sources subject to Title IV of the FCAA;

(e) section 129(e) of the FCAA as codified in 42 USC 7429(e), pertaining to solid waste incineration units that are required to obtain operating permits under Title V of the FCAA;

(f) section 129(g) of the FCAA as codified in 42 USC 7429(g), pertaining to the definition of solid waste incineration unit for the purposes of Title V of the FCAA; and

(g) the Standard Industrial Classification Manual (1987), Office of Management and Budget (PB 87-100012), pertaining to a system of industrial classification and definition based upon the composition and structure of the economy.

(2) Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4). (History: 75-2-217, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; AMD, 1994 MAR p. 2828, Eff. 10/28/94; AMD, 1995 MAR p. 535, Eff. 4/14/95; AMD, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1997 MAR p. 1581, Eff. 9/9/97; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2005 MAR p. 959, Eff. 6/17/05; AMD, 2006 MAR p. 1956, Eff. 8/11/06; AMD, 2007 MAR p. 1663, Eff. 10/26/07; AMD, 2018 MAR p. 438, Eff. 2/24/18.)

17.8.1203 AIR QUALITY OPERATING PERMIT PROGRAM OVERVIEW

(1) This subchapter provides for the establishment of a comprehensive air quality operating permit system consistent with the requirements of Title V of the FCAA and the federal operating permit program (57 FR 32250 July 21, 1992, to be codified as 40 CFR Part 70). These regulations, when viewed as a whole, are not invariably limited to the minimum federal requirements and do not invariably impose the strictest optional alternatives. No air quality operating permit issued under this subchapter may be less stringent than necessary to meet all applicable requirements.

(2) The requirements of this subchapter, including provisions regarding schedules for submission and approval or disapproval of air quality operating permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or in regulations promulgated pursuant to Title IV of the FCAA. (History: 75-2-217, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1204 AIR QUALITY OPERATING PERMIT PROGRAM APPLICABILITY

(1) The requirements of this subchapter apply to the following sources:

- (a) any major source, as defined in this subchapter;
- (b) any source, including an area source, subject to a requirement under section 111 of the FCAA;
- (c) any source, including an area source, subject to a requirement under section 112 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to requirements under section 112(r) of the FCAA;
- (d) any affected source;
- (e) any source required to obtain a permit under section 129(e) of the FCAA;
- (f) any source in a source category designated by the administrator as requiring an operating permit pursuant to 40 CFR 70.3; and
- (g) any source required by the FCAA to obtain a Title V operating permit.

(2) The following source categories are exempted from the obligation to obtain an air quality operating permit:

(a) all sources and source categories that would be required to obtain an air quality operating permit solely because they are subject to 40 CFR Part 60, subpart AAA (Standards of Performance for New Residential Wood Heaters); and

(b) all sources and source categories that would be required to obtain an air quality operating permit solely because they are subject to 40 CFR Part 61, subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos), section 61.145, (Standard for Demolition and Renovation).

(c) All sources listed in (1) that are not major or affected sources, or that are solid waste incineration units as defined in section 129(g) of the FCAA that are not required to obtain a permit pursuant to section 129(g).

(3) The department may exempt a source listed in (1) from the requirement to obtain an air quality operating permit by establishing federally enforceable limitations which limit that source's potential to emit, such that the source is no longer a major stationary source, as defined by ARM 17.8.1201(23).

(a) In applying for an exemption under this section the owner or operator of the source shall certify to the department that the source's potential to emit, when subject to the federally enforceable limitations, does not require the source to obtain an air quality operating permit. Such certification shall contain emissions measurement and monitoring data, location of monitoring records, and other information necessary to demonstrate to the department that the source is not required to obtain a permit under (1).

(b) Any source that obtains a federally enforceable limit on potential to emit shall annually certify that its actual emissions are less than those that would require the source to obtain an air quality operating permit. Such certification shall include the type of information specified in (3)(a).

(c) Federally enforceable limitations that limit a source's potential to emit may be established through conditions contained in a Montana air quality permit, or through a judicial order or an administrative order issued by the department or the board, that has been adopted into the Montana State Implementation Plan.

(d) In order to exempt a source from the requirement to obtain an air quality operating permit, the department may, at a source's request, issue a Montana air quality permit to establish federally enforceable permit terms, solely to limit a source's potential to emit, even if there is no associated construction at the source, the source has a Montana air quality permit or the source otherwise is not required to obtain a Montana air quality permit.

(4) Any source exempt from the requirement to obtain an air quality operating permit may nevertheless opt to apply for a permit under this subchapter.

(5) The air quality operating permit shall include all applicable requirements for all emissions units at a source required to obtain a permit. Nonfederally enforceable requirements and requirements for insignificant emission units shall be included, but shall not be subject to the other requirements of this subchapter except as required in ARM 17.8.1211(3).

(6) Fugitive emissions from a source required to obtain an air quality operating permit shall be included in the permit application and permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(7) The department shall, upon written request of any person, make an informal determination as to whether a particular source, which that person operates or proposes to operate, is subject to the requirements of this subchapter. The request must contain such information as is believed sufficient for the department to make the requested determination. The department may request any additional information that is necessary for informally determining the applicability of this subchapter. The department shall supply any informal applicability determination to the requestor in writing. The department shall notify any person that has received an informal determination of applicability 15 days prior to withdrawal of or any change in that informal determination. An informal determination under this (7) may not be appealed to the board, and does not impair or otherwise limit the opportunity to seek a declaratory ruling under Title 2, chapter 4, part 5, MCA. (History: 75-2-217, MCA; IMP, 75-2-217, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2004 MAR p. 724, Eff. 4/9/04.)

17.8.1205 REQUIREMENTS FOR TIMELY AND COMPLETE AIR QUALITY OPERATING PERMIT APPLICATIONS (1) For each source required to obtain an air quality operating permit, the owner or operator shall submit a timely and complete air quality operating permit or renewal application in accordance with this rule.

(2) To be considered timely for the purposes of this rule, a person required to obtain a permit pursuant to this subchapter shall file an application with the department as follows:

(a) An applicant applying for an air quality operating permit for the first time due to the applicability of newly promulgated regulations shall submit a permit application within 12 months after the source becomes subject to the permit program.

(b) Persons required to obtain an air quality operating permit or permit revision who are also required to obtain a Montana air quality preconstruction permit under this chapter shall file a complete application for an air quality operating permit or permit revision within 12 months after commencing operation, unless an existing operating permit would prohibit the construction or change in operation. If an existing operating permit would prohibit the construction or change in operation, the owner or operator shall obtain a permit revision before commencing operation.

(c) For renewal, a permittee shall submit a complete air quality operating permit application to the department not later than six months prior to the expiration of the existing permit, unless otherwise specified in that permit. If necessary to ensure that the existing permit will not expire before the renewal permit is issued, the department may notify the permittee in writing that the renewal application must be submitted by a specified deadline that is earlier than six months prior to permit expiration. Such written notification must be provided at least one year before the renewal application due date established in the existing permit. In no case may this extended time period or the time period established in the existing permit be greater than 18 months.

(3) To be deemed complete for the purposes of this rule, an application for an air quality operating permit or permit revision must be filed with the department as follows:

(a) An applicant shall provide all information required pursuant to this rule and ARM 17.8.1206. An applicant for permit revision shall submit all required information related to the proposed change. An application for renewal must address in detail those portions of the permit that require revision, updating, supplementation, or deletion. The applicant shall submit information pursuant to this rule and ARM 17.8.1206 sufficient for the department to evaluate the subject source and the application pursuant to all applicable requirements. If the applicant provides sufficient information to satisfy the requirements of application completeness, then the application shall be deemed to be administratively complete for the purposes of applying the application shield provided for in ARM 17.8.1221 and the department shall notify the applicant of such administrative completeness. A responsible official shall certify the submitted information consistent with ARM 17.8.1207. Except as otherwise provided in ARM 17.8.1220(6) and (7), or unless the department determines that an air quality operating application is not substantively complete within 60 days of receipt of the application, such application shall be deemed to be substantively complete.

(b) During the permit review process set forth in (3)(a), the department may determine that additional information is necessary to evaluate or take final action on the application and may request such information in writing and set a reasonable deadline for a response, which may not be less than 15 days.

(c) Applicants eligible for a general air quality operating permit shall provide written notification to the department of their intent to operate under the terms of the general permit, or shall apply for an air quality operating permit consistent with (1). The terms of the general permit adopted pursuant to ARM 17.8.1222 may provide for applications that deviate from the requirements of (1), and ARM 17.8.1206, if such applications are consistent with subchapter V of the FCAA, and include all information necessary for the department to determine qualification for, and assure compliance with, the general permit.

(d) An applicant for an air quality operating permit revision that submits an application for a minor permit modification shall meet the requirements of ARM 17.8.1206, and shall include the following with the application:

- (i) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- (ii) the applicant's suggested draft permit;
- (iii) certification by a responsible official, consistent with ARM 17.8.1207, that the proposed permit modification meets the criteria for use of minor modification procedures and a request that such procedures be used; and
- (iv) completed forms for the department to use to notify the administrator and affected states as required under ARM 17.8.1233.

(e) An application for an air quality operating permit revision that is submitted as part of a group processing of minor modifications must meet the requirements of ARM 17.8.1206, and must include the following:

- (i) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- (ii) the applicant's suggested draft permit;
- (iii) certification by a responsible official, consistent with ARM 17.8.1207, that the proposed permit modification meets the criteria for use of group processing procedures and a request that such procedures be used;
- (iv) a list of the applicant's other pending permit modification applications and a determination as to whether the requested modification, when aggregated with these other applications, equals or exceeds the threshold set under ARM 17.8.1226(7)(b);
- (v) certification by a responsible official, consistent with ARM 17.8.1207, that the applicant notified the administrator of the proposed modification. Such notification need only contain a brief description of the requested modification; and
- (vi) completed forms for the department to use to notify the administrator and affected states as required under ARM 17.8.1233.

(4) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application for an air quality operating permit or permit revision shall, upon becoming aware of such failure or incorrect submittal, promptly submit such facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the applicant filed a substantively complete application, but prior to release of a draft permit.

(5) If an applicant submits information to the department under a judicial determination of confidentiality, the applicant shall submit a copy of such information directly to the administrator. This requirement does not preclude or limit the right of the applicant to assert to the administrator the confidential status and nature of the information. (History: 75-2-217, 75-2-218, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2009 MAR p. 142, Eff. 2/13/09.)

17.8.1206 INFORMATION REQUIRED FOR AIR QUALITY OPERATING PERMIT APPLICATIONS

(1) For each emissions unit at a source required to obtain an air quality operating permit the applicant shall include in its application for a permit, permit renewal, or permit revision the information described in this rule.

(2) The required information shall be submitted to the department and the administrator on a standard air quality permit application form or in a standard permit application format to be approved by the department. To the extent possible all required information shall also be submitted to the department in electronic form, in a word processing format convertible to or compatible with department software.

(3) Insignificant emissions units need not be addressed in an application for an air quality operating permit, except that the application must include a list of such insignificant emissions units and emissions from insignificant emissions units must be included in emission inventories and are subject to assessment of permit fees. Emission inventories are to be calculated or estimated using accepted engineering methods which may include, but are not limited to, use of appropriate emission factors, material balance calculations, or best engineering judgement or process knowledge. Insignificant emissions units may be listed by category.

(4) An application for an air quality operating permit or permit revision may not omit information that is necessary to determine the applicability of any applicable requirement, to impose any applicable requirement, or to evaluate the fee amount required under subchapter 5 of this chapter.

(5) The applicant shall, at a minimum, provide the information specified below:

(a) identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact;

(b) a description of the source's processes and products (by standard industrial classification code) including any associated with each reasonably anticipated operating scenario identified by the source pursuant to ARM 17.8.1215(1);

(c) an emission inventory of all emissions of pollutants for which the source is major, and an emission inventory of all emissions of regulated air pollutants. An air quality operating permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit. The applicant shall provide additional information related to such emissions of air pollutants as necessary to verify which requirements are applicable to the source, and other information that may be necessary to determine any permit fees owed under subchapter 5 of this chapter;

(d) identification and description of all points of emissions described in (5)(c), in sufficient detail to establish both the basis for fees and the applicability of any applicable requirement;

(e) emissions rates in tons per year, and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

(f) information regarding fuels, fuel use, raw materials, production rates, and operating schedules, to the extent such information is needed to determine or regulate emissions;

(g) identification and description of air pollution control equipment and compliance monitoring devices or activities;

(h) limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the source;

(i) other information related to emissions as required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the FCAA) or this chapter (including the location of emission units, flow rate, building dimensions, and stack parameters such as height, diameter, and temperature);

(j) results of all dispersion modeling required by the department, except that this subsection may not be construed as a basis for requiring additional dispersion modeling to be done by the source;

(k) all calculations on which the information in (5)(a) through (j) is based;

(l) citation and description of all applicable requirements;

(m) description of or reference to any applicable test method for determining compliance with each applicable requirement;

(n) other specific information that may be necessary to implement and enforce other applicable requirements of the FCAA or of this chapter or to determine the applicability of such requirements;

(o) an explanation of any proposed exemptions from otherwise applicable requirements;

(p) additional information as determined to be necessary by the department to define reasonably anticipated alternative operating scenarios identified by the source pursuant to ARM 17.8.1215(1) or to define permit terms and conditions implementing ARM 17.8.1215(3) or 17.8.1224(3) and (4);

(q) a certification of compliance with all applicable requirements by a responsible official consistent with ARM 17.8.1207 and section 114(a)(3) of the FCAA;

(r) a statement of the methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(s) a schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department; and

(t) a statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the FCAA.

(6) In addition to the information required in (5) of this rule, the applicant shall submit a compliance plan and schedule that contains a description of the compliance status of the source with respect to all applicable requirements, which shall include the following:

(a) for applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(b) for applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed plan or schedule is required by the applicable requirement or the department;

(c) for requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements and a schedule of compliance. The compliance schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or judicial, board or department order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based; and

(d) a schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

(7) The compliance plan content requirements specified in (6), shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as otherwise provided in regulations promulgated under Title IV of the FCAA with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(8) As applicable, any application submitted pursuant to this subchapter shall use the nationally standardized forms for the acid rain portions of applications and compliance plans, consistent with regulations promulgated under Title IV of the FCAA.

(9) As part of any application for a permit or general permit submitted pursuant to this subchapter, the applicant shall provide to the department a copy of all general safety rules, policies or requirements that are applicable to a department inspector during an air quality inspection.

(10) Upon request, the department shall provide to the applicant a completeness checklist that contains the minimum information required under this rule, ARM 17.8.1205, and 17.8.1207 for an application under this subchapter to be determined to be administratively complete for the purpose of application of the application shield.

(11) An applicant is not required to submit information that has been previously submitted to the department, but must reference such previous submittal. (History: 75-2-217, 75-2-218, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2007 MAR p. 1663, Eff. 10/26/07; AMD, 2008 MAR p. 2267, Eff. 10/24/08.)

17.8.1207 CERTIFICATION OF TRUTH, ACCURACY, AND COMPLETENESS (1) Any application form, report, or compliance certification submitted pursuant to this subchapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this subchapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. (History: 75-2-217, 75-2-218, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

Rules 17.8.1208 and 17.8.1209 reserved

17.8.1210 GENERAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT (1) Each air quality operating permit shall contain the following general information:

- (a) name and mailing address of permittee;
- (b) type of operation;
- (c) permit milestone dates including, the date the permit application was received, the date the permit application was deemed complete, the date the draft permit was issued, the date the proposed permit was issued, the date the final permit was issued and the permit expiration date;
- (d) permit number; and
- (e) name of the designated representative.

(2) The following standard terms and conditions are applicable to each air quality operating permit issued pursuant to this subchapter:

(a) The permittee must comply with all conditions of the permit. Any noncompliance with the terms or conditions of a permit constitutes a violation of the Montana Clean Air Act, and may result in enforcement action, operating permit modification, revocation and reissuance, or termination, or denial of a permit renewal application under this subchapter. Permits may be modified, reopened, terminated or revoked and reissued for cause. Appropriate "cause" for permit termination is noncompliance with permit terms or conditions that is continuing or substantial in nature and scope.

(b) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. If appropriate, this factor may be considered as a mitigating factor in assessing a penalty for noncompliance with an applicable requirement if the source demonstrates both that the health, safety, or environmental impacts of halting or reducing operations would be more serious than the impacts of continuing operations, and that such health, safety, or environmental impacts were unforeseeable and could not have otherwise been avoided.

(c) The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the department, within a reasonable time set by the department (not to be less than 15 days), any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of those records that are required to be kept pursuant to the terms of the permit. This subsection does not impair or otherwise limit the right of the permittee to assert the confidentiality of the information requested by the department, as provided in 75-2-105, MCA.

(f) A permittee must pay application and operating permit fees as a condition of the permit, pursuant to subchapter 5.

(g) Permits under this subchapter will be issued for a fixed term of five years.

(h) If a timely and complete permit application for permit renewal has been submitted, and consistent with the operation of the application shield pursuant to ARM 17.8.1221, the existing permit and all terms and conditions contained therein will not expire until the permit renewal has been issued or denied.

(i) The administrative appeal or subsequent judicial review of the issuance by the department of an initial permit under this subchapter shall not impair in any manner the underlying applicability of all applicable requirements, and such requirements continue to apply to the source as if a final permit decision had not been reached by the department.

(j) The department's final decision regarding issuance, renewal, revision, denial, revocation, reissuance, or termination of a permit is not effective until 30 days have elapsed from the date of the decision. The decision may be appealed to the board by filing a request for hearing within 30 days after the date of the decision. A copy of the request shall be served on the department. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay as provided in 75-2-218, MCA. If effective, the permit shield, or application shield, as appropriate, shall remain in effect until such time as the board has rendered a final decision.

(k) The denial by the department of an application for permit issuance, renewal or revision under this subchapter which is the result of an objection by the administrator may not be appealed to the board. This shall not impair any separate right an applicant or the department may have under state or federal law to challenge an objection by the administrator.

(l) If any provision of a permit is found to be invalid, all valid parts that are severable from the invalid part remain in effect. If a provision of a permit is invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid applications.

(3) The following additional standard terms and conditions are applicable to each air quality operating permit issued to an affected source:

(a) Emissions shall not be permitted in excess of any allowances that the source lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder.

(b) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(c) No limit shall be placed in the permit on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(d) Any allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA.

(4) Each general air quality operating permit shall contain provisions regarding the following standard terms and conditions:

(a) Compliance shall be required with all requirements applicable to other air quality operating permits.

(b) The criteria by which sources may qualify for the general permit shall be set forth.

(5) Each air quality operating permit issued to temporary sources shall contain provisions regarding the following standard terms and conditions:

(a) Conditions that assure compliance with all applicable requirements at all authorized locations.

(b) Requirements that the owner or operator notify the department at least ten days in advance of each change in location.

(c) Conditions that assure compliance with all other provisions of this chapter. (History: 75-2-217, 75-2-218, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1998 MAR p. 350, Eff. 1/30/98; AMD, 2016 MAR p. 1164, Eff. 7/9/16.)

17.8.1211 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO EMISSION LIMITATIONS AND STANDARDS, AND OTHER REQUIREMENTS

(1) Each air quality operating permit issued pursuant to this subchapter shall contain the following:

(a) emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(b) a specific description with appropriate references of the origin of, and authority for, each term or condition contained in the permit, including a description of any differences in form as compared to the applicable requirement upon which the term or condition is based; and

(c) all relevant terms and conditions applicable to a source, including those terms and conditions that are not applicable requirements, which shall be clearly designated as such.

(2) Every requirement contained in an air quality operating permit must be based upon the following:

(a) the FCAA and rules promulgated thereunder, including the Montana State Implementation Plan and other applicable requirements;

(b) rules, requirements, administrative orders, or permits that have been promulgated, adopted, or issued pursuant to Title 75, chapter 2, MCA; or

(c) requirements contained in a judicial order or consent decree entered in response to a violation of any rule, requirement, administrative order, or permit that has been promulgated, adopted, or issued pursuant to Title 75, chapter 2, MCA.

(3) In the air quality operating permit the department shall specifically designate as being nonfederally enforceable under the FCAA any terms or conditions included in the permit that are not required under the FCAA or any applicable requirements. Those terms and conditions which the department specifically designates as being nonfederally enforceable requirements are not subject to the following rules contained in this subchapter:

(a) ARM 17.8.1210, except for (2) and (5). However, while noncompliance with a permit term or condition that is a nonfederally enforceable requirement may result in an enforcement action by the department, it shall not result in permit revocation and reissuance, termination, or denial of a permit renewal application under this subchapter;

(b) ARM 17.8.1211, except for (1) through (3) and (7);

(c) ARM 17.8.1212, except for (1)(a), (2), (3)(a), and (4);

(d) ARM 17.8.1213, except for (3) and (4);

(e) ARM 17.8.1215;

(f) ARM 17.8.1220, except for (1)(a), (b), and (d), (6) through (9), (12) and (13);

(g) ARM 17.8.1222, 17.8.1224 through 17.8.1228, 17.8.1231 and 17.8.1233.

(4) For those sources that are required to develop and register a risk management plan pursuant to section 7412(r) of the FCAA, the air quality operating permit will only require that the permittee comply with the requirement to register such a plan. The content of the plan will not be incorporated into the permit as an applicable requirement.

(5) For affected sources, the permit shall state that where an applicable requirement is more stringent than an applicable requirement from regulations promulgated under Title IV of the FCAA, both provisions shall be incorporated into the permit and shall be enforceable.

(6) If the Montana State Implementation Plan allows for the determination of an alternative emission limit that is equivalent to the limit contained in the plan, and during the air quality operating permit issuance, renewal, or significant modification process the department elects to make such a determination, any permit containing such alternative equivalent limit shall contain provisions to ensure that the limit is demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(7) The requirement under this subchapter to obtain an air quality operating permit may not be construed as providing a basis for establishing new emission limitations beyond those contained in the underlying applicable requirements to be incorporated into the permit. (History: 75-2-217, 75-2-218, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1212 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT
CONTENT RELATING TO MONITORING, RECORDKEEPING, AND REPORTING

(1) Each air quality operating permit shall contain the following requirements with respect to monitoring:

(a) All monitoring and analysis procedures or test methods required under the applicable monitoring and testing requirements, including ARM 17.8.1501 through 17.8.1514 and any other procedures and methods that may be promulgated pursuant to sections 504(b) or 114(a)(3) of the FCAA. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions if the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(b) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the air quality operating permit, as reported pursuant to (3). Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this section; and

(c) as necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(2) Each air quality operating permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(a) Records of required monitoring information that include the following:

(i) the date, place as defined in the permit, and time of sampling or measurements;

(ii) the date(s) analyses were performed;

(iii) the company or entity that performed the analyses;

(iv) the analytical techniques or methods used;

(v) the results of such analyses; and

(vi) the operating conditions at the time of sampling or measurement.

(b) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. All monitoring data, support information, and required reports and summaries may be maintained in a computerized form at the plant site if the information is made available to department personnel upon request, which may be for either hard copies or computerized format. Strip-charts must be retained in their original form at the plant site and shall be made available to department personnel upon request.

(3) All applicable reporting requirements must be included in the permit. Each air quality operating permit shall incorporate the following requirements relating to reporting:

(a) submittal of reports of any required monitoring at least every six months. All instances of deviations from the permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with ARM 17.8.1207.

(b) prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. To be considered prompt, deviations shall be reported as part of the routine reporting requirements under (3)(b), and if applicable, in accordance with the malfunction reporting requirements under ARM 17.8.110, unless otherwise specified in an applicable requirement.

(4) The requirement to obtain a permit under this subchapter may not be used as the basis for establishing new monitoring, recordkeeping, or reporting requirements, except as may be required under (1)(b). (History: 75-2-217, 75-2-218, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2000 MAR p. 839, Eff. 3/31/00; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2007 MAR p. 1663, Eff. 10/26/07; AMD, 2008 MAR p. 2267, Eff. 10/24/08.)

17.8.1213 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO COMPLIANCE (1) All air quality operating permits shall contain the provisions required by this rule with respect to compliance.

(2) Consistent with ARM 17.8.1212, all permits shall contain compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any such data, generated as a condition of the permit, may be used to demonstrate compliance with the conditions of the permit and may be used for direct enforcement. Any document (including reports) required by a permit shall contain a certification by a responsible official that meets the requirements of ARM 17.8.1207.

(3) Each permit shall contain inspection and entry requirements which require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department, the administrator or an authorized representative (including an authorized contractor acting as a representative of the department or the administrator) to perform the following:

(a) enter the premises where a source required to obtain a permit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) inspect at reasonable times any facilities, emission unit, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) as authorized by the Montana Clean Air Act and rules promulgated thereunder, sample or monitor at reasonable times any substances or parameters at any location for the purpose of assuring compliance with the permit or applicable requirements.

(4) Inspections pursuant to (3), shall be conducted in compliance with all applicable federal or state rules or requirements for workplace safety and source-specific facility workplace safety rules or requirements. The source shall inform the inspector of all applicable workplace safety rules or requirements at the time of the inspection. This section shall not limit in any manner the department's statutory right of entry and inspection as provided for in 75-2-403, MCA.

(5) Each permit shall contain a schedule of compliance consistent with ARM 17.8.1206(6).

(6) Consistent with ARM 17.8.1206(6), the permit shall require progress reports to be submitted at least semiannually, or more frequently if specified in the applicable requirement or by the department. Such progress reports shall contain the following:

(a) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(b) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(7) Each permit shall contain requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include the following:

(a) A requirement that compliance certifications be submitted at least once per year or more frequently if otherwise specified in an applicable requirement or by the department. Notwithstanding any applicable requirement, the department may specify that compliance certifications be submitted more frequently for those emission units not in compliance with permit terms and conditions.

(b) In accordance with ARM 17.8.1212, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices that are contained in applicable requirements.

(c) A requirement that the compliance certification include the following:

(i) the identification of each term or condition of the permit that is the basis of the certification;

(ii) the identification of the method(s) or other means used by the owner or operator for determining the status of compliance with each term and condition during the certification period. Such methods and other means include, at a minimum, the methods and means required under ARM 17.8.1212;

(iii) the status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in (7)(c)(ii). The certification must identify each deviation and take it into account in the compliance certification. The certification must also identify as possible exceptions to compliance any periods during which compliance was required and in which an excursion or exceedance as defined in ARM 17.8.1501 occurred; and

(iv) such other facts as the department may require to determine the compliance status of the source.

(d) A requirement that all compliance certifications be submitted to the administrator as well as to the department. (History: 75-2-217, 75-2-218, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1998 MAR p. 350, Eff. 1/30/98; AMD, 2000 MAR p. 839, Eff. 3/31/00; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2003 MAR p. 2856, Eff. 12/25/03.)

17.8.1214 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT
CONTENT RELATING TO THE PERMIT SHIELD AND EMERGENCIES

(1) Except as provided in this section, the department shall include in an air quality operating permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements and any nonfederally enforceable requirements as of the date of permit issuance, provided that:

(a) such applicable requirements and nonfederally enforceable requirements are included and are specifically identified in the permit; or

(b) the department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An air quality operating permit that does not expressly state that a permit shield extends to specific applicable requirements and to nonfederally enforceable requirements will be presumed not to provide such a shield for those requirements.

(3) The permit shield described in (1) shall remain in effect during the appeal of any permit action (renewal, revision, reopening, revocation or reissuance) to the board until such time as the board renders its final decision.

(4) Nothing in (1), (2) or (3), or in any air quality operating permit affects the following:

(a) the provisions of section 303 of the FCAA, including the authority of the administrator under that section;

(b) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) the applicable requirements of the acid rain program, consistent with section 408(a) of the FCAA;

(d) the ability of the administrator to obtain information from a source pursuant to section 114 of the FCAA;

(e) the ability of the department to obtain information from a source pursuant to the Montana Clean Air Act, Title 75, chapter 2, MCA;

(f) the emergency powers of the department under the Montana Clean Air Act, Title 75, chapter 2, MCA; or

(g) the ability of the department to establish or revise requirements for the use of reasonably available control technology (RACT) as defined in this chapter. However, if the inclusion of a RACT into the permit pursuant to this subchapter is appealed to the board, the permit shield as it applies to the source's existing permit shall remain in effect until such time as the board has rendered its final decision.

(5) An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation if the conditions of (6) and (7) are met.

(6) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) an emergency occurred and that the permittee can identify the cause(s) of the emergency;

(b) the permitted facility was at the time being properly operated;

(c) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) the permittee submitted notice of the emergency to the department within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirements of ARM 17.8.1212(3)(c). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(7) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(8) The provisions in (5) through (7) are in addition to any emergency, malfunction or upset provision contained in any applicable requirement. (History: 75-2-217, 75-2-218, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2003 MAR p. 645, Eff. 4/11/03.)

17.8.1215 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO OPERATIONAL FLEXIBILITY (1) If requested by the applicant, the department shall issue an air quality operating permit that contains terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the department. Such terms and conditions shall:

(a) require the source, contemporaneously with making a change from one reasonably anticipated operating scenario to another, to record in a log at the permitted facility a record of the reasonably anticipated scenario under which it is operating;

(b) extend the permit shield described in ARM 17.8.1214 to all terms and conditions under each such reasonably anticipated operating scenario;

(c) require the source to provide contemporaneous written notification when the source shifts from one specified reasonably anticipated operating scenario to another such operating scenario; and

(d) ensure that the terms and conditions of each such reasonably anticipated operating scenario meet all applicable requirements and the requirements of this subchapter.

(2) A change in operating conditions at a source that does not violate an applicable requirement does not require the use of a reasonably anticipated operating scenario.

(3) If requested by the applicant, the department shall issue an air quality operating permit which contains terms and conditions for the trading or averaging of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading or averaging such increases and decreases without case-by-case review and approval. Emissions trading or averaging may occur subject to the terms and conditions in the permit without being included in a reasonably anticipated operating scenario. Such terms and conditions shall:

(a) include all terms required under ARM 17.8.1210 through 17.8.1213 and this rule to determine compliance;

(b) extend the permit shield described in ARM 17.8.1214 to all terms and conditions that allow such increases and decreases in emissions;

(c) provide for the written notification required in ARM 17.8.1224(1)(e), which will state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit; and

(d) meet all applicable requirements and requirements of this chapter.

(History: 75-2-217, 75-2-218, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285.)

Rules 17.8.1216 through 17.8.1219 reserved

17.8.1220 AIR QUALITY OPERATING PERMIT ISSUANCE, RENEWAL, REOPENING, AND MODIFICATION (1) An air quality operating permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:

(a) the department has received a complete application for a permit, permit revision, or permit renewal (applications for permit renewal or revision need only address those portions of the source that have or are proposed to be changed per the requirements of ARM 17.8.1205(3)(a));

(b) the department has complied with the requirements for public participation under ARM 17.8.1232;

(c) the department has complied with the requirements for notifying and responding to affected states under ARM 17.8.1233;

(d) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(e) the administrator has received a copy of the proposed permit, all necessary supporting documentation, and any notices required under ARM 17.8.1233, and has not objected to issuance of the permit under 17.8.1233 within 45 days of receipt of the proposed permit and all necessary supporting documentation; and

(f) if the administrator objects to the issuance of a permit, the department shall, within seven days of receipt of the administrator's objection, send the permit applicant a copy of the objection and any statement received from the administrator.

(2) Except as provided under the initial transition plan, (3), or under regulations promulgated under Title IV or Title V of the FCAA for the permitting of affected sources under the acid rain program, the department shall take final action on each air quality operating permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application.

(3) The department shall take final action on at least one-third of all air quality operating permit applications received during the initial transition period annually for a period of three years following approval of the permit program by the administrator.

(4) Within nine months after receiving a complete application, the department shall take final action on an air quality operating permit application containing an early reduction demonstration that has been approved by the administrator under section 112(i)(5) of the FCAA.

(5) The department shall ensure priority is given to taking action on Montana air quality permit applications for construction or modification submitted pursuant to subchapters 7, 8, 9, and 10 of this chapter.

(6) Upon filing, the department shall promptly make a determination as to whether the application is administratively complete, as provided for in ARM 17.8.1205(3). The department shall provide notice to the applicant of whether the air quality operating permit application is substantively complete. Unless the department requests additional information or otherwise notifies the applicant of substantive incompleteness within 60 days of receipt of a permit application, the application shall be deemed complete. For modifications processed through the minor modification procedures contained in ARM 17.8.1226, the department does not have to provide a completeness determination.

(7) Within 30 days of receipt of a notice of substantive incompleteness, the source shall submit a response to the department supplying the requested information. The department may extend this time period upon request. If a response is not received within this time period the application shall be considered withdrawn, and may be resubmitted. The department shall notify the applicant in writing within 60 days thereafter if the application is still substantively incomplete. This, and any subsequent incomplete notice shall follow the same form and requirements as the original incomplete notice.

(8) The department shall provide a statement that sets forth the legal and factual basis for the draft air quality operating permit conditions (including references to the applicable statutory or regulatory provisions). The department shall send this statement to the administrator and to any other person who requests it.

(9) The submittal of a complete air quality operating permit application does not affect a requirement that a source obtain a Montana air quality permit prior to commencement of construction under subchapters 7, 8, 9, or 10 of this chapter.

(10) An air quality operating permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the FCAA.

(11) The renewal of an air quality operating permit is subject to the same procedural requirements that apply to permit issuance, including those for applications, content, public participation, and affected state and administrator review.

(12) Expiration of an air quality operating permit terminates the source's right to operate unless a timely and administratively complete permit renewal application has been submitted consistent with ARM 17.8.1205(2)(d) and 17.8.1221. If a timely and administratively complete application has been submitted all terms and conditions of the permit, including the application shield, remain in effect after the permit expires.

(13) The department shall provide a minimum of 30 days advance written notice to the holder of an air quality operating permit of the department's intent to revoke and reissue the permit or deny the permit renewal application. The notice of intent may not be appealed to the board. The department's final decision to revoke and reissue or deny renewal becomes effective and may be appealed to the board as provided for in ARM 17.8.1210(2)(j). The permit shield described in ARM 17.8.1214(1) shall remain in effect during any appeal of the department's decision to deny renewal or revoke and reissue to the board until such time as the board renders its final decision. Nothing in this section shall limit the emergency powers of the department under the Montana Clean Air Act, Title 75, chapter 2, MCA. (History: 75-2-217, 75-2-218, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03.)

17.8.1221 OPERATION WITHOUT AN AIR QUALITY OPERATING PERMIT AND APPLICATION SHIELD (1) Except as provided in (2), ARM 17.8.1224(3), and 17.8.1226(6) and (10), no source required to obtain an air quality operating permit may operate after the time that it is required to submit a timely and complete application for a permit, except in compliance with a permit issued under this subchapter.

(2) If a source required to obtain an air quality operating permit submits a timely and complete application for permit issuance or renewal, the source's failure to have a permit is not a violation of this subchapter until the department takes final action on the permit application, except as otherwise noted in this subchapter. This protection becomes effective upon determination by the department that a timely application is administratively complete, as provided for in ARM 17.8.1205(3), and shall cease to apply if, subsequent to the substantive completeness determination made pursuant to ARM 17.8.1220(6), and as required by ARM 17.8.1205(3), the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being necessary to process the permit application. If the department's final action on any permit application under this subchapter is appealed to the board, the application shield, if in effect, shall remain in effect until such time as the board renders its final decision. (History: 75-2-217, 75-2-218, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1222 GENERAL AIR QUALITY OPERATING PERMITS (1) The department may provide for a general air quality operating permit covering a source category with numerous similar sources, if it concludes that the category is appropriate for permitting on a generic basis.

(2) The department may provide for a general permit based upon its own initiative or the application of a source within the source category. The department shall provide a notice and opportunity for public participation, consistent with ARM 17.8.1232. Such procedures may be combined with the rulemaking process before the board required for the adoption and incorporation by reference of a general permit.

(3) A general permit may be used to establish terms and conditions to implement applicable requirements for a source category or for new requirements that apply to sources with existing general permits, or to establish federally enforceable caps on emissions from sources in a specific category.

(4) A general permit may be appropriate under the following conditions:

(a) there are several permittees, permit applicants, or potential permit applicants who have the same or substantially similar operations, emissions, activities, or facilities;

(b) the permittees, permit applicants, or potential permit applicants emit the same types of regulated air pollutants;

(c) the operations, emissions, activities, or facilities are subject to the same or similar standards, limitations, and operating requirements; and

(d) the operations, emissions, activities or facilities are subject to the same or similar monitoring requirements.

(5) A general air quality operating permit shall include those requirements set forth in ARM 17.8.1210(4).

(6) After a general permit has been proposed by the department and formally adopted by the board, a source that intends to operate under the terms of the general permit must provide written notice to the department before it may qualify for the general permit, as required by ARM 17.8.1205(3)(d). Such notification shall identify the source, provide information sufficient to demonstrate that the source falls within the source category covered by the general permit and is capable of operating in compliance with the terms and conditions of the general permit, and include any additional information that may be specified in the general permit.

(7) Without repeating the public participation procedures required under ARM 17.8.1232, the department may review a source's written notification, and based upon the information submitted, confirm or deny that the source appears to both qualify for the general permit and be capable of operating in compliance with the terms and conditions of the general permit. The department may request such additional information from the source as may be necessary to make these findings. Such action is not a final permit action for purposes of board review.

(8) The department shall act to make the necessary findings in (7), within 90 days of receipt of the notification provided for in (6), and shall provide written notice to the source of its findings.

(9) A general permit shall provide that any source whose coverage under the general permit has been confirmed by the department pursuant to (7), shall be entitled to the protection of the permit shield for all operations, activities, and emissions addressed by the general permit, unless and to the extent that it is subsequently determined that the source does not qualify for the conditions and terms of the general permit. If the source is later determined not to qualify for the conditions and terms of the general permit, the source may be subject to enforcement action for operation without an air quality operating permit.

(10) The renewal of a general permit is subject to the same procedural requirements, including public participation, that apply to the initial issuance of general permits.

(11) General air quality operating permits may not be authorized for affected sources under the acid rain program, unless otherwise provided in regulations promulgated under Title IV of the FCAA. (History: 75-2-217, 75-2-218, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1223 TEMPORARY AIR QUALITY OPERATING PERMITS (1) The department may issue an air quality operating permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source may be permitted as a temporary source. Permits for temporary sources shall include those requirements set forth in ARM 17.8.1210(5). (History: 75-2-217, MCA; IMP, 75-2-217, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1224 ADDITIONAL REQUIREMENTS FOR OPERATIONAL FLEXIBILITY AND AIR QUALITY OPERATING PERMIT CHANGES THAT DO NOT REQUIRE REVISIONS

(1) A source holding an air quality operating permit is authorized to make changes within a permitted facility as described in (3) and (4), providing the following conditions are met:

(a) the proposed changes do not require the source or stack to obtain a Montana air quality permit under subchapter 7 of this chapter;

(b) the proposed changes are not modifications under Title I of the FCAA, or as defined in subchapters 8, 9 or 10 of this chapter;

(c) the emissions resulting from the proposed changes do not exceed the emissions allowable under the permit, whether expressed as a rate of emissions, or in total emissions;

(d) the proposed changes do not alter permit terms that are necessary to enforce applicable emission limitations on emissions units covered by the permit;

(e) the facility provides the administrator and the department with written notification at least seven days prior to making the proposed changes.

(2) The source and department shall attach each notice provided pursuant to (1)(e), to their respective copies of the appropriate air quality operating permit.

(3) Pursuant to the conditions in (1) and (2), a source holding an air quality operating permit is authorized to make section 502(b)(10) changes, as defined in this subchapter, without a permit revision. For each such change, the written notification required under (1)(e), shall include a description of the change within the source, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(4) Pursuant to the conditions in (1) and (2), and upon the request of the permit applicant, the department shall issue an air quality operating permit that contains terms and conditions, including all terms required under ARM 17.8.1210 through 17.8.1213 and 17.8.1215 to determine compliance, allowing for the trading of emissions increases and decreases at the source solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, providing the following conditions are met:

(a) the applicant must include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable;

(b) the emissions trades may not be applied to any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades;

(c) the permit must require compliance with all applicable requirements;

(d) emission trading may only be done within a pollutant, that is, emission decreases may only be traded for emission increases of the same pollutant; and

(e) the written notification required under (1)(e), must state when the change will occur, and describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(5) A source holding an air quality operating permit may make a change not specifically addressed or prohibited by the permit terms and conditions without requiring a permit revision, provided that the following conditions are met:

(a) each proposed change does not weaken the enforceability of any existing permit condition;

(b) the department has not objected to such change;

(c) each proposed change meets all applicable requirements and does not violate any existing permit term or condition; and

(d) the source provides contemporaneous written notice to the department and the administrator of each change that is above the level for insignificant emission units as defined in ARM 17.8.1201(22) and 17.8.1206(3), and the written notice describes each such change, including the date of the change, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(6) The permit shield authorized by ARM 17.8.1214 shall not apply to changes made pursuant to (3) and (5), but is applicable to terms and conditions that allow for increases and decreases in emissions pursuant to (4).

(7) Notwithstanding any provisions of this rule, the following changes must be submitted as an air quality operating permit revision:

(a) any change that increases emissions above those allowed in the air quality operating permit;

(b) any change that increases emissions above those allowed in the Montana air quality permit;

(c) any change that is a modification as defined in subchapters 8, 9 or 10 of this chapter;

(d) any change that is a modification or reconstruction under sections 110, 111, or 112 of the FCAA; or

(e) any change subject to the acid rain requirements under Title IV of the FCAA. (History: 75-2-217, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03.)

17.8.1225 ADDITIONAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT AMENDMENTS (1) An administrative permit amendment may be made by the department to an air quality operating permit, consistent with the following:

(a) The department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes into the permit without providing notice to the public or affected states, provided that it designates any such permit revisions as having been made pursuant to this rule.

(b) The department shall submit a copy of the revised permit to the administrator.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(2) If the administrative permit amendment involves a change in ownership or operational control of a source, the applicant must include in its request to the department a written agreement containing a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee. Such an amendment shall be approved unless the department affirmatively demonstrates why such a change would violate an applicable requirement or jeopardize compliance with the terms and conditions of the operating permit.

(3) Administrative permit amendments for purposes of the acid rain portion of the permit will be governed by regulations promulgated under Title IV of the FCAA.

(4) The permit shield provided for in ARM 17.8.1214 does not apply to administrative permit amendments. (History: 75-2-217, MCA; IMP, 75-2-217, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2000 MAR p. 838, Eff. 3/31/00.)

17.8.1226 ADDITIONAL REQUIREMENTS FOR MINOR AIR QUALITY OPERATING PERMIT MODIFICATIONS

(1) Minor air quality operating permit modification procedures may be used only for those permit modifications that:

- (a) do not violate any applicable requirement;
- (b) do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements or other permit terms that are necessary to enforce applicable emission limitations on emissions units covered by the permit;
- (c) do not require or change a case-by-case determination of an emission limitation or other standard, a source-specific determination of ambient impacts for temporary sources, or a visibility or increment analysis;
- (d) are not modifications under any provision of Title I of the FCAA;
- (e) do not require a Montana air quality permit;
- (f) are not required by the department to be processed as a significant modification; and
- (g) do not seek to establish or change a permit term for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms include a federally enforceable emissions cap assumed to avoid classification as a modification under Title I of the FCAA, and an alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the FCAA.

(2) Notwithstanding (1) and (7), minor air quality operating permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the Montana State Implementation Plan or in applicable requirements promulgated by the administrator.

(3) An application for a minor permit modification under this rule need only address in detail those portions of the permit application that require revision, updating, supplementation, or deletion, and may reference any required information that has been previously submitted.

(4) Within five working days of receipt of a complete permit modification application, the department shall meet its obligation under ARM 17.8.1233 to notify the administrator and affected states of the requested permit modification. The department must promptly send any notice required under ARM 17.8.1233 to the administrator.

(5) The department may not issue a final minor air quality operating permit modification until after the administrator's 45-day review period ends, or until the administrator has notified the department that the administrator will not object to issuance of the permit modification, whichever first occurs, although the department can approve the permit modification prior to that time. Within 90 days of the department's receipt of an application under minor modification procedures or 15 days after the end of the administrator's 45-day review period under ARM 17.8.1233, whichever is later, and after the close of any public comment period, the department shall:

(a) issue the permit modification as proposed;

(b) deny the permit modification application;

(c) determine that the requested permit modification does not meet the minor modification criteria and should be reviewed under the significant modification procedures; or

(d) revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by ARM 17.8.1233.

(6) Unless the proposed change requires a Montana air quality permit, the source may make the change proposed in its minor modification application immediately after such application is filed with the department. After the source makes the proposed change, and until the department takes any of the actions specified in (5), the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions that it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions that it seeks to modify may be enforced against it.

(7) Consistent with the requirements in this section and (8) through (10), the department may process groups of a source's applications for certain modifications eligible for minor modification processing. Group processing may be used only for those modifications:

(a) that meet the criteria for minor modification procedures under (1); and

(b) that collectively are below 10% of the emissions allowed by the existing air quality operating permit for the emissions unit at which the change is requested, 20% of the applicable definition of major source in ARM 17.8.1201(23), or five tons per year, whichever is least.

(8) On a quarterly basis or within five business days of receipt of a permit modification application demonstrating that the aggregate of a source's pending minor permit modification application equals or exceeds the threshold level set under (7), whichever is earlier, the department must promptly meet its obligation under ARM 17.8.1233 to notify the administrator and affected states of the requested permit modifications. The department shall send any notice required under ARM 17.8.1233 to the administrator.

(9) The provisions of (5) shall apply to modifications eligible for group processing, except that the department shall take one of the actions specified in (5)(a) through (d) above, within 180 days of receipt of the application or 15 days after the end of the administrator's 45-day review period under ARM 17.8.1233, whichever is later.

(10) The provisions of (6) shall apply to modifications eligible for group processing.

(11) The permit shield under ARM 17.8.1214 will not extend to any minor modifications processed pursuant to this rule.

(12) If the department makes a written determination that a particular modification or type of modification requires public notice, the department shall, consistent with ARM 17.8.1232, provide public notice of a change or changes proposed in a minor permit modification application pursuant to this rule, promptly on the making of the determination, and the department shall provide written notice to the source of the specific reason for such determination. It is the intention of this section that public notice for minor modifications shall not be required as a routine procedure. (History: 75-2-217, MCA; IMP, 75-2-217, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03.)

17.8.1227 ADDITIONAL REQUIREMENTS FOR SIGNIFICANT AIR QUALITY OPERATING PERMIT MODIFICATIONS

(1) The modification procedures set forth in (3), must be used for any application requesting a significant modification of an air quality operating permit. Significant modifications include the following:

- (a) any permit modification that does not qualify as either a minor modification or as an administrative permit amendment;
- (b) every significant change in existing permit monitoring terms or conditions;
- (c) every relaxation of permit reporting or recordkeeping terms or conditions which limits the department's ability to determine compliance with any applicable rule, consistent with the requirements of the rule; or
- (d) any other change determined by the department to be significant.

(2) Nothing herein may be construed to preclude the permittee from making changes consistent with this chapter that would render existing permit compliance terms and conditions irrelevant.

(3) Significant modifications shall meet all requirements of this chapter, including those for applications, public participation, and review by affected states and the administrator, as they apply to permit issuance and renewal, except that an application for a significant modification permit need only address in detail those portions of the permit application that require revision, updating, supplementation, or deletion. The department shall conduct this process to complete review of the majority of significant modifications within nine months after receipt of a complete application.

(4) The permit shield provided for in ARM 17.8.1214 shall extend to significant modifications. (History: 75-2-217, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1228 ADDITIONAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT REVOCATION, REOPENING, AND REVISION FOR CAUSE

(1) An air quality operating permit may be reopened and revised only under the following circumstances:

(a) Additional applicable requirements under the FCAA become applicable to a major source holding a permit with a remaining term of three or more years. Reopening and revision of the permit shall be completed not later than 18 months after promulgation of the applicable requirement. No reopening is required under this subsection if the effective date of the applicable requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to ARM 17.8.1220(12) or 17.8.1221(2).

(b) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) The administrator or the department determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.

(2) Each permit issued under this subchapter shall specify that under the circumstances contained in (1)(a) through (d), the permit shall be reopened and revised.

(3) Proceedings to reopen and revise an air quality operating permit, including the opportunity for appeal and review by the board, shall follow the same procedures as apply to permit issuance, and shall affect only those parts of the permit for which cause exists for reopening and revision under (1). Reopening and revision shall be completed as expeditiously as practicable.

(4) The department shall provide a minimum of 90 days advance written notice to the holder of an air quality operating permit of the department's intent to reopen and revise the permit under (1). The department may, in the notice of intent, request such information as may be necessary to prepare the permit revision for inclusion in the permit after reopening. The notice of intent to reopen may not be appealed to the board. The department's final decision on reopening and revision becomes effective and may be appealed to the board as provided for in ARM 17.8.1210(2)(j). In an appeal of the department's final decision on reopening, the department shall be required to make a showing of substantial necessity. The permit shield described in ARM 17.8.1214(1) shall remain in effect during any appeal of the department's decision to reopen to the board until such time as the board renders its final decision. Nothing in this section shall limit the emergency powers of the department under the Montana Clean Air Act, Title 75, chapter 2, MCA. (History: 75-2-217, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

Rules 17.8.1229 and 17.8.1230 reserved

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17.8.1231 NOTICE OF TERMINATION, MODIFICATION, OR REVOCATION AND REISSUANCE BY THE ADMINISTRATOR FOR CAUSE (1) If the

administrator notifies the department and the permittee in writing that cause exists to terminate, modify, or revoke and reissue an air quality operating permit pursuant to the circumstances contained in ARM 17.8.1228(1), the department shall, within 90 days after receipt of notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The department may apply to the administrator for an extension of up to an additional 90 days if a new or revised permit application is necessary or the department must require the permittee to submit additional information.

(2) If the administrator objects in writing to the department's proposed determination pursuant to (1), the department shall have 90 days from receipt of the objection to resolve the issues raised by the administrator, and to terminate, modify, or revoke and reissue the permit in accordance with the administrator's objection. (History: 75-2-217, MCA; IMP, 75-2-217, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1232 PUBLIC PARTICIPATION (1) Except for permit changes not requiring revisions under ARM 17.8.1224, administrative permit amendments under ARM 17.8.1225, department review of activities to be conducted pursuant to general permits under ARM 17.8.1222, and minor permit modifications where the department has not made a determination that public notice is required under ARM 17.8.1226(12), all air quality operating permit proceedings, including initial permit issuance, minor permit modifications where the department has made a determination that public notice is required under ARM 17.8.1226(12), significant permit modifications, and renewals, shall provide adequate procedures for public notice, including an opportunity for both public comment and a hearing on the draft permit. These procedures shall include the following:

(a) The department shall give public notice by publication in a newspaper of general circulation in the area where the source is located, to persons on a mailing list developed by the department including those who request in writing to be on the list, and by other means if necessary to assure adequate notice to the affected public.

(b) The notice required under (1)(a), shall identify the following:

- (i) the affected facility;
- (ii) the name and address of the permittee;
- (iii) the name and address of the department;
- (iv) the activity or activities involved in the permit action;
- (v) the emissions change involved in any permit modification;
- (vi) the name, address, and telephone number of a person from whom

interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials, including those set forth in compliance plans, compliance certification reports and monitoring reports, and all other materials available to the department that are relevant to the permit decision, with the exception of information that has been declared confidential;

(vii) a brief description of the comment and appeal procedures required by this chapter; and

(viii) the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).

(c) The department shall provide such notice and opportunity for participation by affected states as provided in ARM 17.8.1233.

(d) The department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(2) The department shall keep a record of both the commentors and the issues raised during the public participation process so that the administrator may fulfill the obligation under section 505(b)(2) of the FCAA to determine whether a citizen petition may be granted, and such records shall be available to the public.

(3) All comments received during the public comment period shall be promptly forwarded to the source in order that the source may have an opportunity to respond to these comments. (History: 75-2-217, MCA; IMP, 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2007 MAR p. 1663, Eff. 10/26/07.)

17.8.1233 PERMIT REVIEW BY THE ADMINISTRATOR AND AFFECTED STATES

(1) The department shall provide to the administrator a copy of each proposed and each final air quality operating permit, including any permit that has been appealed to the Board of Environmental Review, if the board has directed the department to issue a permit that differs from the proposed permit previously forwarded to the administrator for review in compliance with this section.

(2) An applicant shall provide a copy of each air quality operating permit application and each minor or significant permit modification application (including the compliance plans) directly to the administrator. To the extent practicable, the information required under this section shall be provided in computer-readable format compatible with the administrator's national database management system.

(3) The department shall keep for five years such records and submit to the administrator such information as the administrator reasonably requires to ascertain whether the state program complies with the requirements of the FCAA and 40 CFR Part 70.

(4) The department shall give notice of each draft air quality operating permit to any affected state on or before the time that the department provides this notice to the public under ARM 17.8.1232, except to the extent ARM 17.8.1226(4) or (8) requires the timing of the notice to be different. The department shall also give notice to any affected state of any appeal of an operating permit to the board, on or before the date that the department provides this notice to the public.

(5) The department shall, as part of the submittal of the proposed air quality operating permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under ARM 17.8.1226(4) or (8)) notify the administrator and any affected state in writing of any refusal by the department to accept all recommendations for the proposed permit submitted by the affected state during the public comment or affected state review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on applicable requirements or the requirements of this subchapter. Those requirements designated as not being federally enforceable may not serve as the basis for such recommendations.

(6) No air quality operating permit for which an application must be transmitted to the administrator under (2), shall be issued if the administrator objects in writing to its issuance within 45 days of receipt of the proposed permit and all necessary supporting information. Objections by the administrator shall only be based on the grounds that the permit did not demonstrate or require compliance with applicable requirements or comply with the requirements of this subchapter. Those requirements designated as not being federally enforceable may not serve as the basis for such objections.

(7) Any objection by the administrator under (6), shall include a statement of the administrator's reasons for objection and a description of the terms and conditions that the air quality operating permit must include to respond to the objection. The administrator shall provide to the permit applicant a copy of the objection.

(8) The failure of the department to do any of the following shall also constitute grounds for an objection by the administrator:

(a) comply with (1) through (5);

(b) submit any information necessary to adequately review the proposed permit; or

(c) process the permit under the procedures approved to meet ARM 17.8.1232, except for those actions by the department that are not subject to ARM 17.8.1232.

(9) If the administrator does not object in writing under (6), any person may petition the administrator within 60 days after the expiration of the administrator's 45-day review period to make such objection.

(10) Any petition filed with the administrator pursuant to (9) shall be based only on objections to the air quality operating permit that were raised with reasonable specificity during the public comment period provided for in ARM 17.8.1232, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

(11) If the administrator objects to the air quality operating permit as a result of a petition filed under (9), the department shall not issue the permit until the administrator's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to the administrator's objection. If the department has issued a permit prior to receipt of the administrator's objection under this section, and the administrator modifies, terminates, or revokes and reissues the permit consistent with the procedures in ARM 17.8.1231, the department may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application. The permit shield described in ARM 17.8.1214(1) shall remain in effect until a final permit is issued.

(12) If, after an appeal, the board directs the department to issue an air quality operating permit that differs from the proposed permit previously forwarded to the administrator for review, and the administrator objects to issuance of the permit, the department shall not issue a permit until the administrator's objection has been resolved. Until final resolution, the source will not be in violation of the requirement to submit a timely and complete application. The permit shield described in ARM 17.8.1214(1) shall remain in effect until a final permit is issued. The permit issuance and appeal requirements of ARM 17.8.1210(2)(j) shall apply.

(13) Consistent with (6) through (12), the department may not issue an air quality operating permit (including a permit renewal or modification) until the administrator has had an opportunity to review the proposed permit and affected states have had an opportunity to review the draft permit as required under this subchapter. The administrator may waive the opportunity for such review by the administrator and affected states. (History: 75-2-217, MCA; IMP, 75-2-217, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285.)

17.8.1234 ACID RAIN--PERMITS REGULATION (1) For the purpose of this rule, the following definitions apply:

(a) "Permitting authority," as used in 40 CFR Part 72, means the Montana Department of Environmental Quality.

(b) The terms and associated definitions specified in 40 CFR Part 72 shall apply to this rule, except as specified in (1)(a).

(2) Any source that is subject to the requirements of 40 CFR Part 72 shall comply with all applicable requirements of 40 CFR Parts 72 and 75 in obtaining an operating permit under this subchapter. (History: 75-2-217, MCA; IMP, 75-2-217, MCA; NEW, 1995 MAR p. 535, Eff. 4/14/95; AMD, 1996 MAR p. 1853, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2007 MAR p. 1663, Eff. 10/26/07.)