

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda # III.A.1

Agenda Item Summary: The Department requests that the Board initiate rulemaking to:

- Amend the air quality incorporation-by-reference (IBR) rules to adopt updated editions of federal statutes and regulations;
- Adopt the 2017 *Montana Ambient Air Monitoring Program Quality Assurance Project Plan* (QAPP) and incorporate all rule changes included in the QAPP;
- Centralize the location of rule reference materials; and
- Revise an internal reference citation and definition in the Administrative Rules of Montana (ARM) Title 17, Chapter 8, subchapter 9.

List of Affected Rules: This rulemaking would amend ARM 17.8.102, 17.8.103, 17.8.202, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.901, 17.8.902, 17.8.904, 17.8.1002, 17.8.1102, 17.8.1202, 17.8.1302, 17.8.1402, and 17.8.1502.

Affected Parties Summary: The proposed rule amendments would affect sources of air pollution subject to regulation under the air quality rules in ARM Title 17, Chapter 8 that would be affected by adopting the current editions of federal statutes and regulations incorporated by reference in the ARM. Specifically, revisions published in the July 1, 2016, edition of the Code of Federal Regulations (CFR), and the 2015 edition of the United States Code (USC), as published on the website of the U.S. Government Printing Office. The adoption of the 2017 version of the QAPP would affect only ambient air quality monitoring programs conducted by the Department. The proposed amendments to subchapter 9 would not affect any regulated sources; they are administrative corrections.

Background: Annually, the Department requests that the Board update its rules incorporating by reference federal air quality statutes and regulations. This rulemaking includes the annual IBR, consolidation of IBR rules, and an update of the QAPP to reflect new federal requirements. Also, this rulemaking proposes administrative changes to ARM Title 17, Chapter 8, subchapter 9 - Permit Requirements for Major Stationary Sources or Major Modifications Locating within Nonattainment Areas.

IBR

The following IBR amendments to the ARM are proposed:

- Update the editions and the website addresses of the CFR (to July 1, 2016) and USC (to 2015), set forth in ARM 17.8.102(1);

- Remove the exemptions of 40 CFR Part 63, Subparts JJJJJ and KKKKK in ARM 17.8.102(2);
- Exempt 40 CFR Part 60, Subparts OOOOa and TTTT from incorporation in ARM 17.8.102(2);
- Correct outdated contact information regarding where to find federal reference materials from ARM 17.8.103, 17.8.202, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1102, 17.8.1202, 17.8.1302, 17.8.1402, and 17.8.1502, and consolidate this contact information in ARM 17.8.102;

Failure to adopt the most recent edition of the CFR could result in the issuance of a federal implementation plan (FIP) for some of the requirements, with the federal Environmental Protection Agency (EPA) becoming the regulator in Montana for those requirements. If the failure continued, loss of state regulatory authority for administering the air program could result. A summary of the updates made to the CFR since the previous version was incorporated by reference is provided in the table attached as Enclosure 2.

As part of the IBR action, this rulemaking would remove the exemptions of 40 CFR Part 63, Subparts JJJJJ and KKKKK, in ARM 17.8.102(2). Subparts JJJJJ and KKKKK are National Emission Standards for Hazardous Air Pollutants (NESHAP) for brick and structural clay products manufacturing and clay ceramics manufacturing, respectively. Originally adopted into the ARM in 2003, these NESHAPS were vacated and remanded by the U.S. Court of Appeals for the District of Columbia on March 13, 2007, leading to their exemption in the ARM. EPA addressed the vacatur and remand by issuing new Subparts JJJJJ and KKKKK on October 26, 2015; these NESHAP exemptions from the ARM are now unnecessary.

The Department recommends not incorporating by reference 40 CFR Part 60, Subparts OOOOa and TTTT, at this time. These subparts refer to the New Source Performance Standards (NSPS) for crude oil and natural gas facilities for which construction, modification or reconstruction commenced after September 18, 2015, and greenhouse gas emissions for electric utility generating units, respectively. Those subparts are currently under litigation with uncertain futures. For Subpart OOOOa, a 2-year stay and a 90-day stay have been proposed to revise the rule. Additionally, on May 18, 2017, a federal court indefinitely stayed litigation over the methane rule for new oil and gas operations in order to give the Trump administration time to review the rule. Subpart TTTT, which is part of the Clean Power Plan, was also stayed on February 9, 2016, until legal challenges to the regulation are resolved.

Currently, addresses and websites for reference materials are duplicated over many subchapters in the air quality rules. This rulemaking would place those references in one central location, ARM 17.8.102, while reducing the number of rule amendments required if the information for reference material changes in the future.

Updated QAPP:

The following amendment to the ARM is proposed:

- Amend ARM 17.8.202(1)(a) to adopt the updated 2017 QAPP;

The QAPP is the document that provides quality assurance requirements for the Department's ambient air monitoring program. The Department's ambient air monitoring program currently adheres to the 2013 version of the QAPP. Since the 2013 QAPP was adopted by the Board on April 16, 2015 (Montana Administrative Register 17-367), there have been numerous revisions to the federal regulations that direct the quality assurance activities of the ambient air monitoring program. The major changes in the 2017 version include monitoring protocols for additional pollutants, administrative changes, revised data treatment, and replacement of references to outdated technologies with references to the modern methods. The numerous changes are described in the revision history that precedes the table of contents in the 2017 QAPP, which can be viewed here: <http://deq.mt.gov/Air/airmonitoring/monitoringdocuments>

The proposed 2017 QAPP includes the amendments to 40 CFR 50.14(c)(1) and (2) made on October 3, 2016. The amendment includes revisions to the treatment of data influenced by exceptional events. Since these amendments occurred after July 1, 2016, they are not in the CFR proposed for adoption in this IBR action. The Department believes it is beneficial to adopt those requirements as soon as possible and include them in the 2017 version of the QAPP, and the proposed amendment to ARM 17.8.202(1)(b) would adopt those amendments to federal regulations.

Subchapter 9 Amendments:

The following amendments are being proposed for ARM Title 17, Chapter 8, subchapter 9:

- Revise the definition of "precursors" in ARM 17.8.901(16); and
- Revise the internal reference citation in ARM 17.8.904(7).

The amendments to ARM 17.8.901 and 17.8.904 result from the Department's ongoing working relationship with EPA. Following submittal of air quality rules into the State Implementation Plan (SIP), EPA contacted the Department with two concerns. The first was not identifying oxides of nitrogen (NO_x) as a precursor to particulate matter with a diameter smaller than 2.5 microns (PM_{2.5}). The second was an incorrect internal reference in ARM 17.8.904(7). This rulemaking would remedy both issues.

Hearing Information: The Department recommends that the Board propose the amendments without a public hearing because they are not controversial, are unlikely to generate public interest, and implement requirements that will eventually be administered by the federal government if not adopted by the Board.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Proposed Amendment

- of Rules;
- 2. Modify the Notice and initiate rulemaking; or
- 3. Determine that the amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking as described in the draft Notice of Proposed Amendment of Rules (No Public Hearing Contemplated).

Enclosures:

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