

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR ACTION ON RULE ADOPTION**

**Agenda # III.A.1**

**Agenda Item Summary:** The Board is considering adoption of a 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 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, 17.8.902, 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 amendment to subchapter 9 would not affect any regulated sources; it is an administrative correction.

**Scope of Proposed Proceeding:** The Department requests that the Board adopt the amendments to the above-stated rules as proposed in Montana Administrative Register (MAR) Notice No. 17-393, published on October 27, 2017.

**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 an administrative change 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.

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. The EPA is reconsidering methane rules and the Clean Power Plan; therefore, these subparts have uncertain futures.

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 amendment is being proposed for ARM Title 17, Chapter 8, subchapter 9:

- Revise the internal reference citation in ARM 17.8.904(7).

The amendment to 17.8.904 results 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 the concern that ARM 17.8.904(7) has an incorrect internal reference. This amendment would correct that concern.

**Hearing Information:** No hearing was requested and no hearing was held on the proposed amendments. The Department submitted testimony in support of the proposed amendment. No member of the public submitted comments during the comment period.

**Board Options:** The Board may:

1. Adopt the proposed amendments set forth in the attached Draft Notice of Amendment, and also adopt the attached HB 521 (stringency) and HB 311 (takings) analyses;
2. Adopt the proposed amendments with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Public Hearing on Proposed Amendments and the record in this proceeding; or
3. Decide not to adopt the amendments.

**DEQ Recommendation:** The Department recommends that the Board act according to Option 1 described above.

**Enclosures:**

1. Notice of Proposed Amendment
2. Department Testimony and Attachment
3. HB 521 and 311 Analysis and Takings Checklist
4. Draft Notice of Amendment

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
17.8.102, 17.8.103, 17.8.202, 17.8.302,	)	AMENDMENT
17.8.602, 17.8.767, 17.8.802, 17.8.902,	)	
17.8.904, 17.8.1002, 17.8.1102, 17.8.1202,	)	(AIR QUALITY)
17.8.1302, 17.8.1402, and 17.8.1502	)	
pertaining to incorporation by reference,	)	NO PUBLIC HEARING
definitions, applicability, operating permit	)	CONTEMPLATED
program overview and applicability of air	)	
quality rules	)	

TO: All Concerned Persons

1. The Board of Environmental Review proposes to amend the above-stated rules.

2. The Board of Environmental Review (board) will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., November 13, 2017, to advise of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [sscherer@mt.gov](mailto:sscherer@mt.gov).

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

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES AND  
AVAILABILITY OF REFERENCE DOCUMENTS

(1) Unless expressly provided otherwise in ~~in~~ this chapter, where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2015~~ 2016, edition of the Code of Federal Regulations (CFR), as it is published on the web site of the U.S. Government Printing Office at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2015&go=Go> ~~=Go~~ <https://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2016&go=Go> ~~=Go~~;

(b) adopted a section of the United States Code (USC) by reference, the reference is to the ~~2014~~ 2015 edition of the USC as it is published on the web site of the U.S. Government Printing Office at <https://www.gpo.gov/fdsys/browse/collectionUSCode.action?selectedYearFrom=2014&go=Go> ~~=Go~~ <https://www.gpo.gov/fdsys/browse/collectionUSCode.action?selectedYearFrom=2015&go=Go> ~~=Go~~;

(c) remains the same.

(2) For purposes of this chapter, the following subparts of 40 CFR Part ~~63~~ 60 are excluded from incorporation by reference:

(a) 40 CFR ~~63 Part 60, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing (40 CFR 63.8380 through 63.8515, and all associated appendices and tables)~~ subpart TTTT, Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units; and

(b) 40 CFR ~~63 Part 60, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing (40 CFR 63.8530 through 63.8665, and all associated appendices and tables)~~ subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015.

(3) Copies of material incorporated by reference in this chapter are available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

(4) A copy of federal materials also may be obtained from:

(a) National Technical Information Service (NTIS), 5301 Shawnee Road, Alexandria, VA 22312; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: [orders@ntis.gov](mailto:orders@ntis.gov); web: <http://www.ntis.gov>;

(b) National Service Center for Environmental Publications (NCSEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone (800) 490-9198; fax: (301) 604-3408; e-mail: [nscep@lmsolas.com](mailto:nscep@lmsolas.com); web: <https://www.epa.gov/nscep>;

(c) U.S. Government Printing Office, 732 North Capital Street, NW, Washington, DC 20401-001; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: [orders@gpo.gov](mailto:orders@gpo.gov); web: <https://www.gpo.gov>; and

(d) the EPA regional office libraries listed at <https://www.epa.gov/libraries/libraries>.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to amend the air quality rules to update editions of federal statutes and regulations, available online, that are incorporated by reference. The proposed amendments to ARM 17.8.102(1) and (2) would adopt revisions to federal regulations published in the July 1, 2016, edition of the CFR as it is published on the website of the U.S. Government Printing Office, and the 2015 edition of the USC, as it is published on the website of the U.S. Government Printing Office.

The reason for the reference to a specific webpage for the CFR is that the CFR is published in a new codified version every year. For Title 40, which contains the federal regulations adopted by reference by the board for air quality regulation, the official version is dated July 1 of each year. However, the online version is not available by that date, and the printed version is not available for more than four months after that date. The board adopts the July 1 edition after the online version has been made available. The board has placed on the Department of Environmental Quality's (department) website a summary of the major revisions to

the CFR that it is proposing to adopt by reference. This summary may be viewed at <http://deq.mt.gov/DEQAdmin/ber/agendasmeetings> for the September 29, 2017, board meeting under III.A.1. Affected CFRs. The reason for the reference to a specific webpage for the USC is that the USC is published in a new printed codified version every six years, with printed cumulative annual supplements. The most recent printed codified version is 2012. It is updated online by the U.S. Law Revision Counsel, which is associated with the U.S. House of Representatives, as new laws are enacted. It then takes about eight months before all titles of the USC are updated on the website of the U.S. Government Printing Office (U.S. GPO) with the changes enacted into law by the previous session of Congress. It takes about another ten months for a printed annual supplement to be distributed. The U.S. GPO publishes the printed versions, and its website is the most authoritative site for the official online version of the USC. It is this website that is used as the version of the updated USC referred to by the rules in ARM Title 17, chapter 8. The board proposes to adopt and incorporate by reference the annual revisions to federal regulations to ensure that Montana's air quality rules are at least as stringent as federal air quality regulations, to maintain authority and federal delegation of Montana's air quality program, and to implement federal emission standards according to a federal program of emissions control.

The board proposes to amend ARM 17.8.102(2), to remove the exemptions of 40 CFR Part 63, subparts JJJJJ and KKKKK. 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 federal Court of Appeals for the District of Columbia Circuit 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. If subparts JJJJJ and KKKKK are not incorporated into the ARM, EPA would develop a federal implementation plan to oversee the enforcement of these rules in Montana.

The board is proposing not to incorporate 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. The fate of these two subparts is uncertain because they are currently being litigated and may be revised or eliminated by the EPA. EPA stayed Subpart OOOOa for 90 days from June 2, 2017 through August 31, 2017, and then proposed a two-year stay following the 90-day stay to allow for time to review the rule and propose an amended rule. Subpart TTTT is part of the Clean Power Plan. Litigation challenging that subpart has been stayed indefinitely by the federal Court of Appeals for the District of Columbia Circuit, and EPA is required to file status reports every 90 days. *North Dakota v. EPA*, Nos. 15-1380 et al. (D.C. Cir. Aug. 10, 2017). EPA published a notice at 82 Fed. Reg. 16330 (April 4, 2017), that it is reviewing subpart TTTT and that, if appropriate, it may initiate proceedings to suspend, revise, or rescind that subpart. The board believes it is appropriate not to adopt 40 CFR Part 60, subparts

OOOOa and TTTT until there is more certainty as to whether they will remain in the CFR.

Also, please see the General Reason Statement below regarding the availability of referenced documents.

17.8.103 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) remains the same.

(2) A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901 Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

~~(3) Copies of federal materials also may be obtained from:~~

~~(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: orders@ntis.gov; web: <http://www.ntis.gov>;~~

~~(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: ncepi@mail.one.net; web: <http://www.epa.gov/ncepihome>;~~

~~(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: orders@gpo.gov; web: <http://www.gpoaccess.gov>; and~~

~~(d) the EPA regional office libraries listed at <http://www.epa.gov/natl/libraries.htm>.~~

~~(4) Copies of the CFR may be obtained from the U.S. Government Printing Office as set forth in ARM 17.8.102. When printed versions are available, they may be obtained as described in (3)(c).~~

~~(5) Copies of the U.S. Code may be obtained from the U.S. Government Printing Office as set forth in ARM 17.8.102. When printed versions are available, they may be obtained as described in (3)(c).~~

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: See Reason Statement for ARM 17.8.102 and General Reason Statement below.

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

(a) the Montana Ambient Air Monitoring Program Quality Assurance Project Plan (2013 2017), a department manual that specifies ambient air sampling and data collection, recording, analysis, and transmittal requirements that pertain only to the department's monitoring program;

(b) 40 CFR Part 50, specifying the national ambient air quality standards and ambient air quality monitoring reference methods except for the following changes: 40 CFR 50.14(c)(1) and (2) are replaced by 40 CFR 50.14(c)(1) and (2) as published



in 81 FR 68216 on October 3, 2016;

(c) and (d) remain the same.

(2) ~~A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901. Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).~~

(3) ~~Copies of federal materials also may be obtained from:~~

(a) ~~National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: orders@ntis.gov; web: <http://www.ntis.gov>;~~

(b) ~~National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: ncepimail@one.net; web: <http://www.epa.gov/ncepihom>;~~

(c) ~~U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: orders@gpo.gov; web: <http://www.gpoaccess.gov>; and~~

(d) ~~the EPA regional office libraries listed at <http://www.epa.gov/natlbra/libraries.htm>.~~

(4) ~~Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (3)(c).~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

REASON: A quality system for ambient air monitoring is the means by which an organization manages the quality of the monitoring information and data it produces in a systematic, organized manner. As a part of a quality system, the department develops and uses the Montana Ambient Air Quality Monitoring Program Quality Assurance Project Plan (QAPP), which follows the regulations in 40 CFR Part 58, Appendix A, Section 2. These regulations have these objectives: fulfilling foundational information needs associated with protecting Montana's air; providing quality data to the public; satisfying stakeholder expectations; complying with applicable statutes, societal concerns, and specifications for standards; and considering associated costs. The QAPP describes the quality assurance system that ensures the department's ambient air monitoring network is maintained in a prescribed manner that satisfies the objectives stated above. This work includes operation of each state or local government air monitoring station (SLAMS) that is used to help determine whether an area is in attainment or nonattainment status for a federal national ambient air quality standard (NAAQS).

Updates in the 2017 QAPP incorporate all applicable changes of federal regulations from 40 CFR Parts 50, 51, 52, 53, and 58. The changes since the 2013 version of the QAPP include:

a. Technical updates to the monitoring program;

- b. Updates to conform to 40 CFR Parts 50, 51, 52, and 58 regarding NAAQS for particulate matter;
- c. Updates to 40 CFR Parts 50, 51, 52, 53, and 58 regarding ozone;
- d. Updates to conform to 40 CFR Part 58, regarding quality assurance;
- e. Updates to include changes from EPA's January 2017 QA Handbook Vol. II and a 2013 EPA memorandum, "Update on Use of PM<sub>2.5</sub> Continuous FEMS";
- f. Updates to conform to 40 CFR Parts 50 and 51 regarding the treatment of data influenced by exceptional events;
- g. Updates to conform to 40 CFR Part 50 regarding methods for determining lead in total suspended particulate matter; and
- h. Updates to reflect current annual monitoring network plans, changes to quality assurance reporting, population information. Updated processing precision and accuracy information to monitor assessment module, new website addresses, and removed references that are no longer applicable.

It is necessary to keep the QAPP current with the federal regulations to direct the department's ambient air monitoring program so that data from the monitoring program is valid for uses such as establishing design values that can be used for redesignation of nonattainment areas. As described in the statement of reasons for the proposed amendments to ARM 17.8.102 above, the board normally adopts, through an annual update to the incorporation-by-reference rule, federal regulations in the CFR as they are published in the July 1 edition of the previous year. However, EPA adopted important changes to 40 CFR 50.14(c)(1) and (2) in October 2016 concerning the public notification requirements for ambient monitoring of exceptional events and the flagging of such exceptional events for potential exclusion from use in determining possible nonattainment with National Ambient Air Quality Standards. Because the board believes it is beneficial to adopt those requirements as soon as possible and include them in the 2017 version of the QAPP, it is proposing to adopt those changes in this rulemaking instead of waiting another year to adopt them. The board proposes to amend ARM 17.8.202(1)(a) to adopt the 2017 version of the QAPP and remove the reference to the 2013 version. The board also proposes to adopt the October 3, 2016, changes to 40 CFR 50.14(c)(1) and (2) so that all rules referred to in the 2017 QAPP are adopted and incorporated into the ARM.

17.8.302 INCORPORATION BY REFERENCE (1) remains the same.

(2) ~~A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.~~ Copies of materials incorporated by reference in this subchapter may be obtained as

referenced in ARM 17.8.102(3) and (4).

~~(3) Copies of federal materials also may be obtained from:~~

~~(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: [orders@ntis.gov](mailto:orders@ntis.gov); web: <http://www.ntis.gov>;~~

~~(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: [ncepimal@one.net](mailto:ncepimal@one.net); web: <http://www.epa.gov/ncepihom>;~~

~~(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: [orders@gpo.gov](mailto:orders@gpo.gov); web: <http://www.gpoaccess.gov>; and~~

~~(d) the EPA regional office libraries listed at <http://www.epa.gov/natlibra/libraries.htm>.~~

~~(4) Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (3)(c).~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

REASON: See General Reason Statement below.

17.8.602 INCORPORATION BY REFERENCE (1) remains the same.

~~(2) A copy of ARM Title 17, chapter 53, subchapter 5, is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901 may be obtained as referenced in ARM 17.8.102(3).~~

~~(3) Copies of federal materials also may be obtained from:~~

~~(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: [orders@ntis.gov](mailto:orders@ntis.gov); web: <http://www.ntis.gov>;~~

~~(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: [ncepimal@one.net](mailto:ncepimal@one.net); web: <http://www.epa.gov/ncepihom>;~~

~~(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: [orders@gpo.gov](mailto:orders@gpo.gov); web: <http://www.gpoaccess.gov>; and~~

~~(d) the EPA regional office libraries listed at <http://www.epa.gov/natlibra/libraries.htm>.~~

~~(4) Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (3)(c).~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

REASON: See General Reason Statement below.

17.8.767 INCORPORATION BY REFERENCE (1) remains the same.

(2) A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901 Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

(3) Copies of federal materials also may be obtained from:

(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: [orders@ntis.gov](mailto:orders@ntis.gov); web: <http://www.ntis.gov>;

(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: [ncepimal@one.net](mailto:ncepimal@one.net); web: <http://www.epa.gov/ncepihom>;

(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: [orders@gpo.gov](mailto:orders@gpo.gov); web: <http://www.gpoaccess.gov>; and

(d) the EPA regional office libraries listed at <http://www.epa.gov/natlibra/libraries.htm>.

(4) Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (3)(c).

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, 75-2-215, MCA

REASON: See General Reason Statement below.

17.8.802 INCORPORATION BY REFERENCE (1) remains the same.

(2) A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901 Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

(3) Copies of federal materials also may be obtained from:

(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: [orders@ntis.gov](mailto:orders@ntis.gov); web: <http://www.ntis.gov>;

(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: [ncepimal@one.net](mailto:ncepimal@one.net); web: <http://www.epa.gov/ncepihom>;

(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954;

phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: [orders@gpo.gov](mailto:orders@gpo.gov); web: <http://www.gpoaccess.gov>; and

~~(d) the EPA regional office libraries listed at <http://www.epa.gov/natlbra/libraries.htm>.~~

~~(4) Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (3)(c).~~

~~(5) The Standard Industrial Classification Manual (1987) may be obtained from the NTIS, as described in (3)(a).~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204

REASON: See General Reason Statement below.

17.8.902 INCORPORATION BY REFERENCE (1) remains the same.

~~(2) Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4). A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.~~

~~(3) Copies of federal materials also may be obtained from:~~

~~(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: [orders@ntis.gov](mailto:orders@ntis.gov); web: <http://www.ntis.gov>;~~

~~(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: [ncepimal@one.net](mailto:ncepimal@one.net); web: <http://www.epa.gov/ncepihom>;~~

~~(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: [orders@gpo.gov](mailto:orders@gpo.gov); web: <http://www.gpoaccess.gov>; and~~

~~(d) the EPA regional office libraries listed at <http://www.epa.gov/natlbra/libraries.htm>.~~

~~(4) Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (3)(c).~~

~~(5) The Standard Industrial Classification Manual (1987) may be obtained from the NTIS, as described in (3)(a).~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: See General Reason Statement below.

17.8.904 WHEN MONTANA AIR QUALITY PERMIT REQUIRED

(1) through (6) remain the same.

(7) Applicability determinations made prior to January 1, 2011, without

accounting for condensable particulate matter, are not subject to ~~(5)~~ (6).

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: The board proposes to amend ARM 17.8.904(7). In 2011, the board amended the rule, which was submitted to the EPA the following year for inclusion in the State Implementation Plan (SIP). In January 2016, the EPA contacted the department with several questions related to the SIP submittal. The question referred to an incorrect internal reference in ARM 17.8.904(7). The department and board agree that the reference should be corrected. Without this amendment, the rules cannot be properly implemented.

17.8.1002 INCORPORATION BY REFERENCE (1) remains the same.

~~(2) A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901. Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).~~

~~(3) Copies of federal materials also may be obtained from:~~

~~(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: [orders@ntis.gov](mailto:orders@ntis.gov); web: <http://www.ntis.gov>;~~

~~(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: [ncepimal@one.net](mailto:ncepimal@one.net); web: <http://www.epa.gov/ncepihom>;~~

~~(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: [orders@gpo.gov](mailto:orders@gpo.gov); web: <http://www.gpoaccess.gov>; and~~

~~(d) the EPA regional office libraries listed at <http://www.epa.gov/natlibra/libraries.htm>.~~

~~(4) Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (3)(c).~~

~~(5) The Standard Industrial Classification Manual (1987) may be obtained from the NTIS, as described in (3)(a).~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: See General Reason Statement below.

17.8.1102 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR 81.327, providing attainment status designation for Montana pursuant to section 107 of the Federal Clean Air Act FCAA;

(b) remains the same.

(2) ~~A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901~~ Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

(3) ~~Copies of federal materials also may be obtained from:~~

(a) ~~National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: orders@ntis.gov; web: <http://www.ntis.gov>;~~

(b) ~~National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: ncepimal@one.net; web: <http://www.epa.gov/ncepihom>;~~

(c) ~~U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: orders@gpo.gov; web: <http://www.gpoaccess.gov>; and~~

(d) ~~the EPA regional office libraries listed at <http://www.epa.gov/natlibra/libraries.htm>.~~

(4) ~~Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (3)(c).~~

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: The acronym for Federal Clean Air Act has previously been defined in the rules. Also, see General Reason Statement below.

17.8.1202 INCORPORATION BY REFERENCE (1) remains the same.

(2) ~~A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901~~ Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

(3) ~~Copies of federal materials also may be obtained from:~~

(a) ~~National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: orders@ntis.gov; web: <http://www.ntis.gov>;~~

(b) ~~National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: ncepimal@one.net; web: <http://www.epa.gov/ncepihom>;~~

(c) ~~U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: orders@gpo.gov; web: <http://www.gpoaccess.gov>; and~~

(d) the EPA regional office libraries listed at <http://www.epa.gov/natlibra/libraries.htm>.

~~(4) Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (3)(c).~~

~~(5) The Standard Industrial Classification Manual (1987) may be obtained from the NTIS, as described in (3)(a).~~

AUTH: 75-2-217, MCA

IMP: 75-2-217, 75-2-218, MCA

REASON: See General Reason Statement below.

17.8.1302 INCORPORATION BY REFERENCE (1) remains the same.

~~(2) Copies of federal materials incorporated by reference in this subchapter may be obtained from:~~

~~(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: [orders@ntis.gov](mailto:orders@ntis.gov); web: <http://www.ntis.gov>;~~

~~(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: [ncepimal@one.net](mailto:ncepimal@one.net); web: <http://www.epa.gov/ncepihom>;~~

~~(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: [orders@gpo.gov](mailto:orders@gpo.gov); web: <http://www.gpoaccess.gov>; and~~

~~(d) the EPA regional office libraries located at <http://www.epa.gov/natlibra/libraries.htm>. Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).~~

~~(3) Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (2)(c).~~

AUTH: 75-2-111, MCA

IMP: 75-2-202, MCA

REASON: See General Reason Statement below.

17.8.1402 INCORPORATION BY REFERENCE (1) remains the same.

~~(2) Copies of federal materials incorporated by reference in this subchapter may be obtained from:~~

~~(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: [orders@ntis.gov](mailto:orders@ntis.gov); web: <http://www.ntis.gov>;~~

~~(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: [ncepimal@one.net](mailto:ncepimal@one.net); web:~~



<http://www.epa.gov/ncepihom>;

~~(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: orders@gpo.gov; web: <http://www.gpoaccess.gov>; and~~

~~(d) the EPA regional office libraries listed at <http://www.epa.gov/natlibra/libraries.htm>~~ Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

~~(3) Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (2)(c).~~

AUTH: 75-2-111, MCA

IMP: 75-2-202, MCA

REASON: See General Reason Statement below.

17.8.1502 INCORPORATION BY REFERENCE (1) For purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR ~~part~~ 51.214 and 40 CFR Part 51, Appendix P, which set forth EPA minimum emissions monitoring requirements for the Montana State Implementation Plan;

(b) 40 CFR ~~Part~~ 60.13 and 40 CFR Part 60, Appendix B, which set forth EPA performance specification and test procedures for continuous emission monitoring systems for new stationary sources;

(c) remains the same.

(d) 40 CFR ~~Part~~ 72.2, which contains the definition of utility unit;

(e) remains the same.

(f) 40 CFR Part 266, subpart H and Appendix IX, which set forth compliance and monitoring requirements for boilers and industrial furnaces.

(2) ~~A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901~~ Copies of materials incorporated by reference in this subchapter may be obtained as referenced in ARM 17.8.102(3) and (4).

~~(3) Copies of federal materials also may be obtained from:~~

~~(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; e-mail: orders@ntis.gov; web: <http://www.ntis.gov>;~~

~~(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; e-mail: ncepimal@one.net; web: <http://www.epa.gov/ncepihom>;~~

~~(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; e-mail: orders@gpo.gov; web: <http://www.gpoaccess.gov>; and~~

~~(d) the EPA regional office libraries listed at <http://www.epa.gov/natlibra/>~~

libraries.htm.

~~(4) Copies of the CFR may be obtained from the U.S. Government Printing Office, as described in (3)(c).~~

AUTH: 75-2-217, 75-2-218, MCA

IMP: 75-2-217, 75-2-218, MCA

REASON: Federal citations are changed to be consistent with the rule citation format. See General Reason Statement below.

General Reason Statement for Proposed Revisions: The board proposes to amend the air quality rules that identify where incorporated materials can be obtained and at the same time correct the reference contact information that has become outdated. Identifying this information once, in the General Provisions of ARM 17.8.102(3) and (4), would eliminate repetition of the information in 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.

4. Concerned persons may submit their data, views, or arguments in writing to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., November 24, 2017. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Sandy Scherer, Legal Secretary, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901: phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov, no later than November 24, 2017.

6. If the board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 80, based on the approximately 800 persons on the interested persons list for air quality matters that is maintained by the board. Because 25 persons is fewer than 80, the board will hold a hearing if it receives hearing requests from at least 25 persons.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH  
Rule Reviewer

BY: /s/ Christine Deveny

CHRISTINE DEVENY, CHAIRMAN

Certified to the Secretary of State, October 16, 2017.

## DEPARTMENT TESTIMONY

November 20, 2017

### Incorporation by Reference Rulemaking

My name is Julie Ackerlund. I am an Air Quality Planner for the Air Quality Bureau, submitting the following testimony on behalf of the Department of Environmental Quality (department). I would like to voice department support for the adoption of the proposed amendments in MAR Notice 17-939(publ. 10/27/17).

Annually, the department requests that the Board of Environmental Review (board) update its rules incorporating by reference federal air quality statutes and regulations and state administrative rules. The incorporation by reference update is accomplished by amending the dates of the editions and website addresses of the Code of Federal Regulations (CFR) and U.S. Code as set forth in ARM 17.8.102(1), and by providing the website address to the online annual versions of the CFR and U.S. Code sources in ARM 17.8.103. Failure to adopt the most recent edition of the CFR may result in the issuance of a federal implementation plan (or FIP) for some of the requirements, with the federal Environmental Protection Agency becoming the regulatory body in Montana for those requirements. If the failure continued, loss of state primacy for administering the air program could result.

The proposed rulemaking would incorporate revisions that were published in:

- the July 1, 2016, edition of the Code of Federal Regulations, and
- the 2015 edition of the United States Code.

The department reviewed the updated regulations to be incorporated by reference and a summary table describing the changes was made available for public review and is attached.

The Montana Ambient Air Monitoring Program Quality Assurance Project Plan (QAPP) has been updated to reflect new federal regulations in 40 CFR Part 58, Appendix A, Section 2. Adoption of the 2017 QAPP in ARM 17.8.202 is desired by the department to ensure the monitoring data collected and processed by the department result in quality data for use protecting Montana's air. For completeness, the department is requesting adoption of rule changes from 81 FR 68216 on October 3, 2016 which are reflected in the 2017 QAPP, but not yet incorporated by reference in ARM 17.8.102.

In addition, the department supports consolidating where reference material is available in the air quality rules, correcting an internal reference, and standardizing several citation references in the rules, as proposed in MAR notice 17-393. Also attached is the stringency and takings review for this rulemaking. The department recommends that the board adopt the amendments as proposed.

## Changes to the Code of Federal Regulations (CFR) (July 1, 2015 - June 30, 2016)

### Sections Incorporated by Reference into the Administrative Rules of Montana

#	Year/Vol	Part/Subpart/Section*	Change	FR Page	Summary	ARM Reference	Topic
1	2016/81	50.14	Revised, removed	65452	In this rule, the Environmental Protection Agency (EPA) revised how exceptional events shall be flagged, when data shall be submitted, the schedule for submitting a demonstration of an exceptional event. The Rule also removed four 'reserved' sections.	17.8.202	Treatment of Monitoring Data Influenced by Exceptional Events
2	2015/80	50.19	Added	65452	The primary and secondary ozone national ambient air quality standards (NAAQS) were added. The standards are met if the 3-year average of the annual fourth-highest daily maximum 8-hour ozone concentration is less than 70 ppb for both the primary and secondary standard.	17.8.202	2015 Ozone NAAQS
3	2015/80	50 Appendix D	Revised	65453	This appendix now includes both the original ethylene chemiluminescence methodology as well as the new NO-chemiluminescence methodology, such that use of either measurement technique would be acceptable for implementation in commercial federal reference method analyzers.	17.8.202	Reference Measurement Principle and Calibration Procedure for Ozone in the Atmosphere
4	2015/80	50 Appendix U	Added	65458	This new appendix explains the data handling conventions and computations necessary for determining whether the primary and secondary NAAQS for ozone are met at an ambient ozone air quality monitoring site. Data reporting, data handling, and computation procedures to be used in making comparisons between reported ozone concentrations and the levels of the ozone NAAQS are specified.	17.8.202	Interpretation of the Primary and Secondary NAAQS for Ozone
5	2016/81	51.165(a)(1)(ii) and 51.166(b)(6) (Subpart I)	Revised	35632	For sources in the oil and natural gas sector, this action affects the determination of what constitutes a "stationary source" for purposes of the prevention of significant deterioration and nonattainment new source review preconstruction permitting programs and the scope of a "major source" in the title V operating permit program. The revised definitions are based on the proximity of emitting activities and consideration of whether the activities share equipment.	17.8.767	Review of New Sources and Modifications
6	2015/80	51.166(i)(11) (Subpart I)	Added	65460	This regulation was amended by adding that the new October 2015 ozone NAAQS do not apply when reviewing permit applications determined to be complete prior to October 1, 2015, but the ozone standard at the time the permit application was deemed complete.	17.8.767	Review of New Sources and Modifications
7	2015/80	53.9(i)	Removed	65460	Removed an obsolete provision for manufacturers to submit Product Manufacturing Checklists for fine and coarse particulate matter monitors.	17.8.103, 17.8.202	Ambient Air Monitoring Reference and Equivalent Methods
8	2015/80	53.14(c)	Revised	65460	Two changes were made which include an increase in the time allowed for the EPA to process requests for approval of modifications to previously designated federal reference methods (FRMs) and federal equivalent methods (FEMs) in the withdrawal of a requirement for annual submission of Product Manufacturing Checklists associated with FRMs and FEMs for PM <sub>2.5</sub> and PM <sub>10</sub> .	17.8.103, 17.8.202	Modification of an Ambient Air Monitoring Reference and Equivalent Methods



#	Year/Vol	Part/Subpart/Section *	Change	FR Page	Summary	ARM Reference	Topic
9	2015/80	53.23(e)(1)(vi)	Revised	65460	The definition of <i>precision</i> has been changed to denote as the standard deviation expressed as a percentage of the upper range limits to agree with the calculation specified in 53.23(e)(10)(vi).	17.8.103, 17.8.202	Procedures for Testing Performance Characteristics of Automated Methods for SO <sub>2</sub> , CO, O <sub>3</sub> and NO <sub>2</sub>
10	2015/80	53.20-53.23, Table B-1 (Subpart B)	Revised	65460	Changes to Table B-1 are to conform to FEM performance testing. Ozone performance standard range parameters were changed to be more consistent with ozone analyzer performance capabilities and ozone lower range performance parameters were added. Also, the precision limits for NO <sub>2</sub> were changed from units of ppm to percentage to agree with the calculation specified in 53.23(e)(10)(vi).	17.8.103, 17.8.202	Procedures for Testing Performance Characteristics of Automated Methods for SO <sub>2</sub> , CO, O <sub>3</sub> and NO <sub>2</sub>
11	2015/80	53.32(g)(1)(iii)	Revised	65466	The description of the measurements for the first set of simultaneous tests with the candidate and reference methods shall follow Table C-2 without exception.	17.8.103, 17.8.202	Procedures for Determining Comparability between Candidate Methods and Reference Methods
12	2015/80	53.50-53.59 Figure E-2 (Subpart E)	Removed	65466	The Product Manufacturing Checklist of Figure E-2 was removed because the requirement for manufacturers of PM <sub>2.5</sub> and PM <sub>10</sub> monitors to submit this checklist was removed at the same time, so it became obsolete.	17.8.103, 17.8.202	Product Manufacturing Checklist
13	2016/81	Part 58	Revised, added, amended	17276	These revisions include adding and harmonizing definitions; clarifying annual monitoring network plan public notice requirements; revising network design requirements; system modifications and operating schedules; clarifying data certification, data submittal and archiving procedures; reorganizing and clarifying quality assurance requirements; and revising certain network design criteria for non-source oriented lead monitoring. These revisions also address other issues in the Ambient Air Quality Surveillance Requirements, to help reduce the compliance burden of monitoring agencies operating ambient monitoring networks.	17.8.202	Ambient Air Quality Surveillance
14	2015/80	Part 58	Revised, added, amended	65466	Several changes have been made to these rules following the change to lower the ozone NAAQS. The EPA has made corresponding revisions in data handling conventions for ozone and changes to the air quality index. The EPA has changed the federal ozone monitoring season, the FRM the FEM analyzer performance requirements, and the Photochemical Assessment Monitoring Stations network.	17.8.202	Ambient Air Quality Surveillance
15	2016/81	60 Subparts A, GG, BBB, DDD, III, LLL, NNN, KKKK, OOOO	Amended, corrected	42542	Several corrections were made to reinstate the symbols "<", "≤", "≥" and ">" in various subparts.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Standards of Performance for New Stationary Sources - General Provisions
16	2015/80	60 Subpart A	Redesignated, new, added, and revised	64648	This amendment is related to permitting and reporting issues regarding the new carbon dioxide NSPS emission standard for fossil fuel-fired electric utility generating units, electric utility steam generating units, and stationary combustion turbines.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Standards of Performance for New Stationary Sources - General Provisions

#	Year/Vol	Part/Subpart/Section *	Change	FR Page	Summary	ARM Reference	Topic
17	2016/81	60 Subpart A	Revised, added	35895	Changes result from amendments to the oil and natural gas new source performance standard (NSPS) that set standards for greenhouse gases, VOC, and implementation improvements.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Standards of Performance for New Stationary Sources - General Provisions
18	2016/81	60 Subpart Da	Revised	20180	This technical correction revises procedures for calculating compliance with the NSPS daily average particulate matter emission limit using particulate matter continuous emission monitoring systems.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Standard of Performance for Electric Utility Steam Generating Units
19	2015/80	60 Subpart F	Revise, added, removed	44776	These changes correct technical errors in the NSPS, clarify several existing definitions, removed the substitution which allowed for inclusion of the average emission rate from the previous hour for which data were available when the source did not have valid 15-minute continuous emission monitoring systems (CEMS) data, and make corrections to the monitoring or operations.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Portland Cement Plants
20	2015/80	60 Subpart J	Revised	75229	Following the residual risk and technology review for the associated national emission standards for hazardous air pollutants (NESHAP), this action finalizes technical corrections and clarifications to improve consistency and clarity and address issues related to a 2008 industry petition for reconsideration.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Petroleum Refineries
21	2015/80	60 Subpart Ja	Revised, amended, removed	75230	Following the residual risk and technology review for the associated NESHAP, this action finalizes technical corrections and clarifications to improve consistency and clarity and address issues related to a 2008 industry petition for reconsideration.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Petroleum Refineries
22	2015/80	60 Subparts T, U, V, W and X	Revised, added	50432	Resulting from the 8-year review of the current NSPS, revisions were made to clarify applicability and certain definitions, and revisions to the monitoring and recordkeeping requirements for absorbers.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Phosphate Fertilizer Industry
23	2016/81	60 Subparts CCCC and DDDD	Revised	40970	This action finalizes the proposed actions on four topics: definition of continuous emission monitoring system data during "startup and shutdown periods", particulate matter limit for the waste-burning kiln subcategory; fuel variability factor for coal-burning energy recovery units; and the definition of "kiln."	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Commercial and Industrial Solid Waste Incineration Units
24	2016/81	60 Subpart OOOO	Amended, corrected, revised, added, removed	35896	Amendments improve implementation of current NSPS standards of Subpart OOOO. These amendments do not address GHG emissions standards but address monitoring, testing, initial compliance requirements, recordkeeping requirements, clarification of due dates, and such.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Crude Oil and Natural Gas Production, Transmission and Distribution
25	2015/80	60 Subpart OOOO	Revised, amended	48268	This action amends the definition of "low pressure gas well" and removes provisions concerning storage vessels connected or installed in parallel, and revised the definition of "storage vessel."	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	Crude Oil and Natural Gas Production, Transmission and Distribution
26	2015/80	60 Appendix B Performance Specification 18	Amended	38633	Performance specification 18 is a performance specification and test procedures for hydrogen chloride (HCl) continuous emission monitoring systems that was added to Appendix B.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1502	Performance Specification 18 for Gaseous HCl CEMS



#	Year/Vol	Part/Subpart/Section*	Change	FR Page	Summary	ARM Reference	Topic
27	2015/80	60 Appendix B Performance Specification 18, <i>7.0 Reagents and Standards</i>	Corrected	42397	The correction to performance specification 18 allows for the use of a reference gas to be $\pm 5$ percent, which is how all reference gases are certified.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1502	Performance Specification 18 for Gaseous HCl CEMS
28	2016/81	60 Appendix B Performance Specification 18	Amended	31518	Several minor technical amendments were made which clarify several aspects of these regulations.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1502	Performance Specification 18 for Gaseous HCl CEMS
29	2015/80	60 Appendix F, Procedure 6	Amended	38649	The quality assurance (QA) procedures for HCl CEMS establishes criteria and test procedures for evaluating the acceptability of the HCl CEMS. The QA procedures specify the minimum QA requirements necessary for the control and assessment of the quality of CEMS data submitted to the EPA. Performance Standard 18 and Procedure 6 are an alternative to the use of Performance Standard 15.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	QA Procedures
30	2016/81	60 Appendix F, Procedure 6	Amended	31520	Several minor technical amendments were made for both the performance specification and test procedures for HCl CEMS and QA procedures for HCl CEMS. These amendments correct minor definition inconsistencies and unintended differences between the proposal and the final rule to eliminate such inconsistencies and to remove unintended changes that occurred between the notice of the proposed rulemaking and the final rulemaking.	17.8.302, 17.8.767, 17.8.802, 17.8.902, 17.8.1002	QA Procedures
31	2015/80	63.14	Revised, redesignated, added, amended	50436, 56738, 62414, 65520, 75236, 75817	Some general provisions of the incorporation by reference section were amended to allow for new references, reference tests and documents, and to correct several errors.	17.8.103, 17.8.302, 17.8.1502	NESHAP General Provisions
32	2015/80	63.560 (Subpart Y)	Revised	75237	Based on developments in practices, processes and control technologies that warrant revisions to the MACT standards, Subpart Y deletes the exclusion for marine vessel loading operations at petroleum refineries.	17.8.103, 17.8.302, 17.8.1502	Marine Tank Vessel Loading Operations
33	2015/80	63 Subpart AA	Revised	50436	Final residual risk and technology review related to the phosphate acid manufacturing source category regulated under NESHAP has amended numeric emission limits for previously unregulated mercury (Hg) and total fluoride emissions from calciners; work practice standards for hydrogen fluoride (HF) emissions from previously unregulated gypsum dewatering stacks and cooling ponds; clarifications to the applicability and monitoring requirements to accommodate process equipment and technology changes; removal of the exemptions for startup, shutdown and malfunction (SSM); and adoption of work practice standards for periods of startup and shutdown; and revised recordkeeping and reporting requirements for periods of SSM.	17.8.103, 17.8.302, 17.8.1502	Phosphoric Acid Manufacturing Plants




#	Year/Vol	Part/Subpart/Section*	Change	FR Page	Summary	ARM Reference	Topic
34	2015/80	63 Subpart BB	Revised	50450	Final residual risk and technology review related to the phosphate fertilizer source category regulated under NESHAP. The SSM exemption is eliminated. Work practice standards for periods of startup and shutdown have been added along with definitions of 'startup' and 'shutdown.' Additional revisions clarify applicability.	17.8.103, 17.8.302, 17.8.1502	Phosphate Fertilizer Production Plants
35	2015/80	63 Subpart CC	Added, revised, amended, redesignated, removed	75237	Final residual risk and technology review related to the petroleum refinery source category regulated under NESHAP. The rulemaking eliminates an exclusion from the definition of 'miscellaneous process vent' and establishes standards for these maintenance vents. New compliance dates apply for the MACT standard to sources constructed on or before June 30, 2014.	17.8.103, 17.8.302, 17.8.1502	Petroleum Refineries
36	2015/80	63 Subpart GG	Revised, removed, added, amended	76179	Final residual risk and technology review related to the aerospace manufacturing and rework facilities source category regulated under NESHAP. Among the changes, limitations are added to reduce organic and inorganic HAPs from specialty coating application operations, remove exemptions for SSM, and address recordkeeping and reporting requirements during SSM.	17.8.103, 17.8.302, 17.8.1502	Aerospace Manufacturing and Rework Facilities
37	2015/80	63 Subpart LL	Revised, amended, added, removed	62414	Final residual risk and technology review related to the primary aluminum reduction plants source category regulated under NESHAPs. These amendments reflect technology based standards and work practice standards, new and revised emission standards for some HAPs from certain potlines, eliminating the exemption for SSM and requires electronic reporting among other changes.	17.8.103, 17.8.302, 17.8.1502	Primary Aluminum Reduction Plants
38	2015/80	63 Subpart NN	Added	45325	Final residual risk and technology review related to the wool fiberglass manufacturing at area sources category regulated under NESHAP. The amendments establish pollutant-specific HAP emission limits, first-time generally available control technologies (GACT) standards for gas-fired glass-melting furnaces, making changes to SSM, and added requirements regarding performance test reporting among other changes.	17.8.103, 17.8.302, 17.8.1502	Wool Fiberglass Manufacturing at Area Sources
39	2015/80	63 Subpart DDD	Revised, amended, added, removed	45329	Final residual risk and technology review related to the mineral wool production source category regulated under NESHAP. The amendments establish pollutant-specific HAP emission limits, making changes to SSM, and added requirements regarding performance test reporting among other changes.	17.8.103, 17.8.302, 17.8.1502	Mineral Wool Production
40	2015/80	63 Subpart LLL	Amended, revised, removed, added	44778	Minor technical errors were corrected in NESHAP. The amendments included corrections and clarifications of the 2013 rule and remove the affirmative defense regulatory text.	17.8.103, 17.8.302, 17.8.1502	Portland Cement Manufacturing Industry

#	Year/Vol	Part/Subpart/Section*	Change	FR Page	Summary	ARM Reference	Topic
41	2015/80	63 Subpart NNN	Revised, amended, added, removed	45334	Final residual risk and technology review related to the mineral wool production and wool fiberglass manufacturing source category regulated under NESHAP. The amendments establish pollutant-specific HAP emission limits, making changes to SSM, and added requirements regarding performance test reporting among other changes.	17.8.103, 17.8.302, 17.8.1502	Wool Fiberglass Manufacturing (major)
42	2015/80	63 Subpart RRR	Revised, removed, amended, added	56738	Final residual risk and technology review related to the secondary aluminum production source category regulated under NESHAP. The amendments include changes to the performance testing reporting, allow owners to change furnace classifications, changes to compliance testing for group 1 furnaces, and alternative compliance options for sweat furnaces among other changes.	17.8.103, 17.8.302, 17.8.1502	Secondary Aluminum Production
43	2016/81	63 Subpart RRR	Amended	38087	The amendments help improve compliance and implementation of the rule. The amendments correct errors, clarify requirements, provide additional options for round top furnaces to account for unmeasured emissions during compliance testing, and clarifies changes in furnace operating mode. Several web site addresses are updated.	17.8.103, 17.8.302, 17.8.1502	Secondary Aluminum Production
44	2015/80	63 Subpart UUU	Revised, added, amended, removed,	75273	Final residual risk and technology review related to the petroleum refineries catalytic cracking units, catalytic reforming units, and sulfur recovery units under NESHAP. The rulemaking eliminates an exclusion from the definition of 'miscellaneous process vent' and establishes standards for these maintenance vents. New compliance dates apply for the MACT standard to sources constructed on or before June 30, 2014.	17.8.103, 17.8.302, 17.8.1502	Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units
45	2015/80	63 Subpart DDDD	Revised, added, removed, redesignated, amended	72806	Following reconsideration of the January 2013 amendments, EPA is making minor changes to the proposed definitions of startup and shutdown and work practices during these periods. There are some technical corrections and rule clarifications to improve the implementation of the final Boiler MACT.	17.8.103, 17.8.302, 17.8.1502	Industrial, Commercial, and Institutional Boilers and Process Heaters
46	2015/80	63 Subpart JJJJ	Revised	65520	This NESHAP was added to meet MACT control of mercury, non-mercury metal HAPs, and dioxins/furans; health-based standards for acid gas HAP, and work practice standards where applicable. This new NESHAP protects air quality and promotes public health by reducing HAP emissions. The previous brick and structural clay products manufacturing NESHAP was vacated and replaced with this rule.	17.8.103, 17.8.302, 17.8.1502	Brick and Structural Clay Products Manufacturing
47	2015/80	63 Subpart KKKK	Revised	65543	This NESHAP was added to meet MACT control of mercury, non-mercury metal HAPs, and dioxins/furans; health-based standards for acid gas HAP, and work practice standards where applicable. This new NESHAP protects air quality and promotes public health by reducing HAP emissions. The previous clay ceramics manufacturing NESHAP was vacated and replaced with this rule.	17.8.103, 17.8.302, 17.8.1502	Clay Ceramics Manufacturing

#	Year/Vol	Part/Subpart/Section *	Change	FR Page	Summary	ARM Reference	Topic
48	2016/81	63 Subpart UUUU	Added, revised, removed, amended	20180	This action makes technical corrections to correct and clarify certain text of the rule. These corrections are categorized as: (1) resolutions of conflicts between preamble and regulatory text, (2) corrections that were inadvertently not made that EPA stated it would make in response to comments, and (3) clarification of language in regulatory text.	17.8.103, 17.8.302, 17.8.1502	Coal- and Oil-Fired Electric Utility Steam Generating Units
49	2016/81	75.16	Removed, corrected	10508	As a correction, 75.16(b)(1)(ii)(A) and (B) were removed.	17.8.767, 17.8.1202, 17.8.1502	CEMS - Monitoring Provisions
50	2016/81	75 Appendix A	Amended, corrected	10508	The first heading "2.1.3. CO <sub>2</sub> and O <sub>2</sub> Monitoring" and the text following it are removed to correct the entry because there is a duplicate heading with correct text beginning one paragraph later.	17.8.767, 17.8.1202, 17.8.1502	CEMS - Monitoring Provisions - Specifications and Test Procedures
51	2016/81	81 Subpart C 81.327	Amended	28720	The Billings sulfur dioxide (SO <sub>2</sub> ) nonattainment request for redesignation as 'attainment' has been approved and finalized. This section now shows that Yellowstone County has been amended to "attainment."	17.8.302, 17.8.902, 17.8.1002, 17.8.1102	Section 107 Attainment Status Designation



**TO:** Board of Environmental Review

**FROM:** Norman J. Mullen, Department Staff Attorney 

**DATE:** November 16, 2017

**SUBJECT:** House Bill 521 (stringency) and House Bill 311 (takings) review of the air quality rule amendments proposed in MAR Notice No. 17-393 (publ.10/27/17)

**HB 521 REVIEW**  
(Comparing Stringency of State and Local Rules  
to Any Comparable Federal Regulations or Guidelines)

Sections 75-2-111 and 207, MCA, codify the air quality provisions of House Bill 521, from the 1995 legislative session, by requiring that the Board of Environmental Review (Board), prior to adopting a rule to implement the Clean Air Act of Montana that is more stringent than a comparable federal regulation or guideline that addresses the same circumstances, make certain written findings after a public hearing and receiving public comment.

In this proceeding, the Board is proposing to amend ARM 17.8.102 by adopting more recent versions of the federal regulations and federal statutes that are incorporated by reference into the state's air quality rules. The Board is also proposing to amend 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 to remove references to the location of the materials being adopted by reference in the subchapters in which those rules are located because ARM 17.8.102 contains that information and it is redundant to repeat those references in each subchapter. The Board is also proposing to amend ARM 17.8.102(2) to remove an exemption from the incorporation by reference of National Emission Standards for Hazardous Air Pollutants (NESHAP) for brick and structural clay products manufacturing and clay ceramics manufacturing. These NESHAP regulations were challenged in court and vacated, which led to their exemption in the ARM. The federal Environmental Protection Agency responded by issuing new regulations in 2015, and the proposed update to the version of the Code of Federal Regulations (CFR) being adopted would incorporate those new regulations into Montana's rules, but the existing exemption would excluded the new regulations from being adopted. Therefore, the Board is proposing to remove the exemption from incorporation by reference of those regulations.

Also in ARM 17.8.102(2), the Board is proposing to exempt from the adoption by reference of federal regulations two subparts that address standards of performance for greenhouse gas

emissions for electric generating units and certain crude oil and natural gas facilities. The exemption is being proposed because those subparts are currently being litigated and may be revised or eliminated by the EPA, and the Board believes it is appropriate not to adopt them until there is more certainty as to whether they will remain in the CFR.

In addition, the Board is proposing to amend ARM 17.8.202(1)(a) to update the edition of the Montana Ambient Air Monitoring Program Quality Assurance Project Plan (QAPP) from the 2013 edition to the 2017 edition. The reason for the amendment is to keep the QAPP current with federal regulatory changes so that monitoring data generated by the Department of Environmental Quality may be used for regulatory purposes, including the designation of areas in the state as attaining or not attaining National Ambient Air Quality Standards (NAAQS).

The Board is proposing to amend ARM 17.8.904(7) to correct a mistake in an internal reference.

For details concerning the reasons for these amendments, please refer to the statements of necessity in MAR Notice No. 17-393 (publ.10/27/17).

None of the proposed amendments would make the state rules more stringent than comparable federal regulations or guidelines. Rather, the proposed amendments would update the Board's air quality rules and QAPP to make them more consistent with federal air quality regulations and statutes. Therefore, no further House Bill 521 analysis is required.

#### HB 311 REVIEW (Assessing Impact on Private Property)

Sections 2-10-101 through 105, MCA, codify House Bill 311, the Private Property Assessment Act, from the 1995 legislative session, by requiring that, prior to taking an action that has taking or damaging implications for private real property, a state agency must prepare a taking or damaging impact assessment. Under Section 2-10-103(1), MCA, "action with taking or damaging implications" means:

a proposed state agency administrative rule, policy, or permit condition or denial pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana constitution.

Section 2-10-104, MCA, requires the Montana Attorney General to develop guidelines, including a checklist, to assist agencies in determining whether an agency action has taking or damaging implications.

House Bill 521 and House Bill 311 Memo for Proposed  
Amendments to Air Quality Rules in  
MAR Notice No. 17-393 (publ. 10/27/17)  
November 16, 2017  
Page 3

I reviewed the guidelines and researched whether the adoptions of the federal regulations being proposed to be incorporated by reference would constitute a deprivation of real property in violation of the federal or state constitution. I determined that they would not, and have completed an Attorney General's Private Property Assessment Act Checklist, which is attached to this memo. No further House Bill 311 assessment is required.



**PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST**  
**(using form prepared by Montana Department of Justice, Jan. 2011)**

In the matter of the air quality rule amendments proposed in MAR Notice No. 17-393 (publ.10/27/17)

**DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE  
PRIVATE PROPERTY ASSESSMENT ACT?**

**YES      NO**

- |                                                               |                |                                                                                                                                                                                                |
|---------------------------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| _____                                                         | _____ <u>√</u> | 1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?                                                            |
| _____                                                         | _____ <u>√</u> | 2. Does the action result in either a permanent or indefinite physical occupation of private property?                                                                                         |
| _____                                                         | _____ <u>√</u> | 3. Does the action deprive the owner of all economically beneficial use of the property?                                                                                                       |
| _____                                                         | _____ <u>√</u> | 4. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 4a and 4b and continue with question 5.]           |
| _____                                                         | _____          | 4a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?                                                                              |
| _____                                                         | _____          | 4b. Is the government requirement roughly proportional to the impact of the proposed use of the property?                                                                                      |
| _____                                                         | _____ <u>√</u> | 5. Does the action deny a fundamental attribute of ownership?                                                                                                                                  |
| _____                                                         | _____ <u>√</u> | 6. Does the action have a severe impact on the value of the property?                                                                                                                          |
| _____                                                         | _____ <u>√</u> | 7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally?                                  |
| [If the answer is <b>NO</b> , do not answer questions 7a-7c.] |                |                                                                                                                                                                                                |
| _____                                                         | _____          | 7a. Is the impact of government action direct, peculiar, and significant?                                                                                                                      |
| _____                                                         | _____          | 7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?                                                                                 |
| _____                                                         | _____          | 7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question? |

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 5, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 4a or 4b.

If taking or damaging implications exist, the agency must comply with Mont. Code Ann. § 2-10-105, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 17.8.102, 17.8.103, 17.8.202,	)	
17.8.302, 17.8.602, 17.8.767,	)	(AIR QUALITY)
17.8.802, 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	)	
pertaining to incorporation by	)	
reference, definitions, applicability,	)	
operating permit program overview	)	
and applicability of air quality rules	)	

TO: All Concerned Persons

1. On October 27, 2017, the Board of Environmental Review published MAR Notice No. 17-393 regarding the proposed amendments of the above-stated rules at page 1933, 2017 Montana Administrative Register, Issue Number 20.

2. The board has amended the rules exactly as proposed.

3. No public comments were received and the department submitted comments in support of the proposed amendments.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North  
JOHN F. NORTH  
Rule Reviewer

By: /s/ Christine Deveny  
CHRISTINE DEVENY,  
Chairman

Certified to the Secretary of State, February 13, 2018.