

Incorporation by Reference Discussion:

IBR spreadsheets for Regulations 18, 19 and 26 – some entries identified as arbitrary, outdated, likely unnecessary

- Blue cells indicate a revision to federal rule since the IBR date in the Regs.
- Orange cells refer to the PSD supporting document (40 CFR 52.21 pdf) outlining all changes as of a date certain.
 - Many IBRs in the PSD chapter are in place for intended exclusions/limitations, etc.
 - Can likely simplify language of PSD chapter and related IBRs due to GHG cases being settled
- Green cells indicate that the IBR date listed has no apparent basis in federal law; the currently listed date may represent the date of adoption of the related Regulation revisions by the Commission, or?
- Gray cells indicate the IBR is not affected by subsequent rule changes because there have been

Reg 8 states that if there is no specified IBR date, it is assumed to be as of the effective date of the regulation.

- The group looked at Regulation 8.817 and 8.818.
- Need to lock down with specific dates anything that shouldn't update every time the regulation is updated pursuant to Reg 8
- If 19 and 26 are combined—Effective date for anything not dated would be the combined Reg's effective date
- Although the longstanding practice, Reg. 8 may present anti-delegation/due process/public notice issues.

Consensus: IBRs need to be reviewed and whether to update, remove date, or leave as is to be determined on a case-by-case basis. Reg. 8 caveat and consequences need ADEQ Legal review, as it is an agency-wide issue; the workgroup will make a list while moving forward, and present it to Legal.

Streamlining and Simplifying Regulation No. 18

- NAAQs, and other conditions in 18: could refer to “those adopted into 19” to streamline language in Reg 18.
 - Allows for updating 2 regs at once – consensus that this approach makes sense....
 - Public notice must include mention when a proposed change in 19 will affect a section of 18, and should be documented for future planning as Standard Operating Procedure

Consensus: NO DATE for IBRs, unless important to lock it in; then choose most recent date that does not expand conditions further than necessary.

The group continued with line-by-line discussion of IBR dates, beginning with Chapter 2 in Regulation 18. See the revised IBR chart for notes from that discussion.

The group will continue with line-by-line discussion of IBR dates in Regulation 19 and 26 at the next meeting.

The group will meet again on April 23, from 1 p.m. to 3 p.m., at ADEQ headquarters in North Little Rock.