



Applicability of 75-2-301 Findings

For Rule Changes Proposed to the Missoula City-County Air Pollution Control Program
April 21, 2022

Montana Code Annotated (MCA) 75-2-301(3)(b) requires the Air Pollution Control Board to fulfill the provisions of MCA 75-2-301(4) when adopting an ordinance or local law that is more stringent than the comparable state law.

MCA 75-2-301(4) allows the Board to adopt a rule more stringent than comparable state or federal regulations or guidelines if they make a written finding after a public hearing and public comment and based on evidence that the proposed local standard or requirement:

- (A) protects public health or the environment of the area;
- (B) can mitigate harm to the public health or the environment; and
- (C) is achievable with current technology.

The written finding must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

If an amendment is purely clarifying an existing rule, it is not subject to MCA 75-2-301(4).

This document identifies which proposed changes to the Missoula City-County Air Pollution Control Program are more stringent than comparable state law and therefore subject to MCA 75-2-301(4).

Chapter 1: Program Authority and Administration

- **Rule 1.105(5)** inserts a missing punctuation mark, a period.

Change corrects a typographical error and Rule 1.105(5) is not more stringent than state law.
MCA 75-2-301(4) does not apply.

Chapter 2: Definitions

- **Rule 2.101(22)** updates definition of Hazardous Waste to be consistent with state rules. Current citation no longer exists in state rules.
- **Rule 2.101(23)** removes the Flathead Reservation from the Impact Zone M definition. The Missoula City-County Air Pollution Control Program has no jurisdiction in the Flathead Reservation. This change removes the incorrect impression that the Air Program rules applied on the Flathead Reservation.
- **Rule 2.101(49)** inserts missing letter.

Changes corrects a reference to state rules, clarifies that the air program rules do not apply on the Flathead Reservation, and fixes a spelling error. Changes to Chapter 2 are not more stringent than state law.

MCA 75-2-301(4) does not apply.

Chapter 3: Failure To Attain Standards

- **Rule 3.101** replaces a potentially mis-leading word in the opening sentence.
- **Rule 3.103** corrects reference errors.

Rule 3.101 states that chapter 3 is required by the Federal Clean Air Act and the change corrects a grammar error. Rule is not more stringent than state law.

MCA 75-2-301(4) does not apply to Rule 3.101.

Rule 3.103 references Rule 9.601 which is not a new rule. By correcting the reference error, the Missoula City-County Air Pollution Control Program will come into compliance with the 1990 National Clean Air Act Amendments. Solid fuel burning produces carbon monoxide (CO), a known human health hazard and criteria pollutant. As a CO Maintenance Area, Missoula County is required by EPA to have contingency measures in place to reduce CO levels as needed and Rule 9.601 is that contingency measure.

MCA 75-2-301(4) does not apply to Rule 3.103.

Chapter 4: Missoula County Air Stagnation and Emergency Episode Avoidance Plan

- **Rule 4.104(1, 2, 3 and 4)** corrects formatting and spelling errors.
- **Rule 4.108(1)** corrects grammatical errors.
- **Rule 4.108(2)(a)** changes the word shall to the legally correct must.
- **Rule 4.108(2)(d)** is a new rule that requires recreational fires to comply with applicable requirements of chapter 7. This rule change would restrict recreational fires in certain areas during air alerts.
- **Rule 4.109(2)(d)** is a new rule that requires recreational fires to comply with applicable requirements of chapter 7. This rule change would restrict recreational fires in certain areas during air warnings.
- **Rule 4.109(4)** corrects formatting.
- **Rule 4.113** corrects grammar error.

Changes to Rules 4.104, 4.108(2)(a), 4.109(4) and 4.113 correct grammar, formatting, and spelling errors. These rules are part of the Montana State Implementation Plan (SIP) and the changes are not substantive.

MCA 75-2-301(4) does not apply.

Changes to Rule 4.108(2)(d) and Rule 4.109(2)(d) restrict recreational fires when air pollution episodes are in affect. Below is MCA 76-13-121 which covers the states rules on recreational fires.

MCA 76-13-121. Permit for burning required. (1) During the wildfire season or an expansion of the wildfire season, a person may not ignite or set a fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or, except as provided in subsection (2), an open fire without an official written permit to ignite or set the fire from the recognized agency for that protection area.

(2) (a) If no restrictions are in place, a permit is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable area or structure and for which a suitable source of extinguishing the fire is available.

(b) A recreational fire may not be ignited if special restrictions prohibiting recreational fires have been established by an authority having jurisdiction.

MCA 76-13-121 (2)(b) gives local jurisdictions with authority the option to restrict recreational fires. **MCA 75-2-301(4) does not apply to the proposed changes to Rule 4.108(2)(d) and Rule 4.109(2)(d).**

Chapter 5: General Provisions

- **Rule 5.108(1)** clarifies how the Missoula City-County Air Pollution Control Board can charge/change fees in the Air Pollution Control Program.
- **Rule 5.108(2)** removes extraneous comment that is not part of the rules.
- **Rule 5.111(1)** places the state requirements specified in Montana Code Annotated 75-2-301 for local air program rule changing requirements into the Missoula City-County Air Pollution Control Program.
- **Rule 5.111(2)** is changed to make this rule consistent with Rule 5.111(1). This rule now clearly states that the Board of County Commissioners and the City Council may approve or veto the Control Board's changes to the Air Rules after a public hearing.

Changes to Rule 5.108 clarify and clean up the rule with no substantive changes. Changes to Rule 5.111(1) make the local program consistent with state requirements governing how local air programs may change rules. Rule 5.111(2) changes make the rule consistent with state requirements and clarify that the Board of County Commissioners and the City Council may approve or veto changes to the Air Rules. None of these changes are more stringent than state law.

MCA 75-2-301(4) does not apply

Chapter 6: Standards for Stationary (Industrial) Sources

- **Rule 6.103(4)** allows the department to grant up to two 12-month extensions to an air quality permit when construction, installation, or alteration was not completed within 36 months of the initial issuance of the air quality permit.
- **Rule 6.107(1)** corrects punctuation errors.
- **Rule 6.505(2)** corrects a superscript error.
- **Rule 6.604** removes reference to a state rule that no longer exist and makes local rules consistent with current state rules.

Changes to Rule 6.103 allows an extension to the permitting process and is not more stringent than state rules. The other proposed rule changes in Chapter 6 correct writing errors and makes the local rules consistent with state rules.

MCA 75-2-301(4) does not apply

Chapter 7: Outdoor Burning

- **Rule 7.101(1-13)** renumbered to 7.101(3-15).
- **Rule 7.101(1)** adds a definition for air curtain burners
- **Rule 7.101(2)** adds a definition for air curtain destructors

Rules 7.101(1) and Rule 7.101(2) add definitions for air curtain burners and for air curtain destructors. There are no comparable state or federal definitions of air curtain burners or air curtain destructors. Because these are definitions and not rules, **MCA 75-2-301(4) does not apply.**

- **Rule 7.101(4)** removes the reference to the department's outdoor burning hotline while keeping the requirement outdoor burners follow the department's outdoor burning restrictions

Rule 7.101(4) is an existing rule and is part of the Montana SIP. The proposed change removes the reference to the department's outdoor burning hotline in the definition of BACT while keeping the requirement outdoor burners follow the department's outdoor burning restrictions. This change acknowledges changing communication technology without affecting the substance or intent of the rule. **MCA 75-2-301(4) does not apply.**

- **Rule 7.101(11)** clarifies that recreational fires burning gaseous fuel are not considered outdoor burning

Rule 7.101(11) is an existing rule and is part of the Montana SIP. The proposed change clarifies that recreational fires burning gaseous fuel are not considered outdoor burning. This change makes the rules more consistent with the state's definition of outdoor burning. **MCA 75-2-301(4) does not apply.**

- **Rule 7.101(13)** corrects a punctuation error.

Rule 7.101(13) is an existing rule and is part of the Montana SIP. The proposed change corrects a punctuation error. Correcting the punctuation error does not make the rule any more or less strict than it is without the proposed correction. **MCA 75-2-301(4) does not apply.**

- **Rule 7.102(1)** updates a pronoun to the current standard.

Rule 7.102(1) is an existing rule and is part of the Montana SIP. The proposed change updates a pronoun to the current standard. Updating a pronoun to the current, gender-neutral standard does not make this existing rule any more or less strict. **MCA 75-2-301(4) does not apply.**

- **Rule 7.104(1)** removes prescribed wildland burning from the list of activities that can be done year-round and updates letters to be consistent with the removal of point (a).
- **Rule 7.104(4)** specifies and clarifies when prescribed wildland burning can be done.
- **Rule 7.104(5)** updates numbering to accommodate the addition of 7.104(4).

Changes to Rule 7.104 do not prohibit prescribed burning December-February. Rather, it details how and when prescribed burning may be conducted during these months. Similarly, ARM 17.8.606 requires that minor burners wishing to conduct prescribed wildland burning December-February submit a written request to the Department of Environmental Quality (DEQ), demonstrating that the prescribed wildland burning must be conducted prior to reopening of open burning in March; receive permission for each specific burn from DEQ; and adhere to the time periods set for burning by DEQ. In ARM 17.8.601 (1)(b), for prescribed wildland open burning conducted during December, January, or February, BACT includes burning only during the time periods specified by DEQ. Per ARM 17.8.606 and ARM 17.8.610, both major and minor burners must comply with BACT. The changes to Rule 7.104 provide the mechanism for major and minor burners to obtain burning permission and to burn during time periods specified by the department December-February. **MCA 75-2-301(4) does not apply.**

- **Rule 7.105(1)** corrects formatting.

Rule 7.105(1) is an existing rule and is part of the Montana SIP. The proposed change corrects formatting. Correcting formatting does not make the rule any more or less strict. **MCA 75-2-301(4) does not apply.**

- **Rule 7.105(2)** removes language that is redundant with other parts of chapter 7 and this removal clarifies the rules.

Rule 7.105(2) is an existing rule and is part of the Montana SIP. The proposed change removes language that is redundant with other parts of Chapter 7 and this removal clarifies the rules. The change does not make the rule any more or less strict. **MCA 75-2-301(4) does not apply.**

- **Rule 7.105(3)** replaces the outdoor burning hotline as the department's mechanism for announcing burn restrictions with the department's outdoor burning website and the major and minor burners' burn approval systems.

Rule 7.105(3) is an existing rule and is part of the Montana SIP. The proposed change replaces the outdoor burning hotline as the department's mechanism for announcing burn restrictions with the department's outdoor burning website and the major and minor burners' burn approval systems. The change acknowledges changing technology without making the rule any more or less strict. **MCA 75-2-301(4) does not apply.**

- **Rule 7.106(2)(b)** updates language without changing the substance of the rule.

Rule 7.106(2)(b) is an existing rule and is part of the Montana SIP. The proposed change updates language without changing the substance of the rule or making it more or less strict. **MCA 75-2-301(4) does not apply.**

- **Rule 7.107(3)(c)** removes reference to the outdoor burning hotline while still requiring major burners to adhere to the department's burn restrictions.

Rule 7.107(3)(c) is an existing rule and is part of the Montana SIP. The proposed change removes a reference to the outdoor burning hotline while still requiring major burners to adhere to the department's

burn restrictions. This change acknowledges changing technology without making the rule any more or less strict. **MCA 75-2-301(4) does not apply.**

- **Rule 7.107(6)** specifies the process for how major burners may conduct wildland outdoor burning during December, January, or February. Process will include written request that states why the burn must be done in the winter months and the health department gives authorization for the burn to occur.

Rule 7.107(6) is a new rule. It specifies the process for major burners to conduct prescribed wildland outdoor burning during December, January, or February. The process will include a written request that states why the burn must be done in the winter months. The health department must give authorization for the burn to occur. The state's rules do not spell out 7.107(6). However, this rule is consistent with what the state routinely includes in major source permits, and ARM 17.8.610 requires major sources to comply with the conditions of the permit. As a result, these rules are more descriptive, but not more stringent. **MCA 75-2-301(4) does not apply.**

- **Rule 7.110(1)(d)** allows the outdoor burning of natural vegetation generated off-site to be granted a conditional outdoor burning permit if the burning will occur via the temporary use of an air curtain burner or an air curtain destructor.

Rule 7.110(1)(d) is a new rule that allows the outdoor burning of natural vegetation generated off-site to be granted a conditional outdoor burning permit if the burning will occur via the temporary use of an air curtain burner or an air curtain destructor. Currently, Missoula's rules limit conditional burn permits for material generated off-site to licensed landfills. This represents a relaxing of our rule and puts it more in line with the state, which allows the burning of untreated wood generated off-site if the Department of Environmental Quality determines the material is untreated wood waste and the burner receives departmental permission for the burn (ARM 17.8.604(2)). These are the requirements of a Missoula County conditional burn permit. Because Rule 7.110(1)(d) is a relaxing of a Missoula rule that brings it more in line with the state, **MCA 75-2-301(4) may not apply.** However, limiting the burning to the use of air curtain burners and air curtain destructors is more stringent than the state. **Additional detail to fulfill the requirements of MCA 75-2-301(4) is included in the "Findings" document.**

- **Rule 7.110(2)(c)** makes an exception to allow conditional outdoor burning permits to be issued for burns inside the Air Stagnation Zone if the burning will take place in an air curtain burner or an air curtain destructor.

Rule 7.110(2)(c) is an existing rule and is part of the Montana SIP. The proposed change makes an exception to allow conditional outdoor burning permits to be issued for burns inside the Air Stagnation Zone if the burning will take place in an air curtain burner or an air curtain destructor. Currently, Missoula's rules prohibit conditional burn permits inside the Missoula Air Stagnation Zone. This represents a relaxing of our rule and puts it more in line with the state, which does not limit conditional burn permits by location. **MCA 75-2-301(4) may not apply.** However, limiting the burning to the use of air curtain burners and air curtain destructors is more stringent than the state. **Additional detail to fulfill the requirements of MCA 75-2-301(4) is included in the "Findings" document.**

- **Rule 7.116** is a new rule that limits recreational fires during air pollution alerts, warnings, emergencies, and crises.

MCA 76-13-121 (quoted below) is the state law that covers the state's rules on recreational fires. MCA

76-13-121 (2)(b) gives local jurisdictions with authority the option to restrict recreational fires. **MCA 75-2-301(4) does not apply to the proposed changes to Rule 7.116.**

MCA 76-13-121. Permit for burning required. (1) During the wildfire season or an expansion of the wildfire season, a person may not ignite or set a fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or, except as provided in subsection (2), an open fire without an official written permit to ignite or set the fire from the recognized agency for that protection area.

(2) (a) If no restrictions are in place, a permit is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable area or structure and for which a suitable source of extinguishing the fire is available.

(b) A recreational fire may not be ignited if special restrictions prohibiting recreational fires have been established by an authority having jurisdiction.

Chapter 8: Fugitive Particulate

- **Rule 8.203(3)(b & c)** corrects reference errors.
- **Rule 8.203(3)(e)** removes an extra word.
- **Rule 8.208(1)** allows the health department to approve alternative areas for paving that are the same size and usage as an area required to be paved by other sections of Chapter 8.

Changes to Rule 8.203 fix a reference and a grammar error. Rule 8.208 deals with paving requirements and there are no comparable state or federal requirements for paving of vehicle use areas.

MCA 75-2-301(4) justification will be in written findings document for changes to Chapter 8.

Chapter 9: Solid Fuel Burning Devices (Wood Stoves)

- **Rule 9.102(5)** changes the definition of “EPA Method” to reference all of subpart AAA instead of just three sections and adds in the new 40 CFR Part 60 Subpart OOOO. These subparts cover the federal testing methods for woodstoves, pellet stoves, hydronic heaters, and furnaces. Fireplaces are still not covered by a federally required testing method or rules.
- **Rule 9.102(10)** adds in a definition for a Seeley Lake Wood Stove Zone.
- **Rule 9.102(11)** adds the word “disposal” to the definition of what is a solid fuel burning device.
- **Rules 9.102(11, 12 and 13)** are renumbered.
- **Rule 9.201(1)** adds the term Chapter 9 to the rule for clarification.
- **Rule 9.203** edited for clarification.
- **Rule 9.203(2)** corrects a spelling error.
- **Rule 9.204** is a new rule that specifies what solid fuel burning devices may be installed inside the Seeley Lake Wood Stove Zone.
- **Rule 9.205** renumbered rule and updated rule to coordinate and mesh with the 2015 New Source Performance Standards for wood stoves. This rule does not apply for new solid fuel burning device installation in the Missoula Air Stagnation Zone nor the Seeley Lake Wood Stove Zone.
- **Rule 9.205(1)(c)** fixes a grammar error, change .9 to 0.9.
- **Rule 9.205(4)** edited for clarification.
- **Rules 9.206 through 9.212** renumbered.
- **Rule 9.207(3 and 7)** inserted missing word “Impact” for clarification.

- **Rule 9.401(3)** updates list of rules that apply to this rule.
- **Rule 9.501(1)** would require the removal of solid fuel burning devices in the Missoula Air Stagnation Zone when a property is sold, transferred or conveyed. Previous version of the rule required solid fuel burning device removal only when a property was sold. The new requirement for property would now apply to inherited property and other changes of ownership. This change makes Rule 9.501 consistent with the rest of Chapter 9.
- **Rule 9.501(2)** replaces the word “sold” with the phrase “sold, transferred or conveyed” for the list of devices that can remain when a property is sold, transferred or conveyed. The revised rule would also remove the grandfathering in of class I wood stoves that were installed between 1986 and 1994. Upon change of ownership in the Missoula Air Stagnation Zone, all wood stoves would need to be removed from a property when a property changes ownership.
- **Rule 9.501(3 - 8)** is deleted. Completion of the Certificate of Compliance Form would no longer be required when a property is sold, transferred or conveyed in the Missoula Air Stagnation Zone.
- **Rule 9.601** fixes a grammatical error.

Chapter 9 is the solid fuel burning device chapter. There are no comparable state or federal requirements for solid fuel burning devices.

MCA 75-2-301(4) justification will be in written findings document for changes to Chapter 9.

Chapter 10: Fuels

- **Rule 10.102(1)** corrects a clerical error.
- **Rule 10.105(1)** corrects a spelling error.
- **Rule 10.109(1)** removes the requirement to annually sample 20% of all regulated gasoline storage tanks and gasoline blending facilities for the oxyfuel program. Blending facility registration fees still required to defray department costs associated with assuring compliance with the oxygenated fuels program.
- **Rule 10.110** added to specify that the oxygenated fuels program, Rules 10.103 through 10.109, ceases when authorization to end the program is received by the county.
- **Rule 10.111** is renumbered.
- **Rule 10.111(2)** is added to update the federally required contingency measures. If the oxygenated fuels program ever ceases, this rule makes possible the re-instatement of the oxygenated fuels program if the carbon monoxide national ambient air quality standard is exceeded because of vehicular traffic.

Changes to Rule 10.102, Rule 10.105 and Rule 10.111 address spelling and numbering topics with no substantive changes. Rule 10.109 is a local rule intended to verify compliance with the federally required oxy-fuel program. Rule 10.110 is added to specify that the oxygenated fuels program, Rules 10.103 through 10.109, ceases when authorization to end the program is received by the county from the federal and state government. Rule 10.110 and Rule 10.111 make the local program consistent with state and federal requirements as state and federal requirements change.

MCA 75-2-301(4) does not apply

Chapter 13: Variances

- **Rule 13.104** fixes a spelling error.

Corrects a typographical error and Rule 13.104 is not more stringent than state law.

MCA 75-2-301(4) does not apply.

Chapter 14: Enforcement and Administrative Procedures

- **Rule 14.107(1)** clarifies that a person has 15 days to request a hearing before the Control Board if they disagree with an administrative review conclusion/decision.
- **Rule 14.107(2)** fixes a spelling error.

Clarifies an administrative process and corrects a typographical error. Changes to Chapter 14 are not more stringent than state law.

MCA 75-2-301(4) does not apply.