

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
24.301.131, 24.301.138, 24.301.142,) AND ADOPTION
24.301.146, 24.301.154, 24.301.171,)
24.301.172, 24.301.173, 24.301.208,)
24.301.301, 24.301.602, 24.301.710,)
24.301.714, 24.301.717, 24.301.718,)
and 24.301.719, and the adoption of)
NEW RULE I pertaining to building codes)

TO: All Concerned Persons

1. On October 5, 2006, the Department of Labor and Industry (department) published MAR Notice No. 24-301-203 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 2319 of the 2006 Montana Administrative Register, issue no. 19.

2. On November 1, 2006, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the November 13, 2006, deadline.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: One commenter supported the adoption of the new building codes, stating that the Montana Building Industry Association has reviewed the new codes and supports having coordinated codes for state and local program use. The commenter requested clarification that the adoption of the International Residential Code (IRC) specifically excludes Attachment P of the IRC, which allows jurisdictions adopting it to require automatic fire sprinkler systems in all new one- and two-family dwellings and townhouses.

RESPONSE 1: The department acknowledges and appreciates the comment. In response to the clarification regarding Appendix P of the IRC, the department is not proposing adoption of Appendix P at this time. All appendix chapters of the codebooks must be specifically and individually adopted in addition to the codebook and if not specifically adopted, the appendix chapters are not allowed for use by state or local building programs. Appendix P contains a statement at the beginning of the appendix that "[t]he provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance." Therefore, the commenter can be assured that Appendix P is not being proposed for adoption at this time.

COMMENT 2: One commenter thanked the department for the opportunity to participate in the rule process and supports the adoption of the new elevator codes.

RESPONSE 2: The department acknowledges and appreciates the comment.

COMMENT 3: One commenter thanked the State of Montana for adopting the 2006 Uniform Plumbing Code (UPC). The commenter also suggested that the Uniform Mechanical Code (UMC), also published by the International Association of Plumbing & Mechanical Officials (IAPMO), would work just as well for Montana. The commenter stated that if the department considers adopting the UMC, IAPMO would offer its assistance in the adoption to protect the health of the public.

RESPONSE 3: The department acknowledges and appreciates the comment. The department has not proposed adoption of the UMC in this notice and therefore cannot take action at this time with respect to the comment. The department will consider IAPMO's offer of assistance when considering the adoption of a new mechanical code.

COMMENT 4: One commenter requested the department's assurance that the adoption of the National Board Inspection Code (NBIC) in ARM 24.301.710(4) and (5) will not increase the cost of repairs to boilers being inspected.

RESPONSE 4: The department acknowledges the comment and specifically notes that the adoption of the NBIC will not increase the cost of boiler repairs. The introduction to the NBIC clearly states that if any provision within the code conflicts with the requirements of the jurisdiction, the jurisdictional regulation shall govern. Adoption of the NBIC should in no way be construed as a change in what is required for boiler inspection, repair, or alteration and is being adopted to achieve uniformity of inspection procedures among all inspectors.

COMMENT 5: One commenter noted that the NBIC requires all repairs to boiler and pressure vessels be conducted by an NBIC "R" stamp holder. ARM 24.301.722 currently accepts, but does not require the "R" stamp. The commenter suggested amending ARM 24.301.722 to achieve consistency with the NBIC requirement.

RESPONSE 5: The department acknowledges and appreciates the comment. As stated in response four, the department does not intend to change any boiler or pressure vessel inspection, repair, or alteration requirements at this time due to adoption of the NBIC. The department has not proposed any amendment to ARM 24.301.722 in this notice and therefore cannot take action at this time with respect to the comment. The department will consider the comment when next amending the department's rules relating to boilers.

COMMENT 6: Comments were received concerning the amendments to ARM 24.301.717 and 24.301.718 which change the time allowed from 30 to 15 days

for insurance inspectors to submit inspection reports (ARM 24.301.717) and for insurance companies to notify the department of new or expired insurance accounts (ARM 24.301.718). The comments stated that 15 days is an unreasonable requirement for insurance inspectors and companies to meet as many inspectors do not reside in Montana and may have inspection areas covering several states. An inspector who conducts a week of inspections in Montana and then travels to another state may easily take more than 15 days to process and submit the necessary paperwork to Montana. It was also noted that most other jurisdictions allow 30 days for submission of these items and the time frame appears to work well.

RESPONSE 6: The department acknowledges the comments and agrees that 15 days may be unreasonable. The department was previously unaware of the large inspection areas that insurance inspectors cover and did not anticipate the potential hardship on insurance inspectors or insurance companies. Due to the comments received, the department will not reduce the time frames in ARM 24.301.717 and 24.301.718 as proposed and the required submission dates will remain at 30 days.

COMMENT 7: One commenter stated that amending ARM 24.301.719 as proposed could result in an insurer performing an inspection and submitting a report only to have the department's inspector make a separate visit to issue the number. The commenter suggested removing all references to "special inspector" in this rule, stating that the state inspector would conduct all initial inspections and assign a number to all new boilers, which is consistent with 50-74-105 and 50-74-206, MCA. One commenter suggested removing all references to "special inspector" from ARM 24.301.719.

RESPONSE 7: The department agrees that amending ARM 24.301.719 as proposed could result in both a state inspector and a special inspector visiting the same location. The department proposed the amendment to provide options as to which inspector can perform an initial inspection while still requiring that the department assign the jurisdictional number. The department agrees that the proposed change would only complicate the issue and is withdrawing the proposed amendments to this rule at this time.

COMMENT 8: One commenter suggested that the proposed new language in ARM 24.301.719 be deleted and that the department issue identification numbers to inspectors on an as needed basis.

RESPONSE 8: As stated in response seven above, the department is withdrawing the proposed amendments to this rule.

COMMENT 9: One commenter expressed concern regarding ARM 24.301.208 stating that the proposed amendments are not fair and equitable and do not agree with basic auditing concepts adopted by the federal government and the Montana legislature. The commenter stated that these procedures are unnecessary

and conflict with the Montana Single Audit Act (2-7-502, MCA). The commenter suggested that rules required by the department be included within the compliance requirements provided by Local Government Services so that auditors can ensure compliance with all program rules within the regular audit. The commenter is opposed to requiring the city, county, or town to pay for the agreed upon procedures engagement and suggests that the department pay for the cost of the engagement. The commenter suggested that the best solution to alleviate the hardship on smaller programs would be to increase the reserve fund balance and revenue thresholds that dictate the need for a separate engagement from \$10,000 to \$50,000.

RESPONSE 9: This is an existing rule that has been in effect since 1998 and the department is proposing to change the agreed-upon procedures to give auditors better guidance on how to verify compliance with state law. As the commenter noted, the department must ensure that all code enforcement functions are properly performed, including making sure that all construction related fees are only used for building code enforcement. Having the auditors use the new agreed-upon procedures will help ensure that certified cities, counties, and towns are only spending permit revenue on building code enforcement.

The commenter implied that this rule is in conflict with the Montana Single Audit Act at 2-7-502, MCA. Department staff reviewed the statute and did not identify a conflict. In addition, a staff member with the Local Government Services Bureau of the Department of Administration, which helped write the new agreed-upon procedures, was consulted and could not identify any conflicts with the Montana Single Audit Act. These new agreed-upon procedures are already found in the Compliance Supplement for Audits of Montana Local Governments that is published by the Local Government Service Bureau and are not in administrative rule. The department lacks the resources to pay for these audits as suggested by the commenter because cities, counties, and towns do not pay the department for the review and certification of their building code programs. The department agrees with the commenter's suggestion to increase the reserve fund balance and revenue balance from \$10,000 when the audit is required. However, the balance amounts cannot be changed at this time because the department did not include a proposed amendment of these amounts in this notice. Increasing this amount will be considered the next time the department proposes to amend administrative rules. For these reasons the department is amending this rule exactly as proposed.

4. The department has amended ARM 24.301.131, 24.301.138, 24.301.142, 24.301.146, 24.301.154, 24.301.171, 24.301.172, 24.301.173, 24.301.208, 24.301.301, 24.301.602, 24.301.710, and 24.301.714 exactly as proposed.

5. The department is not amending ARM 24.301.719.

6. The department has amended ARM 24.301.717 and 24.301.718 with the following changes, stricken matter interlined, new matter underlined:

24.301.717 INSURANCE COMPANY TO PROVIDE WRITTEN NOTIFICATION TO THE DEPARTMENT OF CHANGE IN BOILER STATUS

(1) remains as proposed.

(2) The written notification of boiler status, referenced in (1), shall be filed with the department within 30 ~~45~~ working days of the change in boiler status and shall include all applicable boiler information (boiler identification number or stamp, owner, location, operating certificate number, etc.).

(3) remains as proposed.

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-202, MCA

24.301.718 BOILER INSPECTIONS (1) through (1)(e) remain as proposed.

(i) Boiler inspection reports shall be filed with the department within 30 ~~45~~ working days after inspection on forms acceptable to the department. Such report shall indicate the boiler has been approved for operation by a special boiler inspector employed by the insurance company that insures the boiler.

(ii) remains as proposed.

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-206, 50-74-209, MCA

7. The department has adopted NEW RULE I (24.301.402) exactly as proposed.

/s/ DARCEE L. MOE

Darcee L. Moe

Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 16, 2007