

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I pertaining to the carbon)
monoxide detector standard)

TO: All Concerned Persons

1. On April 29, 2010, the Department of Labor and Industry (department) published MAR notice no. 24-320-244 regarding the public hearing on the proposed adoption of the above-stated rule, at page 978 of the 2010 Montana Administrative Register, issue no.8.

2. On May 24, 2010, a public hearing was held on the proposed adoption of the above-stated rule in Helena. Several comments were received by the June 1, 2010, deadline.

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

COMMENT 1: Two commenters stated that the new rule should allow combination smoke detector and carbon monoxide detectors.

RESPONSE 1: The department notes that the rule does not prohibit the use of combination smoke detector/carbon monoxide detectors as long as the carbon monoxide detector is compliant with UL 2034.

COMMENT 2: One commenter opined that the detector placement requirements of the new rule are unmanageable in most rentals, because of the proximity between the kitchen and common area to the bathroom and bedrooms. The commenter questioned why a detector must be placed in the hallway, and instead suggested that carbon monoxide detectors be placed inside the bedrooms.

RESPONSE 2: The department notes that the new rule requires that detectors are installed outside each separate sleeping area in the immediate vicinity of the bedrooms, so that the alarm can detect the gas prior to its entry into the bedroom (sleeping area), and yet still be close enough to effectively alarm the occupants.

COMMENT 3: A commenter stated that it is very difficult to install new wiring in a hallway of a mobile home, as required by the new rule.

RESPONSE 3: The department explains that the rule does not require "hard wiring" of detectors and that battery-operated detectors (not requiring wiring) are allowed.

COMMENT 4: One commenter suggested amending the detector location language of (1)(a) to require "one detector per habitable level of the residence," and that "habitable" be defined to mean upstairs, main level, and occupied basements.

RESPONSE 4: The department notes that detection is designed to be focused around sleeping areas where people will require the most proximate alarm, especially based on the nature of the physiological effects that carbon monoxide has on mammals.

COMMENT 5: A commenter opined that the new rule unfairly targets landlords and the requirements should apply to all residential owners and commercial buildings.

RESPONSE 5: The department determined that the enabling legislation of 70-24-303, MCA, only directs the requirement to "dwelling units," as defined in the Landlord Tenant Act. The promulgation of a rule that required carbon monoxide detectors in all residences and commercial buildings would exceed statutory authority and be unenforceable.

COMMENT 6: One commenter opposed the new rule because it cannot be enforced by city building inspectors.

RESPONSE 6: The department notes that the enabling legislation of 70-24-303, MCA, prescribes the enforcement mechanism which specifically states that the rule is not to be enforced by the state building code, but only as provided in Title 70, chapter 24, part 4, which provides remedies under the Landlord Tenant Act.

COMMENT 7: Two commenters opposed the new rule, stating that there will be an increase in false detector readings that will impose a burden on public safety services and tenants if they have to pay for multiple responses to false readings, or for plumbers or other professionals to detect or locate the carbon monoxide source.

RESPONSE 7: The department notes that proper selection of a carbon monoxide detector and compliance with the UL 2034 standard should reduce false readings.

COMMENT 8: Two commenters requested clarification on the location or necessity of installing detectors in (1) a multi-family apartment building with a central combustible heat source, located in a mechanical room separate from the individual apartments; (2) a multi-family apartment building with a combustible heat source, located in an individual apartment; (3) a multi-family apartment building with all electric heat and appliances; and (4) a multi-family apartment building with an attached garage.

RESPONSE 8: The department concluded that the new rule clearly states that dwelling units containing fuel-fired appliances or having attached garages need to have detectors installed.

COMMENT 9: A commenter asked how to remain in compliance with the rule if the size of the dwelling unit prohibits compliance with the detector manufacturer's installation directions for minimum space clearance from a furnace.

RESPONSE 9: The department points out that the new rule requires the general location of installation with relation to sleeping areas and bedrooms. The manufacturer's installation instructions may vary from unit to unit, especially when specifying installation specifications NOT related to installation location.

COMMENT 10: One commenter stated the rule does not account for multiple rooms sharing a hallway and opined that when three bedrooms share the same small hallway, it is just as effective to have one detector as to have three and no reason to incur additional expenses in purchasing the additional detectors.

RESPONSE 10: The department notes that that the rule requires detectors to be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms, which allows some economy when bedrooms are grouped together. If three bedrooms are grouped together, one detector placed outside the vicinity of the three bedrooms will suffice in lieu of three detectors (one in each bedroom).

COMMENT 11: A commenter suggested that the rule allow for the location of a detector at the door leading to an attached garage in dwelling units that have noncombustible (electric) heating systems because, in this case, carbon monoxide could only come from the attached garage.

RESPONSE 11: The department notes that detection is designed to be focused around sleeping areas where people will require the most proximate alarm, especially based on the nature of the physiological effects that carbon monoxide has on mammals. Although placement near the garage door as suggested would allow for more proximate detection, that location may not be close enough to sleeping areas to sound a sufficient alarm in many home or apartment layouts.

COMMENT 12: One commenter stated that requiring detectors on each level of the dwelling unit is excessive and suggested that requiring one detector per floor of a structure will provide safety and limit excessive cost.

RESPONSE 12: The department notes that detection is designed to be focused around sleeping areas where people will require the most proximate alarm, especially based on the nature of the physiological effects that carbon monoxide has on mammals.

COMMENT 13: One commenter stated that a subject as critical to health and safety as carbon monoxide requires more complexity than can be addressed in the single paragraph of the proposed new rule. Property managers, owners, and tenants will have many questions to ask about the rule's application, which is not addressed in the proposed rule.

RESPONSE 13: The department notes that the new rule relies on two additional sources of information to guide property managers, owners, and tenants with their questions which are the UL 2034 standard and the individual detector's manufacturer's installation instructions.

COMMENT 14: One commenter stated that the rule should allow either a plug-in type or a battery type device and not hard-wired types, as the latter are cost prohibitive.

RESPONSE 14: The department notes that the rule does not require "hard wiring" of detectors and that battery operated detectors (not requiring wiring) are allowable.

COMMENT 15: A commenter stated that, since detector manufacturers stand to profit from requiring an abundance of detectors, the rule should state where detectors are to be placed instead referring to manufacturer's instructions.

RESPONSE 15: The department determined that the new rule clearly requires detectors outside of each separate sleeping area in the immediate vicinity of the bedrooms. Reference to the manufacturer installation instructions will provide further details on how to install the detector, such as battery installation and proper anchoring into various wall/ceiling materials.

COMMENT 16: One commenter asserted there are a limited number of, if any, cases of carbon monoxide poisoning in a properly finished dwelling.

RESPONSE 16: The department notes that the enabling legislation of 70-24-303, MCA, only directs the requirement to "dwelling units," as defined under the Landlord Tenant Act. The rule does not address the quality of properly finished dwellings, as not all dwellings are properly finished and even when they are, fuel-fired appliances can develop venting problems over time, and door seals between the garage and dwelling unit can be removed or deteriorate, especially when there is a lack of proper maintenance or other unquantifiable variables.

COMMENT 17: A commenter stated that tenants should be responsible for maintaining carbon monoxide detectors and any costs associated with responding to false alarms.

RESPONSE 17: The department notes that the new rule does not dictate responsibility for maintenance and any costs associated with responding to false alarms to any person.

COMMENT 18: One commenter noted that people with respiratory problems need the alarm to sound on carbon monoxide detectors at 30 PPM in 60 minutes, rather than at 70 PPM in 60 minutes.

RESPONSE 18: The department notes that the rule sets the minimum standards for the carbon monoxide detectors, provided by the UL 2034 standard, and does not prohibit individuals from exceeding the minimum standard.

COMMENT 19: One commenter suggested that the best location for detectors is near the ceiling of hallways to prevent access by children.

RESPONSE 19: The department concluded that detectors should be installed outside each separate sleeping area in the immediate vicinity of the bedrooms, and as long as the manufacturer of the specific detector allows for ceiling installation and the location is compliant with the rule, the rule requirement would be satisfied.

4. The department has adopted NEW RULE I (24.320.301) 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 October 4, 2010