

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.101.413 renewal dates and) PROPOSED AMENDMENT,
requirements, 24.122.301,) ADOPTION, AND REPEAL
24.122.405, 24.122.410, and)
24.122.505 boiler operating engineer)
licensure, 24.142.301, 24.142.302,)
24.142.402, 24.142.404, 24.142.502,)
24.142.503, 24.142.504, 24.142.506,)
24.142.507, 24.142.509,)
24.142.2101, 24.142.2102,)
24.142.2103, and 24.142.2401)
licensure of elevator contractors,)
inspectors, and mechanics,)
24.301.401 national electrical code,)
24.301.602, 24.301.606, 24.301.607,)
24.301.610, and 24.301.623 elevator)
code, 24.301.710, 24.301.711,)
24.301.718, 24.301.719, and)
24.301.724 boiler safety, the adoption)
of NEW RULES I definitions and II)
tag-out and lock-out - stop orders,)
and the repeal of ARM 24.142.401)
and 24.142.501 elevator licensing,)
24.301.608, 24.301.609, and)
24.301.611 elevator inspection and)
variances)

TO: All Concerned Persons

1. On November 1, 2012, at 1:00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on October 26, 2012, to advise us of the nature of the accommodation that you need. Please contact Dave Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2053; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; e-mail dcook@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department is eliminating the lists of elevators and other conveyances over which it

has jurisdiction from these rules and will instead reference "conveyance" and "conveyance work" as defined in ARM 24.142.301 and New Rule I. It is reasonably necessary to make this change throughout these rules to shift reliance to the covered equipment in 50-60-704, MCA, instead of repeating the laundry list over and over again in rule. Referring to the statute, which is the most accurate and authoritative source, will ensure consistency in application of the rules, and will help avoid inadvertent errors in repeating the list in multiple locations within the rules.

Additionally, authority and implementation cites are being amended throughout these rules to accurately reflect all statutes implemented through the rules, provide the complete sources of the department's rulemaking authority, and delete erroneous references to 50-60-201, 50-60-203, and 50-60-211, MCA.

Accordingly, the department has determined it is reasonably necessary to amend certain rules. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

4. The rules proposed to be amended by the department provide as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(k) remain the same.

(l)	Elevator Program	Contractor	Biennially <u>Annually</u>	April 1
		Inspector	Biennially <u>Annually</u>	April 1
		Mechanic	Biennially <u>Annually</u>	April 1

(m) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA;

REASON: The department is shifting from a biennial to an annual renewal period to allow the department to more accurately forecast the elevator licensure program's budget and manage deficits or surpluses.

24.122.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) "Boiler classification" means, for the purpose of determining the appropriate class of boiler operating engineer's license required:

(1)(a) through (1)(b)(i) remain the same.

(2) "Department" means the ~~department of labor and industry~~ Department of Labor and Industry.

(3) "Hot water supply boiler" means a boiler, completely filled with water, intended for operation at pressures not exceeding 160 psig and/or temperatures exceeding 250 degrees F., measured at or near the boiler outlet, that furnishes hot water to be used external to itself ~~providing potable water within the temperature and pressure limits established by the state plumbing code, and which may be monitored by any person holding a current low pressure boiler operating engineer's license or limited low pressure operating engineer license.~~

(4) through (6) remain the same.

~~(7) Additional definitions related to boiler operators are in building code rules found at ARM 24.301.711. The department incorporates by reference the definitions contained in the September 30, 2004, version of related to boiler operators in building code rules at ARM 24.301.711, which include the following terms:~~

~~(a) through (7)(j) remain the same.~~

AUTH: 50-74-101, MCA

IMP: 50-74-101, MCA

REASON: It is reasonably necessary to amend (3) so that the definition of "hot water supply boiler" is the same as in the boiler safety definitions found in ARM 24.310.711. The department is striking the unnecessary revision date of ARM 24.301.711 from (7) to eliminate wordiness and redundancy.

24.122.405 APPROVAL OF TRAINING COURSES (1) through (3)(a) remain the same.

(b) a list of books, publications, and source material to be utilized in the training course;

(c) through (4)(c) remain the same.

(5) Instructors or entities approved to conduct a training course shall provide a certificate of completion to those persons successfully completing the course, which includes the specific name of the approved course, the number of hours of total training, the name of the person receiving the training, the location (city) of the training, and the date of completion.

~~(6) All training programs currently approved will have to be reevaluated by July 13, 2005. Those programs not evaluated by July 13, 2005 will not be accepted by the department as credit for experience for license applicants.~~

AUTH: 50-74-101, MCA

IMP: 50-74-304, MCA

REASON: The department is amending (5) to require additional information on boiler operator engineer training course certificates. The department determined this is necessary to evaluate the substance of the training, the validity of the certificate, and attendance by the individual claiming credit for the course. The department is also deleting (6) to eliminate a moot date that has passed.

24.122.410 RESPONSIBILITY OF LICENSEE (1) through (4) remain the same.

(5) All applicable boiler operating certificates and boiler operating engineer's licenses must be conspicuously displayed in the boiler room. In lieu of posting in the boiler room, appropriate signage may be provided, establishing the location where the documents may be examined.

(6) remains the same.

(7) When an ~~accident~~ incident occurs which renders a boiler inoperative, the licensee shall notify the department as soon as it is practical.

AUTH: 50-74-101, MCA

IMP: 50-74-106, 50-74-210, 50-74-214, MCA

REASON: The department is amending this rule to use the broader term of "incident" and require department involvement in more instances where a boiler is rendered inoperative than just accidents.

24.122.505 APPLICATION FOR LICENSURE (1) Any person required to obtain a boiler operating engineer's license shall make application to the department on form(s) and in a manner prescribed by the department.

(2) remains the same.

(a) a completed ~~and signed~~ application;

(b) ~~proof~~ applicant's birth date and declaration that the applicant is 18 years of age or older;

(c) through (3) remain the same.

(a) proof the applicant has successfully completed department-approved training course(s) specific to the class of boiler license sought; and

(b) verification, acceptable to the department, from a boiler operating engineer with a license at least equal to the class of license sought by the applicant, that the applicant has worked with the type of boiler for which the license is sought under the engineer's supervision for a minimum of 40 hours, and that the applicant is competent to operate the boiler of the class for which the license is being sought.

(4) remains the same.

AUTH: 50-74-101, MCA

IMP: 50-74-302, 50-74-303, 50-74-304, 50-74-305, 50-74-307, 50-74-308, MCA

REASON: The department is amending (1) and (2) to no longer require a signed application and documentation to prove an applicant's age. The shift to require an applicant's birth date and declaration will further facilitate the department's movement to process license applications exclusively online.

24.142.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) ~~"Alteration" means a change of original design or operation through modernization, replacement of components or assemblies, or upgrade to existing equipment.~~

(2) and (3) remain the same, but are renumbered (1) and (2).

(4) ~~"Apprentice" means an individual who is working with and receiving training from an elevator mechanic or limited mechanic licensed under this chapter and who is registered by an appropriate governmental unit.~~

(5) (3) ~~"Conveyance" means and is synonymous with "elevator" and includes, but is not limited to:~~ the equipment set forth at 50-60-704(1), MCA.

(a) ~~escalators;~~

(b) ~~inclined elevators;~~

(c) ~~dumbwaiters;~~

- ~~(d) platform hoists;~~
- ~~(e) material lifts;~~
- ~~(f) moving walks;~~
- ~~(g) platform or wheelchair lifts; and~~
- ~~(h) chair lifts.~~

~~(4) "Conveyance work" means the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of the equipment set forth at 50-60-704(1), MCA. Further definitions of these activities are located in the ASME codes adopted by reference at ARM 24.301.602.~~

~~(6) "Electrical equipment" means any device or group of components that are connected to a source of electrical power. Such devices include, but are not limited to:~~

- ~~(a) electro-mechanical switches;~~
- ~~(b) controllers;~~
- ~~(c) motors;~~
- ~~(d) car and hall fixtures;~~
- ~~(e) lighting fixtures; or~~
- ~~(f) any other component that has exposed electrical parts or connections, either by design or when protective covers are removed.~~

~~(7) remains the same, but is renumbered (5).~~

~~(8) "Equipment testing" means safety tests required by the adopted safety standard performance of properly licensed elevator inspectors.~~

~~(9) remains the same, but is renumbered (6).~~

~~(10) "Interactive testing and maintenance" means activity which requires human interaction with the technical components of controllers and machinery. Interactive testing includes, but is not limited to:~~

- ~~(a) car and counterweight safety tests;~~
- ~~(b) pressure relief tests;~~
- ~~(c) buffer tests;~~
- ~~(d) brake tests;~~
- ~~(e) unintended car movement tests; and~~
- ~~(f) ascending car overspeed tests.~~

~~(11) "Limited elevator contractor" means any person, firm, partnership, company, or entity that is engaged in the business of installing, altering, servicing, replacing or maintaining residential elevators or other conveyances in private residences.~~

~~(12) "Limited mechanic" means any person who is engaged in the installation, alteration, servicing, replacing, or maintaining of residential elevators, platform lifts, stairway chairlifts, and dumbwaiters in private residences.~~

~~(13) "Lockout" means the placement of a locking device on an energy isolating device, in accordance with an established procedure, to ensure that the energy isolating device and the equipment being controlled by it cannot be operated until the lockout device is removed.~~

~~(14) "Maintenance" means the renewal of operating parts, cleaning, lubricating and adjusting existing elevator equipment to ensure proper and safe operation as required by code. The term includes, but is not limited to:~~

- ~~(a) cleaning and lubricating equipment;~~

~~(b) relamping and repairing car lighting fixtures; and~~

~~(c) regular monitoring of hydraulic oil levels.~~

~~(15) "NAESA" means the National Association of Elevator Safety Authorities.~~

~~(16) "Operational testing" means, but is not limited to, those activities which require measurement or observation, but which does not require any form of conveyance disassembly. These activities include, but are not limited to:~~

~~(a) fire service tests;~~

~~(b) step/skirt index tests;~~

~~(c) starting and stopping of equipment through normal means; or~~

~~(d) smoke and heat detectors tests.~~

~~(17) "Repair" means the restoration of an elevator to its original intended design, but does not include changing its operation or intended use.~~

~~(18) "Residential elevator" means a powered or passenger conveyance which is installed in a private residence where the access to or control of the conveyance is restricted from public access.~~

~~(19) and (20) remain the same, but are renumbered (7) and (8).~~

~~(21) "Tagout" means the temporary placement of a printed notice on an energy isolating device, in accordance with an established procedure, to indicate that the energy isolating device and the equipment it controls may not be operated until the printed notice is removed by the person who attached it to the isolating device.~~

AUTH: 37-73-102, ~~50-60-203~~, 50-60-705, MCA

IMP: 37-73-102, 37-73-201, 37-73-202, 37-73-203, 37-73-204, 37-73-208, 37-73-212, 37-73-216, 50-60-704, MCA

REASON: The department determined it is reasonably necessary to delete definitions in (1), (4), (11), (12), (14), and (17), as they are already defined either in ASME or the Montana Code Annotated. This amendment will ensure against any unintended consequences should the terms be defined differently, and allow the maintenance of one definitive source for such definitions. These definitions unnecessarily repeat the statute defining the scope of practice of an elevator contractor and limited elevator mechanic.

The department is deleting erroneous definitions from (6) and (8), because "electrical equipment" and "equipment testing" do not appear in these rules or in Title 37, chapter 73, or Title 50, chapter 60, part 7, MCA.

The department is deleting the definitions of "interactive testing and maintenance" and "operational testing" from (10) and (16), and relocating the concepts to ARM 24.142.302 for clarity and to provide context for the definitions. The department concluded that these two definitions were ambiguous and did not adequately delineate what conveyance maintenance or repair does not require a license. Following amendment, these rules will draw a distinction and limit the type of maintenance and repair that is not addressed by the ASME code. Any requirement set forth in the code must be performed only by a licensed elevator mechanic or limited elevator mechanic.

The department determined that including "residential elevators" in the types of conveyances a mechanic may service exceeds the statutory authority of 37-73-

203(5), MCA, and is deleting (12). All conveyance work on an elevator in a private residence must be performed by an elevator contractor and elevator mechanic.

It is reasonably necessary to strike definitions of "lockout" and "tagout" from (13) and (21) and place them more appropriately with the elevator safety program rules in Title 24, chapter 301, MCA, to be located with specific procedural requirements associated with performing such actions in New Rule II.

The department is deleting (18) because "residential elevator" is used in association with the rules defining "limited" contractors and mechanics that improperly broadened their scope of practice. All other references to the term "residential elevator" are deleted, because for purposes of licensing rules of the subchapter, the location of the elevator is irrelevant, in contrast to it being relevant for determining whether a permit under Title 50, chapter 60 part 7, MCA, is required. An elevator in a private residence is exempt from permit and term "residential elevator" is misleading.

24.142.302 EXCEPTIONS SCOPE OF PRACTICE (1) Elevator mechanic licenses ~~issued by the department~~ are not required for individuals who do not require access to the pit, hoistway, or top of the car to ~~install~~ perform limited maintenance inside the car, which does not impact code compliance issues to include:

(a) through (e) remain the same.

(2) ~~Elevator mechanic licenses are not required for operational testing and maintenance work that is performed on conveyances when the appropriate lockout and tagout procedures have been performed by the person doing that work.~~ Individuals who perform operational testing after the person doing the test has performed a lock-out and tag-out, and as long as the testing does not impact code compliance issues or require any form of conveyance disassembly. Such testing may include, but is not limited to:

(a) ~~Except where allowed by law, interactive testing and maintenance checks may only be performed by licensed elevator personnel.~~ fire service tests;

(b) step/skirt index tests;

(c) starting and stopping of equipment through normal means; or

(d) smoke and heat detectors tests.

~~(3) Elevator contractor licenses issued by the department are not required for:~~

~~(a) an owner or employee of the owner performing only operational testing and maintenance on conveyances; or~~

~~(b) a public agency that employs licensed elevator mechanics to perform maintenance.~~

~~(4) (3) The construction or modification of hoistway shaft enclosure or machine room enclosure that does not involve alteration, repair, or maintenance of an elevator does not require an elevator contractor's license. However, the alteration to construction or modification of these structures must comply with all other applicable sections of the currently adopted building regulations.~~

~~(5) (4) A licensed elevator contractor may use a helper to assist a licensed elevator mechanic or limited mechanic during an installation to do conveyance work. Assistance does not include performing any function that requires knowledge, skills, or abilities of an elevator mechanic or limited mechanic.~~

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: ~~37-1-104~~, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, MCA

REASON: It is reasonably necessary to amend (1) and add qualifying language regarding issues that affect code compliance to further differentiate between activities requiring elevator mechanic licensure and those that do not.

The department is amending (2) to incorporate the definition of "operational testing" previously set forth in ARM 24.142.301 and provisions being deleted from (3)(a) to provide better context in applying this licensure exception. The department is deleting (3)(b) after determining that there is no statutory support for this exemption and only an elevator contractor has the statutory authority to obtain a permit. Under 37-73-101, MCA, an "elevator contractor" means any person intending to engage in the business of installing, altering, or repairing elevators, escalators, dumbwaiters, or other equipment subject to the provisions of Title 50, chapter 60, part 7, MCA. Additionally, it is the contractor, rather than the mechanic, upon whom the obligation to maintain insurance lies.

To align with amendments proposed to ARM 24.301.602, the department is adding the term "shaft" to (3) to more clearly distinguish between the working parts of the hoistway, which are covered by the elevator code, and the space within the building that is covered by building codes.

The department is amending (4) to clarify that since "installation" may reasonably be construed to refer to "construction," it would appear that if the "helper" category is appropriate in one facet of conveyance work, it is appropriate in all.

24.142.402 FEE SCHEDULE (1) remains the same.

(2) Application for license by examination (applies to all categories and includes original license fee)	\$ 150 <u>200</u>
(3) Contractor - original license fee	150 <u>600</u>
(4) Biennial <u>Annual</u> renewal fee for all categories of licensure, <u>except contractor</u>	400 <u>150</u>
(5) <u>Annual renewal fee for contractor license</u>	<u>600</u>
(5) (6) Application for license by endorsement or reciprocity (includes original license fee)	400 <u>150</u>
(6) through (8) remain the same, but are renumbered (7) through (9).	
(9) (10) Continuing education course curriculum approval	75 <u>200</u>
(10) remains the same, but is renumbered (11).	

AUTH: 37-1-101, 37-73-102, MCA

IMP: 17-2-302, 17-2-303, 37-1-101, 37-1-134, 37-73-102, 37-73-201, 37-73-204, 37-73-208, 37-73-212, 37-73-216, 37-73-221, MCA

REASON: The department determined it is reasonably necessary to increase initial licensure and renewal fees to address a historical shortfall between the fees and the costs associated with those services. The program has been operating at a loss for multiple years in anticipation of additional licensees, but the program numbers have

failed to grow and have actually decreased. The department has never seen the anticipated number of licensees initially reported when the 2005 Legislature heard testimony from stakeholders on this licensing program. It is necessary to increase the fees as proposed to align fees with the completed cost vs. revenue analysis, and to meet the statutory requirement that fees be commensurate with costs.

The department determined it is reasonably necessary to separate the annual contractor renewal fee from all other renewal categories now because the program has been in existence long enough to realize that the contractor's renewal generates more expense to track insurance requirements and maintain the continuity of having a licensed mechanic associated with each contractor. Additionally, separating out this category will ensure that no other license type has to share the burden of the increased expenses associated with the contractor license.

It is necessary to increase the CE course curriculum approval fee to meet the actual costs of reviewing and approving the applications. Noting that the review process often takes longer to complete than originally anticipated, due in part to incomplete or noncompliant information, the department is increasing these fees to cover the actual costs of the bureau chief's review of these complex applications.

The department estimates that the proposed fee changes will affect 107 licensees and new applicants and result in approximately \$17, 050 in additional annual revenue.

24.142.404 LICENSEE RESPONSIBILITIES (1) Licensed elevator mechanics, limited mechanics, elevator contractors, limited elevator contractors, ~~or~~ and elevator inspectors shall have their licenses available on job sites at all times when employed in these capacities. Elevator mechanic or limited mechanic apprentices shall have their registration card, issued by the department, on their persons at all times when so employed. Failure to comply with this provision may result in disciplinary action against the apprentice's supervising licensee. A licensed elevator mechanic, limited mechanic, elevator contractor, limited elevator contractor, elevator inspector, elevator mechanic apprentice, or limited mechanic apprentice who does not have the required proof of licensure or apprenticeship registration while working in one of those capacities is subject to the issuance of a licensing citation in accordance with As provided by 37-73-225, MCA, a licensed elevator mechanic and a limited elevator mechanic are subject to a fine for failure to produce proof of licensure upon request.

~~(2) A licensed limited mechanic shall:~~

~~(a) perform work only in the employment of a licensed elevator contractor;~~

and

~~(b) perform work only on residential elevator construction.~~

~~(3) (2) A~~ All licensed elevator mechanic mechanics and limited licensed elevator mechanics shall perform conveyance work only in the employment of a licensed elevator contractor or limited licensed elevator contractor. An elevator mechanic who is a sole proprietor or individual engaging in the business of conveyance work must also be licensed as an elevator contractor.

~~(4) (3)~~ A licensed elevator contractor or limited elevator contractor shall not allow any person to perform elevator or other conveyance installation or repair work, unless the person is:

(a) through (c) remain the same.

~~(5)~~ (4) Elevator contractors are responsible for obtaining any permit required by the state of Montana or a certified local building code enforcement authority relating to ~~elevator equipment~~ conveyance work and are responsible for ensuring that work performed complies with the permitting requirements.

~~(6)~~ (5) Elevator contractors, limited elevator contractors, elevator mechanics, or limited mechanics may not allow their ~~license~~ licenses to be used by other individuals, firms, corporations, or businesses for the purpose of obtaining ~~elevator conveyance~~ permits or for performing conveyance work.

~~(7) Elevator contractors may not erect, construct, install or alter an elevator, dumbwaiter, escalator, or other equipment subject to the provisions of Title 50, chapter 60, MCA, unless they have first obtained a permit to do so from the department.~~

(8) remains the same, but is renumbered (6).

~~(9) All licensees are responsible for obtaining continuing education training as required by ARM 24.142.2102.~~

~~(10) Any violation of these licensing responsibilities will be deemed "unprofessional conduct" in addition to conduct described in 37-1-410, MCA and are subject to sanctions as provided by 37-1-406, MCA.~~

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: 37-1-406, 37-1-410, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, ~~37-73-220~~, 37-73-225, MCA

REASON: The department is amending (1) to comply with 37-73-225, MCA, which provides for citation consequences only to "a person doing work at a job site that requires an elevator mechanic's license." The current rule incorrectly applies citation consequences to license holders other than a mechanic, in excess of statutory authority. Other amendments clarify the distinction between department jurisdiction over licensees, but not apprentices.

The department is deleting (2) as it is not necessary to restate the scope of practice stated in law and to avoid the potential to copy the statutory language into rule and deviate from the statutory language. This is the case in current (2)(b), which purports to authorize limited elevator mechanics to work on "residential elevators" beyond the scope of practice as stated in the statute, which actually limits them to work only on stairway chairlifts, platform lifts, and dumbwaiters.

Amendments to new (2) underscore the principle of the codependency between contractor and mechanic licenses, and further clarify that the principle applies to both full and limited license categories.

The department is deleting (7) as this provision is adequately provided for through proposed amendments to ARM 24.142.2401 and 24.301.607.

Section (9) is being deleted as it contains an incorrect reference to ARM 24.142.2102 regarding sponsors, and because the provisions are already addressed in ARM 24.142.2103 and 24.142.2401.

The department is deleting (10) to avoid confusion among licensees. The department concluded that it is preferable to address these grounds for

unprofessional conduct at ARM 24.142.2401, rather than to narrowly imply that the responsibilities in this rule are the only grounds for unprofessional conduct.

24.142.502 ELEVATOR MECHANIC AND LIMITED MECHANIC LICENSURE QUALIFICATIONS (1) remains the same.

~~(a) passed a written examination or certification approved by the department successfully completed a state-approved apprenticeship or other education program that meets requirements established by department rule; or~~

~~(b) performed has three years verifiable conveyance work of experience verified by current or previous employers and, except as provided in (2), passed a written examination administered by the department.~~

(2) Elevator mechanic applicants who can under oath provide verifiable proof of employment as an elevator mechanic for at least three years prior to October 1, 2005, and who possess the requisite experience for licensure, may be licensed without examination upon payment of the application fee.

(3) For the purpose of meeting the experience option requirement for licensure as an elevator mechanic, one year equals at least 1500 hours as verified by current or previous employers. The department may, for good cause, allow a substitute means of verification of the three-year experience requirement as determined appropriate in the department's sole discretion, such as employment, payroll, or tax records.

~~(2) (4)~~ An applicant for a limited mechanic's license shall furnish evidence satisfactory to the department that the applicant has:

~~(a) passed a written examination or certification approved administered by the department; or~~

~~(b) one year of verifiable work experience in performing residential conveyance work.~~

AUTH: 37-73-102, 37-73-203, ~~50-60-203~~, MCA

IMP: ~~37-1-104~~, 37-73-102, 37-73-201, 37-73-203, 37-73-204, ~~50-60-203~~, MCA

REASON: The department determined it is reasonably necessary to amend this rule to correctly reflect the statutory qualifications for elevator mechanic and limited mechanic licensure. Specifically, it is necessary to delete (4)(b), the one year residential conveyance experience requirement for limited mechanics, as this exceeds statutory authority. Section (2) is relocated here from ARM 24.142.503, as it is more logically placed with licensure qualifications. New (3) clarifies for applicants that a year means at least 1500 hours and provides for an alternative means of experience verification for the rare times when an employer cannot verify experience.

24.142.503 ELEVATOR MECHANIC AND LIMITED MECHANIC APPLICATIONS (1) An applicant shall have one year from the date of department approval to take the examination for which the application was approved. If the examination is not taken within that one-year period, the applicant will be required to

submit a new application, provide written verification of experience, and pay the applicable fees.

(2) All applications shall be approved or disapproved on a case-by-case basis, as the department may deem proper, according to the following criteria:

(a) through (d) remain the same.

~~(3) Elevator mechanic applicants who can, under oath, provide verifiable proof of employment as an elevator mechanic for at least three years prior to October 1, 2005, and who also possess the requisite experience for licensure may be licensed without examination upon payment of the application fee.~~

AUTH: 37-1-105, 37-73-102, 50-60-203, MCA

IMP: 37-1-105, 37-73-102, 37-73-201, 37-73-203, 37-73-204, 37-73-221,
MCA

REASON: The department is relocating (3) to ARM 24.142.502 as it is more appropriately located with the licensure requirements.

24.142.504 TEMPORARY PRACTICE PERMIT ~~(1) In the event of an emergency or disaster, as defined in 10-3-103, MCA, the department may issue a temporary practice permit for an elevator mechanic or limited elevator mechanic. A temporary practice permit will not be issued until the department:~~

~~(a) verifies information provided by a licensed elevator contractor that the contractors' employee, who is the applicant, may be qualified to perform elevator mechanic work without direct supervision; and~~

~~(b) determines that the training, education, and/or experience of the applicant seeking temporary practice permits is sufficient to allow that person to perform unsupervised elevator mechanic work without creating a risk to public health, safety, and well-being.~~

~~(2) Documentation of the training, education, and/or experience required in (1) for a temporary practice permit must include the following:~~

~~(a) a sworn affidavit from a licensed contractor stating an employee/applicant seeking a temporary practice permit has sufficient elevator installation experience to perform specific types of elevator work without supervision by a licensed mechanic;~~

~~(b) certified submission of relevant training or coursework successfully completed by the applicant; and~~

~~(c) in the case of an apprentice seeking a temporary practice permit, documentation from a state apprenticeship and training bureau or program that the apprentice has completed no less than 70% of the apprentice's required term and is completely current with related instruction.~~

~~(3) The department will verify the information described in (2) as it deems necessary to determine if acceptable standards of public health, safety, and well-being can be maintained by issuing temporary permits to specific applicants. Indicators used to evaluate acceptable levels of competency include, but are not limited to:~~

~~(a) satisfactory completion of relevant course work;~~

~~(b) amount of relevant on the job training;~~

~~(c) relevant military training and experience;~~

~~(d) relevant on the job training and experience from related trades; and
(e) trade school certificates.~~

~~(4) A temporary practice permit issued pursuant to (1) is valid for 30 days.~~

~~(a) Subsequent temporary practice permits will only be issued if the emergency or disaster condition still exists.~~

~~(5) In the event the department determines that a shortage of licensed elevator mechanics or limited mechanics exists to the extent that, if left uncorrected, it could have a materially adverse impact on public health, safety, and well-being, the department may issue a temporary practice permit for an elevator mechanic or limited mechanic.~~

~~(a) A licensed elevator contractor may submit written notification to the department that a shortage of licensed elevator mechanics or limited mechanics exists. The elevator contractor must be in good standing with the department and have no active complaints against the licenses of the contractor or the contractor's employees before the contractor is eligible to declare a shortage of elevator mechanics or limited mechanics for the contractor's business. Sufficient proof of a bona fide shortage of licensed elevator mechanics or limited mechanics must accompany the written notification and must include:~~

~~(i) a detailed description of the nature of the claimed shortage which particularly explains why the shortage was unforeseeable;~~

~~(ii) a description of all the projects affected by the claimed shortage, including the location of each project; and~~

~~(iii) evidence of the need for immediate action by an elevator contractor, especially as it may relate to healthcare issues or accessibility for disabled persons.~~

~~(6) Upon consideration and subsequent finding by the department that a contractor's claimed shortage of elevator mechanics or limited mechanics is bona fide to the extent that, if left uncorrected, an adverse material impact on public health, safety, and well-being will result, the department will issue temporary practice permits as it deems prudent and appropriate to temporarily remedy the mechanic shortage.~~

~~(7) A temporary practice permit issued pursuant to (5) is valid for 30 days and only at the locations noted in (5)(a)(ii).~~

~~(a) Subsequent temporary practice permits will be issued only if continued monitoring by the department indicates a bona fide elevator mechanic or limited mechanic shortage continues to exist.~~

~~(8) For good cause and upon notice, the department may revoke any temporary practice permit as it believes is prudent and necessary to best serve the interests of ensuring or maintaining public health, safety, and well-being.~~

(1) The department may issue two types of temporary licenses:

(a) to elevator inspectors for a six-month temporary license, pending certification while under supervision of a licensed, certified inspector; and

(b) to elevator mechanics in the case of an emergency or disaster as provided at 37-73-216, MCA.

(2) All temporary practice permits are subject to revocation under contested case proceedings in 37-1-403, MCA.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-216, ~~50-60-203~~, MCA

REASON: Section 37-73-216, MCA, authorizes elevator contractors to certify to the state the qualifications of their employees with acceptable education and experience to perform elevator repair work without direct supervision, but under the contractor's legal responsibility, during a declared emergency or disaster. The department determined it is reasonable and necessary to amend this rule to correct several instances of statutory conflict. The current rule conflicts with the statute by requiring the state, rather than the employer, to certify the qualifications of a temporary mechanic, and as a result, assuming the liability that the law has placed external to the state. Additional conflicts include the addition of time restraints that the Legislature intended to avoid during emergencies, creating a standard by which the department measures the need to issue permits, and allowing renewal in 30-day increments.

The department also concluded that amending and simplifying this rule is warranted since 37-73-216, MCA, the implemented statute, contains sufficient direction and procedure that makes it unnecessary to elaborate by rule.

24.142.506 ELEVATOR INSPECTOR QUALIFICATIONS --TRANSITION PERIOD (1) ~~Applicants Unless they qualify for a temporary license under 37-73-208, MCA, applicants~~ for elevator inspectors licenses shall provide evidence satisfactory to the department that they possess certification as such from one or more of the following entities:

(a) through (d) remain the same.

~~(2) Inspectors currently approved to inspect elevators in Montana will have six months from the date this rule becomes effective to become certified in accordance with this rule.~~

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: 37-73-102, 37-73-201, 37-73-208, MCA

REASON: The department is amending (1) to clarify the six-month temporary licensure for noncertified inspectors working under certified personnel. The "transition period," or grandfather clause in (2) is no longer necessary, since the rules have now been in effect longer than the six-month period stated.

24.142.507 ELEVATOR CONTRACTOR APPLICATIONS (1) and (a) remain the same.

(b) the appropriate fee; ~~and~~

(c) ~~proof of the following:~~

(i) ~~a~~ general contractor registration to engage in the business of installing, repairing, or altering powered conveyances;

(ii) ~~(d)~~ a currently dated, certified copy of a liability insurance policy issued to the business name listed on the application, which includes the insurance policy number, and which complies with the requirements of 50-60-716, MCA; ~~and~~

(iii) ~~(e)~~ a current certificate of existence or a current certificate of fact, issued by the Montana Secretary of State's office; ~~and~~

(f) a current list of all licensed elevator mechanics or inspectors who will be responsible for all work performed under the contractor's license, and any permit issued to the contractor, which shall be updated at license renewal.

~~(2) The department shall issue a limited elevator contractor license to an applicant who:~~

~~(a) submits the documentation required in (1); and~~

~~(b) employs a licensed limited mechanic, named on a form provided by the department, as the mechanic responsible for code compliance on all work performed under that contractor license.~~

~~(3) The department shall issue an unlimited elevator contractor license to an applicant who:~~

~~(a) submits the required documentation listed in (1); and~~

~~(b) employs a licensed elevator mechanic, named on a form prescribed by the department, as the elevator mechanic responsible for code compliance on all work performed under that contractor license.~~

~~(4) (2) An individual owner or sole proprietor of an unlimited elevator contracting business not licensed as an elevator mechanic or inspector shall employ an one or more licensed elevator mechanic mechanics or inspectors to perform all conveyance work done under that contractor's license and conveyance permits issued to that contractor.~~ No holder of an elevator mechanic's license can be named as the responsible elevator mechanic for more than one elevator contractor at any given time.

(5) through (7) remain the same, but are renumbered (3) through (5).

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-212, ~~50-60-203~~, 50-60-716,
MCA

REASON: The department is amending this rule for clarity, accuracy, simplicity, better organization, and ease of use in setting forth the qualifications and current application procedures for elevator contractor licensure. Renumbering following amendment is done to comply with ARM formatting requirements.

The department is amending (2) to address confusion and clarify the obligations for work performed and permits issued under a contractor's license. This is necessary to ensure that conveyance work is completed by licensed personnel, regardless of whether under an unlimited or limited contractor.

24.142.509 EXAMINATIONS (1) through (4) remain the same.

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: 37-73-102, 37-73-201, 37-73-204, MCA

24.142.2101 RENEWALS (1) ~~Renewal dates are biennial. The first two-year renewal cycle will commence on April 1, 2008.~~ Renewal is the responsibility of the licensee and although the department may send reminder notices to the last known address of provided by the licensee, failure to receive such notices does not relieve licensees of their responsibility of renewal.

(2) remains the same.

~~(3) An audit of continuing education hours will be conducted by the department for each renewal cycle. Failure to obtain the requisite continuing education hours is grounds for license suspension or revocation.~~

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: 37-1-403, 37-73-220, MCA

REASON: The department is amending (1) to align with the shift to annual renewals and to clarify the licensee obligation to provide current address information to the department. The department is moving (3) within this notice to be situated with similar continuing education provisions at ARM 24.142.2103.

24.142.2102 CONTINUING EDUCATION SPONSORS AND COURSES

(1) through (3)(a) remain the same.

(b) All course approvals expire ~~May~~ July 1st of each ~~renewal~~ year.

(c) through (5) remain the same.

(6) Course sponsors must ~~submit~~ maintain a list of names and license numbers of the attendees to the department ~~as prescribed by the department no later than 30 days after the date of course completion.~~

AUTH: 37-73-102, MCA

IMP: 37-73-102, 37-73-220, MCA

REASON: The department is amending (3) to align course approvals with the shift to annual renewals and enable the department to better monitor programs on an annual basis. The department is amending (6) to no longer require that course sponsors submit attendee information, since it is the licensee's responsibility to maintain this information.

24.142.2103 CONTINUING EDUCATION CREDITS REQUIRED (1) ~~In order to renew any class of~~ Each holder of an elevator mechanic license, a limited elevator mechanic license, or an elevator inspector license, the licensee must have completed complete at least eight hours of approved continuing education during the ~~two-year license period~~ immediately preceding the annual renewal.

(2) remains the same.

(3) The department may conduct a random audit of 15 percent of all licensees annually for compliance with the continuing education requirement. Failure to obtain the requisite continuing education hours is grounds for license suspension or revocation.

AUTH: 37-73-102, ~~37-73-220~~, MCA

IMP: 37-1-131, 37-73-102, 37-73-220, MCA

REASON: The department is amending (1) to align with the shift to annual renewals and clarify the licensees that have continuing education (CE) requirements. Further,

it is necessary to amend (1) to comply with 37-1-131, MCA, and require licensees to affirm CE completion at renewal, but not require submission of CE proof to renew.

24.142.2401 LICENSE DISCIPLINE ~~(1) The department will follow all statutes, rules, and policies relating to discipline of licensees under this chapter and 37-1-410, MCA.~~

~~(2) (1)~~ In addition to the activities conduct set forth in 37-1-410, MCA, the following ~~activities are also deemed by the department to be~~ conduct is also defined as unprofessional conduct:

(a) ~~uncorrected failure to correct~~ violations of the Montana state elevator code as adopted cited by the Department of Labor and Industry's Building Codes Bureau department;

(b) failing failure to comply with all provisions of state law relating to workers' compensation insurance, unemployment insurance, and independent contracting; and

(c) failure to comply with continuing education requirements set forth in ARM 24.142.2103-;

(d) failure to comply with the permitting provisions set forth in 50-70-709, MCA, and ARM 24.301.606;

(e) failure to request an inspection as provided in ARM 24.301.606;

(f) failure to provide proof of licensure upon request as prescribed in 37-73-225, MCA;

(g) failure of a licensed elevator inspector to file condition reports as prescribed in ARM 24.301.623;

(h) failure to notify the department of a material policy alteration or policy cancellation as required by 50-60-716, MCA; and

(i) failure to comply with any law and rule governing elevator licensing program or the elevator code.

~~(3) (2) Upon findings~~ The provisions of Title 37, chapter 1, part 4, MCA, govern the prosecution of unprofessional conduct as defined in (1) and determined in accordance with the Montana Administrative Procedure Act, the department may impose sanctions including, but not limited to, those allowed by or listed in 37-1-406, MCA.

AUTH: 37-73-102, MCA

IMP: 37-1-402, 37-1-403, 37-1-404, 37-1-405, 37-1-406, 37-1-409, 37-1-410, 37-73-102, 37-73-225, 37-73-226, 37-73-227, MCA

REASON: The department is amending this rule to specify additional acts of unprofessional conduct to ensure that licensees are provided clear notice of the consequences of failing to follow requirements to obtain permits and request inspections. Additional amendments to this rule eliminate unnecessary provisions and provide clear reference to the appropriate statutes governing the prosecution of unprofessional conduct by licensees.

24.301.401 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL CODE (1) The department, by and through the Building Codes

Bureau, adopts and incorporates by reference the National Fire Protection Association Standard NFPA 70, National Electrical Code, ~~2008~~ 2011 edition referred to as the National Electrical Code, unless another edition date is specifically stated. The National Electrical Code is a nationally recognized model code setting forth minimum standards and requirements for electrical installations. A copy of the National Electrical Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517 or the National Fire Protection Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

AUTH: 50-60-203, 50-60-603, MCA

IMP: 50-60-201, 50-60-203, 50-60-601, 50-60-603, MCA

REASON: The department has reviewed the revisions made to the National Electrical Code most recently reflected in its 2011 edition as compared to the 2008 edition, and is amending this rule to adopt and implement those changes as appropriate for minimum standards and requirements for electrical installations.

24.301.602 INCORPORATION BY REFERENCE OF ELEVATOR CODE

~~(1) The Department of Labor and Industry, referred to as Subject to the provisions of Title 50, chapter 60, part 7, MCA, the department, adopts and incorporates by reference the following conveyance codes promulgated by the American Society of Mechanical Engineers (ASME):~~

~~(a) through (d)(i) remain the same.~~

~~(2) The purpose of the elevator code is to provide safety standards for the design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of permanently installed hoisting and lowering mechanisms.~~

~~(a) Devices covered by the elevator code include but are not limited to:~~

~~(i) elevators;~~

~~(ii) platform lifts;~~

~~(iii) stairway chair lifts;~~

~~(iv) dumbwaiters;~~

~~(v) escalators;~~

~~(vi) automated people movers;~~

~~(vii) inclined lifts; and~~

~~(viii) moving walks and their hoistway.~~

~~(b) The elevator code does not apply to self-powered, mobile equipment including, but not limited to:~~

~~(i) material hoists and man lifts;~~

~~(ii) mobile scaffolds, towers, and platforms;~~

~~(iii) powered platforms and equipment for exterior and interior maintenance;~~

~~(iv) conveyors and related equipment;~~

~~(v) cranes, derricks, hoist, hooks, jacks, and slings;~~

~~(vi) industrial trucks;~~

~~(vii) portable equipment, except for portable escalators;~~

~~(viii) tiering or piling machines used to move materials to and from storage that are located and operated entirely within one story;~~

- ~~(ix) equipment for feeding or positioning materials at machine tools, printing presses, and similar locations;~~
- ~~(x) furnace hoists; and~~
- ~~(xi) railroad car lifts or dumps which are typically used on a temporary basis on construction sites.~~

~~(3)~~ (2) Inspection, code compliance, and enforcement of hoistway (shaft) standards ~~is~~ are the responsibility of the appropriate authority having jurisdiction for inspection and enforcement of the building code. A "hoistway shaft" is distinguished from a "hoistway" for the purposes of building code jurisdiction over the former, and elevator code jurisdiction over the latter.

~~(4)~~ (3) The codes, standard, and appendix referenced in (1), together with Title 50, chapter 60, part 7, MCA, and this subchapter, are collectively referred to as the "elevator code." A copy of the ~~elevator code~~ ASME codes and standards may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017 P.O. Box 2300, Fairfield, NJ 07007-2300, or www.asme.org.

AUTH: ~~50-60-203,~~ 50-60-705, 50-60-715, MCA

IMP: ~~50-60-204,~~ 50-60-704, 50-60-705, 50-60-715, MCA

REASON: The department is amending (1) to clarify that the ASME rules are subordinate to the enabling legislation and remove a redundant definition of the department, which is already defined in ARM 24.301.109.

It is reasonably necessary to delete (2), because it unnecessarily repeats 50-60-704, MCA, and instead refer to the ASME code in (1), and clarify that the statute controls where there are differences between the two.

The department is amending new (2) to distinguish between the part of a building (the "hoistway shaft") and a part of a conveyance ("hoistway") and applicable codes pertaining to each. New (3) clarifies that the definition of "elevator code" includes not only the ASME code and standards, but also applicable state law and rules, and that the three must be read and applied together.

24.301.606 PLAN REVIEW AND PERMIT FEE (1) An elevator contractor may not erect, construct, install, or alter ~~an elevator, dumbwaiter, escalator, or other equipment~~ any conveyance subject to the provisions of Title 50, chapter 60, MCA, unless the elevator contractor has first submitted plans, paid the fee, and obtained a permit from the department ~~and paid the requisite permit fee.~~

(2) The plan review and permit fee for new installations and alterations of ~~an elevator, escalator, moving walk and other conveyance covered within the scope of the elevator code and subject to the inspection requirements of Title 50, chapter 60, MCA,~~ a conveyance is:

- (a) valuation up to and including \$40,000 \$~~55~~ 200
- (b) valuation over \$40,000 ~~55,~~ 200

plus \$~~4~~ 3 for each \$1,000 or fraction thereof over \$40,000

~~(3) Plans, applications and fees for new units must be submitted to the department at least 30 days prior to commencement of construction and installation of the unit. Plan approval and issuance of permits must be obtained from the~~

~~department prior to the commencement of construction and installation. Whenever a new conveyance is proposed to be installed or alterations are proposed to an existing conveyance in a certified building jurisdiction, the elevator contractor must provide that jurisdiction with a copy of the plans submitted to the department.~~

~~(4) The permit holder must contact the department or a licensed elevator inspector for an inspection of a newly installed or altered conveyance a minimum of ten working days prior to the scheduled or anticipated date for placing the conveyance in use.~~

~~(a) Prior to calling for inspection of a newly installed or altered conveyance, the permit holder must ensure all aspects of the installation or alteration are complete and ready for inspection, including, but not limited to:~~

~~(i) the functioning of all conveyance components; and~~

~~(ii) completion of all related electrical, mechanical, fire alarm, fire suppression, and building construction work to the shaft, machine room, and related areas.~~

~~(b) If upon the requested arrival of department personnel, the conveyance is not ready for inspection, the permit holder will still be responsible for the inspection fee despite the inability to complete the inspection, and will also be charged for all subsequent inspections or reinspections.~~

~~(4) No elevator permit will be issued until a building permit is issued, unless it is determined by the department that a building permit is not required.~~

~~(5) Building code related drawings as required by 50-60-709, MCA, must also be submitted to certified cities, counties, and towns if an elevator is being installed within their building codes jurisdictions.~~

~~(6) Private residential elevators are only allowed in buildings that are not accessible to the general public or to other occupants of the building.~~

~~(7) (5) Permits will expire six months after issuance as provided by 50-60-709, MCA.~~

~~(8) (6) Permits In addition to the criteria provided at 50-60-709, MCA, a permit may be revoked and subject to an administrative hearing under 50-60-105, MCA, for cause including but not limited to:~~

~~(a) having a reasonable cause finding of unprofessional conduct, as defined in 37-1-402 and 37-1-410, MCA, which conduct materially against a licensed elevator contractor or mechanic that relates to work done under a lawfully issued the safety of the conveyance, subject to the permit; or~~

~~(b) not following the plans approved by the department; or~~

~~(c) (b) failure to obtain or maintain insurance on an installation as required in 50-60-716, MCA.~~

AUTH: ~~50-60-203, 50-60-705, 50-60-709, MCA~~

IMP: ~~50-60-204, 50-60-105, 50-60-709, 50-60-711, MCA~~

REASON: The department determined it is reasonably necessary to increase permitting and plan review fees in (2) to address a historical shortfall between these fees and the costs associated with those services. The department has seen an increase in the variety of machine types and in the complexity of permit applications and therefore is spending more time reviewing and issuing new permits for

conveyance devices. It is necessary to increase the fees as proposed to align fees with the costs vs. revenue analysis that has been done, and to meet the statutory requirement that fees be commensurate with costs. The department estimates that the proposed fee increases will affect approximately 125 new devices per year and result in \$16,625 in new annual permit fees.

The department is amending (3) because the department currently requires less than 30 days to review plans and issue a permit and may issue a permit within one or two working days. The admonition to obtain the permit before commencing work is clarified in amendments to (1).

Section (4) is deleted, since building permits are issued independently from elevator permits and there is no statutory authority for the department to withhold an elevator permit on this contingency, nor is there any apparent administrative or public benefit to do so. The provision on providing copies of plans to certified building jurisdictions is deleted from (5) and further clarified in (3).

The department is moving the substance of (6) under the new definition of "private residence" in New Rule I. The department is adding (4) to further clarify the process required by the permit holder to request the inspection, the standards required prior to requesting an inspection, and the consequences for being unprepared for the inspection, to address actual instances the department has experienced, and associated waste of resources.

It is reasonably necessary to amend (5) as the current rule misleadingly refers to only a portion of the applicable statute. Following amendment, the rule will refer to the statute to incorporate both the elapse of a six-month period and the ability of the department to specify a shorter expiration period.

The department is amending (6) to specify the statutory grounds for revocation, eliminate unnecessary duplication of statutory language, and clarify the administrative remedy for contesting a department decision to revoke. Further amendments clarify the department's jurisdiction over licensees committing unprofessional conduct, and impose a reasonable cause requirement as determined through a separate procedure to avoid relying on incomplete information or information that does not have an indicia of reliability. In (6)(b), the department is deleting "installation" as it further limits and qualifies the insurance obligation that is not present in the statute.

24.301.607 CERTIFICATE OF INSPECTION INSPECTIONS -
CERTIFICATES - FEES

~~(1) The department shall inspect hoisting and lowering mechanisms equipped with a car or platform, which move between two or more landings, including but not limited to:~~

~~(a) elevators, platform lifts and stairway chair lifts;~~

~~(b) power driven stairways and walkways for carrying persons between landings, including but not limited to:~~

~~(i) escalators; and~~

~~(ii) moving walks;~~

~~(c) hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to carrying only materials by its limited size or limited access to the car, including but not limited to:~~

~~(i) dumbwaiters;~~

~~(ii) material lifts and dumbwaiters with automatic transfer devices; and
(d) automatic guarded transit vehicles on guideways with an exclusive right-of-way including, but not limited to, automated people movers.~~

~~(2) Each installation shall be inspected at least once every 12 months, except as provided in ARM 24.301.609, and freight elevator inspections must be conducted at least every two years.~~

~~(3) If the inspection by the department reveals a unit complies with the requirements of the code and the inspection fee has been paid, a certificate of inspection will be issued.~~

~~(4) If the inspection by the department reveals a unit has minor deficiencies that do not cause imminent hazard to life and safety but that should be corrected before the next inspection, a conditional certificate may be issued after the certificate of inspection fee has been paid. Only one conditional certificate will be issued for each specified deficiency. Upon the next scheduled inspection, if the same deficiencies exist, the department will require those deficiencies be corrected before a certificate of inspection will be issued.~~

~~(5) New or upgraded elevators cannot be placed in operation prior to an inspection by the department and the issuance of a temporary certificate of inspection. Installers shall call the department for an inspection a minimum of 10 working days prior to the scheduled or anticipated date for placing the elevator in use. A temporary certificate may be withdrawn at any time, for cause, by the department.~~

(1) No conveyance may be operated prior to inspection by an authorized elevator inspector and issuance of a current certificate of inspection from the department.

(2) Except for registered freight elevators, which require inspection every two years, all other registered conveyances require inspection on an annual basis. The department may require more frequent intervals as part of a plan of correction.

(3) The department will schedule and conduct inspections and will issue a certificate of inspection upon:

(a) payment of the inspection and certificate fees; and

(b) a determination by either a private, licensed elevator inspector or a department inspector that the conveyance is in compliance with the elevator code.

(4) The department will charge the full inspection fee for mutually scheduled inspections in which department inspectors arrive to find the conveyance not yet ready for inspection.

(5) The department may require correction of deficiencies and reinspection, prior to the next annual inspection, as it determines in the interest of public safety.

(6) When a department inspection reveals a deficient condition, the department, within 24 hours, will issue a corrective notice providing the owner or lessee 14 days to correct the deficiencies. Failure by the owner or lessee to correct the deficiencies or to submit a plan of correction acceptable to the department within the time stated will result in the issuance of a formal notice and order to stop operation of the conveyance.

~~(6) (7) A duplicate certificate of inspection will be issued for a \$10 no fee.~~

(7) (8) The annual certificate of fee for each separate department inspection (initial, annual, biennial, accident, or reinspection) fee is:

- (a) when inspections are performed by the department:
 - (i) ~~for each elevator, escalator, and moving walk~~
(also applies to follow-up inspections performed after a licensed inspector's inspection) \$100 140 per conveyance
 - (ii) ~~(b) for each lift (also applies to follow-up inspections done after certified inspector's inspection lifts~~ ~~70~~ 100 per conveyance
 - (b) ~~(c) when inspections are made by certified inspectors and no follow-up is required by the department: department processing fee for a condition report issued by licensed private inspector~~
 - (i) ~~for each elevator, escalator and moving walk~~ 10 per conveyance
 - (d) certificate of inspection fee 10 per conveyance
- ~~(8) When an inspection reveals an unsafe condition, the inspector shall immediately file with the owner and the department a full and true report of such inspection and such unsafe condition.~~

~~(a) If the department finds that the unsafe condition endangers human life, it shall cause the elevator, escalator, moving walk, or other conveyance to be posted with a notice, in a conspicuous place, stating that the conveyance is unsafe. The owner shall see to it that such notice is legibly maintained where placed by the department.~~

~~(b) The department shall also issue an order in writing to the owner requiring the repairs or alterations to be made to the conveyance, which is necessary to render it safe. The department may order the operation thereof discontinued until the repairs or alterations are made or the unsafe conditions are removed.~~

~~(c) Only the department may remove a posted notice of unsafe conditions when the department is satisfied that the unsafe conditions have been corrected.~~

~~(d) The certificate fee will be charged even though the unit is not certified for operation, and at such time as the deficiencies are corrected, a reinspection fee will be charged.~~

~~(9) It is unlawful to operate any elevator, escalator, moving walk, or other conveyance without a current certificate of inspection or authorization from the department. These certificates shall be issued upon payment of prescribed fees and the presentation of a valid inspection report indicating that the conveyance is safe and that the inspection was made within the previous six months. Certificates shall not be issued when the conveyance is posted as unsafe. Obtaining current certificates of inspection is the responsibility of the owners of the conveyance.~~

~~(10) (9) Elevator certificates An owner shall post in a conspicuous place in or on each conveyance, the current certificate of inspection, or signs indicating that a copy of the certificate is available upon request and where one can be obtained, must be posted in each elevator information on how to obtain a copy of it.~~

AUTH: 50-60-203, 50-60-705, 50-60-711, MCA

IMP: 50-60-103, 50-60-211, 50-60-705, 50-60-706, 50-60-711, 50-60-715,

MCA

REASON: The department is deleting (2) because it unnecessarily repeats 50-60-711, MCA, describing inspection intervals. Further, the department proposes to

repeal ARM 24.301.609 in this notice, as contradicts the requirement in the statute to conduct annual inspections.

It is reasonably necessary to delete (3) and add (2) through (6) to fully and specifically describe the process of requesting an inspection, the consequences of not passing the inspection, the issuance of certificates, and the standard required to be met before the certificate issues. The new sections clearly indicate relative responsibilities and duties of contractors, inspectors, owners, and lessees.

The department is deleting (4), because there exists no statutory authority to issue a "conditional certificate" when "minor deficiencies" exist. The statute only allows the department to issue a certificate when there is compliance with applicable building and elevator codes. Likewise, (5) is deleted as the department lacks the authority to issue a "temporary certificate of inspection." The certificate is documentation that an inspection has been completed and that the conveyance complies with the requirements of the applicable building code and Title 50, chapter 60, part 7, MCA. The department is relocating the ten-day notice requirement to ARM 24.301.606 in this notice.

The department is amending (7) to provide duplicate certificates of inspection for no charge, because customers now have direct access to the certificate records online, leaving no additional costs for producing or mailing multiple certificates. Given that few duplicate certificates are requested, the costs associated with issuing duplicates will be offset by other efficiencies elsewhere in these rule changes.

It is reasonably necessary to amend (8) to more succinctly set forth the different fees for different types of conveyances. The amendments further clarify the various types of inspections for which the department will charge, eliminating the ambiguity in the current rule about different charges for reinspections. The department determined that fees must be increased to accommodate staff increases to address new conveyances constructed in the state, and to comply with the statutory mandate to conduct annual inspections. In addition, the fee increases are necessary to accommodate higher costs for travel (gasoline, fleet maintenance, and lodging). The department estimates that these fee changes will affect approximately 3162 new and existing devices and result in \$135,850 additional annual revenue.

The department is deleting (8) and moving the inspection deficiency provisions to (6) and New Rule II to clarify the procedure for posting and deactivating a conveyance that the department has determined to be a threat to public safety. The department further determined it is incongruent to charge for a certificate when no certificate is issued. Following these amendments, the department will charge only when a certificate is issued and then assess a separate fee for each inspection, regardless of whether or not the inspection showed deficiencies.

The department is deleting (9) and incorporating its substance into the new text of this rule, with the exception of the reference to accepting inspections made within six months. The statute makes no such reference and the department's actual practice is to issue the certificates contemporaneously with the inspection.

It is reasonably necessary to amend (10) to clearly delineate the owner's responsibility to post certificates for conveyances.

24.301.610 ACCIDENTS (1) When a ~~permanently installed~~ conveyance is involved in an accident causing injury or death, an owner or lessee aware of such

~~accident must be reported~~ submit a written report to the department within 72 hours. The department ~~may then cause the site of the accident to be inspected, the cause of the accident to be determined~~ must inspect the conveyance involved in the accident, charge the appropriate fee, and, if necessary, require corrective action.

AUTH: ~~50-60-203, 50-60-705, MCA~~

IMP: ~~50-60-103, 50-60-201, 50-60-211, 50-60-705, 50-60-711, MCA~~

REASON: The department is amending this rule to delete "permanently installed" to ensure that conveyances under the department's jurisdiction are not qualified or limited beyond the parameters in statute at 50-60-704, MCA. Additional amendments clarify that the duty to report an accident lies with the owner or lessee of a conveyance, and that the department has a mandatory authority to inspect conveyances under its jurisdiction and order corrective action.

24.301.623 INSPECTIONS BY LICENSED PRIVATE INSPECTORS

~~(1) The department shall accept inspections by licensed private elevator inspectors of permanently installed hoisting and lowering mechanisms equipped with a car or platform, which move between two or more landings, including but not limited to:~~

~~(a) elevators, platform lifts and stairway chair lifts;~~

~~(b) power driven stairways and walkways for carrying persons between landings, including but not limited to:~~

~~(i) escalators; and~~

~~(ii) moving walks;~~

~~(c) hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car, including but not limited to:~~

~~(i) dumbwaiters;~~

~~(ii) material lifts and dumbwaiters with automatic transfer devices; and~~

~~(d) automatic guarded transit vehicles on guideways with an exclusive right-of-way including, but not limited to, automated people movers.~~

~~(2) Each installation must be inspected at least once every 12 months, except that freight elevator inspections must be conducted at least every two years.~~

~~(a) A detailed report of each unit inspected must be filed with the department within 14 working days after the inspection is completed on a form approved by the department. Such report must list all failures of the installation specific in reference to the code requirements of Chapter 30 of the International Building Code, and the state elevator code.~~

~~(b) A certificate of inspection must be issued by the department upon receipt of the report of the licensed elevator inspector that the unit is in an acceptable state of repair for receiving certification, and after the inspection fee has been paid to the department.~~

~~(c) Licensed private elevator inspectors shall attempt to secure compliance with the department's rules. If unsuccessful, inspectors shall so report to the department. If it then becomes necessary for the department to make an inspection, the fee for inspecting each permanently installed hoisting and lowering mechanism~~

will be charged to the owner as per other inspections made by the department, as provided in ARM 24.301.607 and 24.301.608.

~~(d) The department may inspect any installation, which has been or will also be inspected by a licensed private elevator inspector. Whenever the department inspection confirms that a licensed private elevator inspector's inspection report is substantially or materially incomplete, invalid, or otherwise unacceptable, the department may assess that licensed private elevator inspector the fee for inspection by the department, as provided in ARM 24.301.607 and 24.301.608.~~

~~(e) The owners of units inspected by licensed private elevator inspectors shall be charged \$10 by the department. This charge covers receiving and processing the condition report for each individual piece of equipment in a building and for issuing a certificate of inspection for that equipment if the licensed private elevator inspector doing the inspection certifies to the department that there are not any deficient conditions or that all deficient conditions noted in the condition report have been corrected and that a follow-up inspection by the department is not necessary.~~

~~(3) Whenever the department has reason to believe the conduct of a licensed private elevator inspector has been unprofessional, as provided in 37-1-410, MCA, the department will report that information to the Professional and Occupational Licensing Bureau for further investigation.~~

(1) When an owner or lessee of a conveyance engages a licensed private inspector to conduct an inspection of a conveyance, the inspector must complete a condition report in a manner prescribed to the department within three days of the inspection.

(2) Upon receipt of the \$10 fee for receiving and processing the condition report, and a \$10 certificate inspection fee, the department shall issue certificates of operation for all conveyances certified by the licensed private inspector to be in compliance with the elevator code and the currently adopted edition of the International Building Code as provided by ARM 24.301.131, or that deficient conditions in a past condition report have been corrected and no department inspection is necessary.

(3) The department may inspect any conveyance that has been the subject of a deficient condition report submitted by a licensed private inspector and charge the owner or lessee the department's inspection fee.

AUTH: 50-60-705, 50-60-711, MCA

IMP: ~~50-60-201, 50-60-211,~~ 50-60-705, 50-60-711, 50-60-715, MCA

REASON: The department determined it is reasonably necessary to amend and reorganize this rule to clearly and concisely set forth current processes and requirements for inspections by licensed private elevator inspectors. Several provisions are being incorporated in ARM 24.301.607, to be situated with similar provisions on inspections, certificates, and associated fees. In (1), the department is reducing the time period for filing a condition report from 14 days to three days. The department concluded there is no reason for such a lengthy period, since the reports will be submitted electronically.

It is reasonably necessary to establish fees in (2) that are commensurate with the costs of filing condition reports and issuing certificates of inspection. These \$10 fees are shown in ARM 24.301.607. The department is also replacing the specific reference to chapter 30 of the IBC for the current edition, as there are provisions beyond chapter 30 that are applicable to elevators.

The department is eliminating the requirement in (2)(d) for a finding of inspector wrongdoing before the department can charge for inspections. As set forth in (3), the department will charge for every inspection conducted, as there are expenses involved in every inspection. In amending this rule, the department eliminated several provisions of (2), after determining that there is no authority to charge inspectors, the proper method to address inspector unprofessional conduct is the disciplinary process by the Elevator Safety Program, and the proper party to charge for a reinspection due to the deficiency of a licensed private inspector is the owner or lessee certificate holder. Section (3) is deleted, as it unnecessarily repeats 37-1-402, MCA.

24.301.710 INCORPORATION BY REFERENCE OF BOILER AND PRESSURE VESSEL CODE (1) The Department of Labor and Industry, referred to as department in this and all subsequent rules, adopts and incorporates by reference the following sections of the American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code, 2004 edition, referred to as Boiler and Pressure Vessel Code, unless another edition is specifically stated:

(a) through (1)(g) remain the same.

(2) ~~The Department of Labor and Industry~~ department adopts and incorporates by reference, the American Society of Mechanical Engineers publication CSD-1, Controls and Safety Devices for Automatically Fired Boilers, 2002 edition, referred to as CSD-1, unless another edition is specifically stated.

(3) remains the same.

~~(4) The department adopts and incorporates by reference, the National Board of Boiler and Pressure Vessel Inspectors, National Board Inspection Code (NBIC), 2004 edition.~~

~~(5) The NBIC is a nationally recognized inspection manual which establishes basic boiler safety inspection procedures. A copy of the NBIC may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183.~~

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

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

REASON: The department is amending this rule to repeal the previous adoption and incorporation by reference of the National Board Inspection Code (NBIC) in favor of the American Society of Mechanical Engineers standards, except regarding traction engines. The department determined this is reasonably necessary to ensure uniformity and avoid overlapping and contradictory provisions by adopting by reference two separate national standards, with the exception of traction engine-related provisions of the NBIC. Provisions of the NBIC boilers conflict with the department's long-standing and effective inspection practices involving boilers. With

respect to traction engines, the NBIC provides inspection guidelines that are not otherwise provided in department rule and are proposed to be amended at ARM 24.301.714.

24.301.711 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Alteration" means any change in an item described on the original manufacturer's data report, which affects the pressure containing capability of the boiler.

(2) remains the same.

(3) "Boiler" means a closed vessel in which water is heated, steam is generated, steam is super-heated, or any combination thereof, under pressure or vacuum, for use external to itself, by the direct application of heat from combustible fuels or electricity. The term boiler includes fired units for heating or vaporizing liquids other than water, where these units are separate from processing systems and complete within themselves.

(4) and (5) remain the same.

(6) "Design professional" means a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences, and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering, and who has been licensed as a professional engineer, and who has experience with boiler design and repair.

(6) through (10) remain the same, but are renumbered (7) through (11).

~~(11)~~ (12) "Internal inspection" means as complete an examination as can reasonably be made of the internal surfaces of a boiler while it is shut down, when such manhole plates, handhole plates, or other inspection opening closures are opened or removed for cleaning or repair.

(12) through (14) remain the same, but are renumbered (13) through (15).

~~(15)~~ (16) "Owner" means any person, firm, corporation, state, county, municipality, or other entity owning or possessing for operation any boiler within the state of Montana.

~~(16)~~ (17) "Potable water" means water which is utilized for drinking, culinary, and domestic purposes.

(17) through (21) remain the same, but are renumbered (18) through (22).

~~(22)~~ (23) "Standard boiler" means a boiler that bears a state of Montana stamp, the stamp of another state which has adopted equivalent boiler construction standards, an ASME stamp, a national board stamp, or other approved stamp acceptable to the department.

(23) through (26) remain the same, but are renumbered (24) through (27).

~~(27)~~ (28) "Traction engine" means a historic model, historic power boiler, portable steam engine, donkey engine, steam car, steam boat, steam locomotive, historical vertical boiler, or steam traction engine tractor utilized primarily for exhibition purposes.

~~(28)~~ (29) "User" means any person, firm, corporation, state, county, municipality, or other entity operating any boiler within the state of Montana.

(29) remains the same, but is renumbered (30).

AUTH: 50-60-203, 50-74-101, MCA
IMP: 50-60-103, 50-60-201, 50-60-203, 50-74-101, 50-74-209, 50-74-215,
MCA

REASON: The department determined it is reasonably necessary to add the definition of "design professional" at (6), to specify that the department will require a design professional to be a licensed professional engineer for the purposes of certification under ARM 24.301.722, that boiler repairs have been completed in compliance with established standards.

The definition of "traction engine" is amended to clarify that there are a broad variety of devices or vehicles that are included under this category, and provide better guidance to the public for the purposes of these rules.

24.301.718 BOILER INSPECTIONS (1) through (1)(e) remain the same.

(i) Boiler inspection reports shall be filed with the department within 30 days after inspection ~~on forms~~ in a manner acceptable to the department. Such report shall indicate the boiler has met the requirements imposed by Title 50, chapter 74, MCA, and that the boiler has been approved or rejected for operation by a special boiler inspector employed by the insurance company that insures the boiler.

(ii) All boilers which are insured by an insurance company employing a special boiler inspector shall be inspected within 90 days of the inspection due date. When a special inspector fails to inspect and submit a report to the department within this grace period, the department shall complete the required inspection and charge a fee pursuant to ARM 24.301.714.

(ii) remains the same, but is renumbered (iii).

~~(2) Steam heating boilers and power~~ Power boilers must be inspected internally:

(a) remains the same.

(b) during a scheduled maintenance shutdown, with prior approval from the department and the insurance company, if the boiler is inspected by a special boiler inspector employed by the insurance company.

AUTH: 50-60-203, 50-74-101, MCA
IMP: 50-60-203, 50-74-101, 50-74-206, 50-74-209, 50-74-215, 51-74-217,
MCA

REASON: The department is amending (1)(e)(i) to clarify the requirements and format for the submittal of inspection reports. These changes are necessary to conform to requirements of the department's software system and to qualify the submittal as meeting the established benchmark for inspection.

To promote the regular inspection of boilers, the department is adding (1)(e)(ii) to clarify that the department will, after a 90-day grace period, assume inspection duties to determine compliance with the boiler safety code when a special inspector fails to meet the inspection interval criteria. The department is removing steam heating boilers from (2), because the design of a steam heating boiler does not lend itself to an internal inspection. The department has revised and added

language to allow for internals to be on power boilers and to allow insurance inspectors to weigh in on the timing of the required internal inspection.

24.301.719 ASSIGNMENT OF STATE IDENTIFICATION NUMBER (1) At the time of the initial boiler inspection, the state boiler inspector ~~or special boiler inspector~~ will assign and apply to the boiler a state identification number as directed by the department.

(2) through (4) remain the same.

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

IMP: 50-60-203, 50-74-102, 50-74-206, MCA

REASON: The department is amending this rule to remove "special boiler inspector", because the duty to install and properly document the original boiler number on a given device into the state inspection system, and track the completion of inspections thereafter, is solely that of state boiler inspectors. A "special boiler inspector" is not an agent or employee of the state, but rather, an agent or employee of an insurance carrier who is merely authorized to perform limited inspections.

24.301.724 TRACTION ENGINES (1) Traction engines shall not be placed into operation, prior to the issuance of an operating certificate by the department, unless written permission is obtained from the department to operate the traction engine on a temporary basis.

(2) Every traction engine shall have a ~~log book~~ logbook, maintained by the owner or user, which indicates operational hours, repairs, defects, adverse operating conditions, or other information related to the boiler.

~~(3) Traction engines, except historic models, which are utilized to operate belt drive equipment and machinery shall be roped off or barricaded to prevent public access within six feet of a moving part of the equipment and machinery.~~

(4) ~~(3)~~ At least 30 days prior to a public gathering or show of traction engines, the show promoter, manager, fair board, or other responsible party shall report to the department all traction engines that are intended to be operated in the show.

(4) The department adopts and incorporates by reference the following sections of the National Board of Boiler and Pressure Vessel Inspectors, National Board Inspection Code (NBIC), 2007 edition for all traction engines: Part II, Section 6, Supplement 1 and Supplement 2. A copy of the NBIC may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183.

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

IMP: 50-60-203, 50-74-101, 50-74-104, MCA

REASON: The department determined it is reasonably necessary to amend (1) and require written requests for permission to run traction engines to ensure clear and verifiable communication. The department is deleting (3) to clarify that belt driven equipment is not under the authority of the department as part of the boiler safety laws and rules.

The department is adding (4) to adopt Part II, Section 6, Supplement 1 and 2 of the 2007 NBIC, to incorporate the inspection methods for traction engines and locomotives, because the department otherwise does not have specific inspection standards for these types of equipment.

5. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) "Conveyance" as used in this rule means the equipment, associated parts, and hoistways set forth at 50-60-704(1), MCA. It does not include conveyances in private residences, farms, or ranches.

(2) "Conveyance work" means the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of the equipment set forth at 50-60-704(1), MCA.

(3) "Private residences" for the purposes of applying the permit exclusion at 50-60-703, MCA, include only those conveyances contained wholly within a single, private residence, for personal use by the owner. Conveyances to which the public may gain access are not deemed to be within a private residence. However, any person performing conveyance work in a private residence or on a farm or ranch is still subject to the elevator contractor, mechanic, and inspector licensing requirements in Title 37, chapter 73, MCA.

AUTH: 50-60-203, 50-60-705, 50-60-715, MCA

IMP: 37-73-201, 37-73-203, 37-73-208, 37-73-212, 50-60-703, 50-60-704, 50-60-705, 50-60-715, MCA

REASON: The department is defining "conveyance" in (1) to provide a reference to the statutory list of covered equipment in 50-60-704, MCA, instead of repeating the laundry list over and over again in rule. Referring to the statute, which is the most accurate and authoritative source, will ensure consistency in application of the rules, and will help avoid inadvertent errors in repeating the list in multiple locations.

In (2), the term "conveyance work", as it is used in (3) and elsewhere in subchapter 301, is necessary to distinguish the types of activities that require a licensed elevator mechanic or inspector.

It is reasonably necessary to define "private residence" to distinguish elevators in areas that are accessible by the public in multiple family dwellings, for example, as opposed to elevators that are located inside of a residence and inaccessible to the public, including delivery and shipping personnel. The definition further clarifies that even though conveyances in private residences are not subject to permit requirements, it is still a legal requirement to have licensed personnel perform any type of conveyance work on conveyances in a private residences.

NEW RULE II TAG OUT AND LOCK OUT – STOP-WORK ORDERS (1) Whenever the department finds that a deficient condition presents an imminent threat to public safety or welfare, it may immediately post a stop-work order in a conspicuous place on or near the conveyance and perform a "tag-out" and "lock-out" to deactivate the conveyance, pending satisfactory correction by the owner or

lessee. The owner or lessee shall ensure the stop-work order is legibly maintained as posted by the department.

(2) Only after the department determines that the public safety threat has been sufficiently abated may it authorize removal of the stop-work order and reactivation of the conveyance.

(3) Only a department inspector may reverse the stop-work order imposed under this rule after personal reinspection of the conveyance.

(4) The owner or lessee may appeal a stop-work order by requesting an administrative hearing as authorized by 50-60-105, MCA.

AUTH: 50-60-705, 50-60-709, MCA

IMP: 50-60-105, 50-60-705, 50-60-709, MCA

REASON: The department determined it is reasonably necessary to adopt New Rule II to relocate and clearly set forth the provisions previously in ARM 24.301.607(8). The department is specifying the standard for issuance of a stop-work order to be deficiencies that present an imminent threat to public safety or welfare. Additionally, the amendments clarify to staff and the public the ability to appeal the department's decision by requesting a hearing as provided by statute.

6. The rules proposed to be repealed are as follows:

24.142.401 GENERAL found at ARM page 24-12835.

AUTH: 37-1-101, 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, 37-73-216,
MCA

REASON: It is reasonably necessary to repeal this rule as it unnecessarily and inaccurately repeats the provisions of 37-73-101, MCA, (definitions of contractor, inspector, and mechanic) and 37-73-201, MCA, (licensed required for practice). Further, the rule provides no additional procedural or definitional guidance to assist the public or the program in interpreting the statute.

24.142.501 DOCUMENTATION OF SUITABLE TRAINING AND EXPERIENCE found at ARM page 24-12845.

AUTH: 37-73-102, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212,
MCA

REASON: The department is repealing this rule because it conflicts with 37-73-203, MCA, which expressly requires three years of experience as verified by "current and previous employers." The plain statutory language rules out education or training other than on-the-job training from an employer. The rule could be interpreted to allow for situations when an applicant may not be able to obtain the verification of a past employer, in which case the department may accept alternative, reliable

verification. This concept, as well as the language in (4) defining a "year," is being moved to ARM 24.142.502 within this notice.

24.301.608 REINSPECTION - FEE found at ARM page 24-32002.

AUTH: 50-60-203, 50-60-705, 50-60-711, MCA

IMP: 50-60-103, 50-60-201, 50-60-211, 50-60-705, 50-60-711, MCA

REASON: It is reasonably necessary to repeal this rule since the department is clarifying and relocating (1) and relevant portions of (4) to ARM 24.301.607. Sections (2) and (3) are repealed because under 50-60-711, MCA, fees must be reasonable, based on the equipment being inspected, and not to exceed the costs of providing an inspection.

The first sentence of (4) is repealed because plan review and permitting is entirely separate, in both function and expense, from inspection, and the fees are set and collected separately. The department is eliminating the provision regarding a charge for travel as there is no statutory authority for this charge.

24.301.609 INSPECTION INTERVAL EXTENSION found at ARM page 24-32002.

AUTH: 50-60-203, 50-60-705, MCA

IMP: 50-60-103, 50-60-201, 50-60-705, 50-60-711, MCA

REASON: It is reasonably necessary to repeal this rule as it contradicts the statutory requirement in 50-60-711, MCA, that inspections must be done annually, except that freight elevator inspections must be conducted every two years. The department lacks the authority to allow owners to waive this requirement and procedurally, there is no reason why inspections cannot be done on an annual basis.

24.301.611 MODIFICATIONS, APPEALS AND VARIANCES found at ARM page 24-32003.

AUTH: 50-60-203, 50-60-705, MCA

IMP: 50-60-201, 50-60-206, MCA

REASON: It is reasonably necessary to repeal this rule because the provision in (1) is being replaced with an administrative hearing remedy after a correction notice or stop-work order in New Rule II. Section (2) is deleted because it incorrectly references 50-60-206, MCA, which only applies to the "state building code" in parts 1 through 4 of Title 50, chapter 60, MCA. Although the correct reference would be 50-60-705, MCA, which permits the department to modify or grant exceptions to relevant statutes or rules as long as public safety or welfare would not be jeopardized, the rule is unnecessary as this is adequately addressed in statute.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to Dave Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to dcook@mt.gov, and must be received no later than 5:00 p.m., November 9, 2012.

8. An electronic copy of this Notice of Public Hearing is available through the department's web site on the World Wide Web at www.buildingcodes.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed for each program. 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 the person wishes to receive notices regarding all program administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to Dave Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2050; e-mailed to dcook@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

11. Colleen White, attorney, has been designated to preside over and conduct this hearing.

/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 1, 2012