BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY OF THE STATE OF MONTANA


NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On April 15, 2022, the Department of Labor and Industry (department) published MAR Notice No. 24-301-351 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 460 of the 2022 Montana Administrative Register, Issue Number 7.

2. The department held a public hearing in Helena on May 6, 2022, over the Zoom videoconference and telephonic platform. Comments were received during the public comment period.

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

COMMENT 1: One commenter opposed the Uniform Plumbing Code (UPC) requirements for hot water piping insulation in residential homes, asserting that they add considerable cost to a new home.

RESPONSE 1: A requirement for piping insulation existed in the International Energy Conservation Code (IECC) version 2018 with modifications in ARM 24.301.161. The department has proposed changes to reflect that the requirements
for water pipe insulation reside with the area of responsibility, which is the UPC. The department recognizes the need to balance cost with energy efficiency and will continue to review for possible amendment in the future.

COMMENT 2: Numerous commenters supported the department's adoption of the 2021 IECC and requested an expansion to allow local certified jurisdictions to set their own energy efficiency goals.

RESPONSE 2: The department agrees in the necessity of the 2021 IECC. As allowed in 50-60-301(2)(b), MCA, a local certified jurisdiction may adopt energy conservation standards that exceed the minimum standards contained in the state building code, as long as they are part of a voluntary incentive-based program.

COMMENT 3: Three commenters supported the 2021 IECC adoption and were interested in seeing additional stretch codes like the zero energy residential codes Appendix RC, the Electric Vehicle Readiness stretch code, and the Grid-interactive Efficient Building codes.

RESPONSE 3: The department recognizes a need to continually review and approve modern technologies that can provide a reduction in construction costs while balancing life safety and energy efficiency. The department will review the suggested stretch codes for possible addition in the future.

COMMENT 4: One commenter requested the department amend the 2021 International Mechanical Code (IMC) to allow new A2L refrigerants to be used in heating, ventilation, and air conditioning (HVAC) units. The commenter provided data showing an anticipated shortage of currently approved refrigerants expected, and the intention to approve A2L refrigerants in the 2024 IMC.

RESPONSE 4: The department is responsible under 50-60-103(4), MCA, to recommend tests or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building code and issue certification of the acceptability. As these new refrigerants have been tested and will be approved in the near future, the department can issue a certification of acceptability to allow the use in Montana upon application for review. That review can be requested by submitting a request with supporting data to buildingcodes@mt.gov.

COMMENT 5: One commenter was concerned about the International Wildland Urban Interface Code (IWUI), its applicability, and a need for education.

RESPONSE 5: The department originally adopted the IWUI in 2016 for optional use by local certified building code programs. The IWUI has been slow to catch on, and the department recognizes the need for additional education and review of the code to facilitate its effective implementation. The department will reach out to the building industry, certified building programs, and other interested parties to form a work group for this purpose.
COMMENT 6: A commenter proposed an exception to the 2020 National Electrical Code Subsection 210.8(A)(2) to allow a dedicated non-ground fault circuit interrupter (GFCI) outlet in garages for freezers. The commenter stated they hear two to three stories a year about people going on vacation and their freezer outlet tripping, losing all their frozen goods, and having a big mess.

RESPONSE 6: The department did not propose any changes to Subsection 210.8 and cannot do so in the final notice. The department will review and monitor issues related to GFCI requirements in garages for possible future necessary amendments.

COMMENT 7: One commenter proposed striking amendments to ARM 24.301.301(1)(q) and (v) as they are contained in the 2021 UPC word for word.

RESPONSE 7: The department did not propose changes to ARM 24.301.301(1)(q) and (v) and cannot do so in the final notice. The department will continue to review the state building code and possibly address these changes in the future.

COMMENT 8: One commenter suggested adding the word "vertical" to ARM 24.301.301(1)(ad) as it would then be the same as the 2021 UPC.

RESPONSE 8: The department did not propose changes to ARM 24.301.301(1)(ad) and cannot do so in the final notice. The department notes that (1)(ad) was specifically added and worded to allow for both horizontal and vertical wet venting. The department will continue to review for possible necessary changes in the future.

COMMENT 9: Several commenters proposed amending ARM 24.301.401, to exempt laundry areas from Arc Fault Circuit Interrupter (AFCI) requirements in the National Electrical Code (NEC) 2020 210.12, AFCI Protection.

RESPONSE 9: The department did not propose changes to the NEC 2020 Subsection 210.12(A), AFCI Protection Dwelling Units related to laundry units and cannot do so in this final notice. As this issue is ongoing with manufacturers of equipment, AFCI producers, and contractors, the department will review this proposed change for possible future amendment.

COMMENT 10: One commenter suggested the department amend ARM 24.301.401, to exempt HVAC equipment from GFCI requirements and provided supporting data to justify the amendment.

RESPONSE 10: The department did not propose changes to the NEC 2020 Subsection 210.8, Ground-Fault Circuit-Interrupter Protection for Personnel and cannot do so in this final notice. The department does acknowledge potential issues with compatibility between HVAC equipment and GFCI protection devices and believes more research is warranted. The department will review this proposed change for possible future amendment.
4. The department received numerous comments both in support of and opposition to the striking of the existing "kitchen" amendment to National Electrical Code (NEC) Subsection 210.12 Arc Fault Circuit Interrupter Protection (AFCI) at ARM 24.301.401(2). In response to the commenters and their concerns, and because this issue remains ongoing with manufacturers of equipment, AFCI producers, and contractors, the department is not proceeding with the proposed striking of (2) and will review this matter for possible future amendment.


6. The department has repealed ARM 24.301.209 as proposed.

7. The department has amended ARM 24.301.401 with the following changes, stricken matter interlined, new matter underlined:

   24.301.401 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL CODE  (1) remains as proposed.
   (2) Subsection 210.12, Arc-Fault Circuit-Interrupter Protection, is amended to delete all references to "kitchen" or "kitchens."
   (2) remains as proposed but is renumbered (3).

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

/s/ DARCEE L. MOE  /s/ LAURIE ESAU
Darcee L. Moe  Laurie Esau, Commissioner
Rule Reviewer  DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 31, 2022.