

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption NEW) NOTICE OF PUBLIC HEARING ON
RULES I through XIII, pertaining to) PROPOSED ADOPTION
approved construction techniques for)
fire mitigation)

TO: All Concerned Persons

1. On May 24, 2010, at 1:00 p.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed adoption 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 May 19, 2010, 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 2007 Montana Legislature enacted Chapter 443, Laws of 2007 (Senate Bill 51), an act revising growth policy and subdivision laws and requiring subdivision regulations to identify areas unsuitable for development. The bill was signed by the Governor and became effective on May 8, 2007. The department determined it is reasonable and necessary to adopt New Rules I through XIII to implement the legislation which requires the department to identify appropriate construction techniques for mitigation of fire hazards.

As required by 76-3-501, MCA, the governing bodies of every county, city, and town must adopt and provide enforcement of subdivision regulations. In turn, 76-3-504, MCA, requires such local subdivision regulations to provide for the identification of areas that are unsuitable for subdivision development because of natural or human-caused hazards. The regulations must prohibit subdivision in these areas, unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures, including those identified by the department under the direction of Title 50, chapter 60, part 9, Fire Mitigation Construction Techniques. The proposed rules were developed after a series of public meetings conducted by the department across the state and included various governmental officials and representatives of the private sector.

As restated in the body of the proposed new rules for emphasis, the proposed New Rules implement the 2007 legislation, which requires the department to merely identify appropriate construction techniques, from which local government officials may select and enforce individually or in combination, to mitigate identified fire

hazards. The rules and stated construction techniques are not part of the state building code and are not enforceable by the department's Building Codes Bureau.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) As used in this subchapter, the following definitions apply:

(a) "Accessory structure" means a building or structure utilized for sheltering equipment or materials, or for other uninhabitable occupancy purposes.

(b) "Approved" means acceptable to the code official or authority having jurisdiction.

(c) "Department" means the Department of Labor and Industry.

(d) "Fire-resistance-rated construction" means the use of methods, materials, and systems in the construction of a structure to provide against the spread of fire within a structure and to or from a structure to the outside environment.

(e) "Ignition-resistant building material" means a type of building material that resists ignition or sustained flaming combustion.

(f) "International Building Code" means the International Building Code (IBC), adopted by ARM 24.301.131.

(g) "International Residential Code" means the International Residential Code (IRC) adopted by ARM 24.301.154.

(h) "Noncombustible" means a material that is either a material of which no portion will ignite and burn when fire is applied to it, or a material that has a structural base of noncombustible material with surface materials not in excess of 1/8 inch in thickness, which has a flame spread index of 50 or less.

(i) Any material conforming to ASTM 136 shall be considered noncombustible.

(ii) "Flame spread index" refers to the index obtained from tests conducted in ASTM E 84 or UL 723.

(i) "Wildland-Urban Interface" (WUI), means that geographical area where structures and other human development meet or intermingle with wildland or vegetative fuels.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE II APPLICABILITY AND ENFORCEABILITY (1) For the purposes of this subchapter and pursuant to 50-60-901, MCA, the department provides the following construction techniques that may be used individually or in combination by a local government to mitigate identified fire hazards in areas designated by local government pursuant to 76-3-504, MCA.

(2) Rules adopted under this subchapter may not be construed as part of the state building code provided in 50-60-203, MCA, and may only be enforced as provided in Title 76, chapter 3, part 5.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE III PREMISES IDENTIFICATION (1) The address of the building shall be plainly visible and legible from the building's primary access road adjacent to the property.

AUTH: 50-60-901, MCA
IMP: 76-3-504, MCA

NEW RULE IV SMOKE DETECTION (1) All habitable structures shall have smoke alarms installed that meet or exceed the provisions for smoke detection and notification found in either the latest adopted edition of the IRC or the IBC, whichever applies to the type of structure.

AUTH: 50-60-901, MCA
IMP: 76-3-504, MCA

NEW RULE V ROOF AREAS (1) Roof coverings shall have at least a Class B roof assembly or an approved noncombustible roof covering. If the profile of the covering is such that a space is present between the covering and the roof decking, the space at the eave ends shall be fire-stopped to prevent the entry of flames or embers; or have one layer of 72-pound mineral-surfaced, nonperforated cap sheet, complying with ASTM D 3909, and installed over the combustible decking.

(2) When roof valleys are present, valley flashing shall consist of not less than 0.019-inch (26-gauge galvanized sheet) corrosion-resistant metal installed over a minimum three-foot wide underlayment of one layer of 72-pound mineral-surfaced, nonperforated cap sheet, complying with ASTM D 3909, and installed over the entire running length of the valley.

(3) Eaves, soffits, and fascias that are combustible shall be enclosed with solid materials with a minimum thickness of 3/4 inch. Rafter tails shall not be left exposed, unless constructed of heavy timber materials.

(4) If a structure is not located in a designated WUI, the roof assemblies listed in this rule shall comply with the IRC.

AUTH: 50-60-901, MCA
IMP: 76-3-504, MCA

NEW RULE VI CHIMNEYS AND FLUES (1) An approved spark arrester constructed of a minimum 12-gauge welded-wire or woven-wire mesh, with openings not exceeding 1/2 inch shall be installed on every fireplace and wood stove chimney and flue.

AUTH: 50-60-901, MCA
IMP: 76-3-504, MCA

NEW RULE VII GUTTERS AND DOWNSPOUTS (1) Gutters and downspouts shall be constructed of noncombustible materials and shall prevent the accumulation of leaves and debris by an approved method.

(2) If a structure is not located in a designated WUI, this rule does not apply.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE VIII EXTERIOR AREAS (1) In structures where the window to exterior wall area exceeds 20 percent (i.e., more than 20 percent of all exterior wall areas is comprised of exterior windows or window walls), the exterior windows, window walls, glazed doors, glazing within exterior doors, and skylights shall be tempered glass, multilayered glazed panels, glass block, or have a fire protection rating of not less than 20 minutes.

(2) Exterior doors shall be of approved noncombustible construction and materials, solid core wood not less than 1 3/4 inches thick, or have a fire protection rating of not less than 20 minutes. Vehicle access doors shall be constructed of ignition-resistant building materials.

(3) Exterior walls of buildings or structures shall extend from the top of the foundation to the underside of the roof sheathing and shall be constructed with one of the following methods:

(a) materials approved for a minimum of one-hour fire-resistance-rated construction on the exterior side;

(b) noncombustible materials;

(c) heavy timber or log wall construction;

(d) wood that is labeled for exterior use and is fire-retardant-treated on the exterior side; or

(e) materials that are ignition-resistant on the exterior side.

(4) If a structure is not located in a designated WUI, this rule does not apply.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE IX VENTS (1) Ventilation openings in vertical exterior walls, attics, foundations, or underfloor areas shall not exceed 144 square inches each. Attic ventilation openings shall not be located in soffits, eave overhangs, between rafters at eaves, or other overhang areas.

(a) Gable end and dormer vents shall be located at least ten feet from property lines.

(b) Underfloor ventilation openings shall be located as close to grade as practical.

(2) All such vents shall be covered with noncombustible corrosion-resistant mesh with openings not to exceed 1/4 inch or shall be designed and approved to prevent ember or flame penetration into the structure. Vents shall not be placed in walls that face heavy vegetative fuels.

(3) If a structure is not located in a designated WUI, this rule does not apply.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE X UNENCLOSED UNDERFLOOR AREAS (1) All underfloor areas shall be enclosed to the ground in the same manner as required for exterior walls in [NEW RULE VIII], unless such unenclosed areas are protected with either one-hour fire-resistance-rated construction or heavy timber construction or fire-retardant-treated wood to the underside of all exposed floors and all exposed structural columns, beams, and supporting walls.

(2) If a structure is not located in a designated WUI, this rule does not apply.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE XI ACCESSORY STRUCTURES (1) An accessory structure without a complete exterior wall system enclosing the area under the roof or above the floor that is attached to buildings with habitable spaces and projections (e.g., decks), shall be a minimum of one-hour fire-resistance-rated construction, heavy timber construction, or constructed of one of the following:

- (a) noncombustible materials;
- (b) fire-retardant-treated wood labeled for exterior use; or
- (c) ignition-resistant building materials.

(2) When an attached accessory structure is located so that any portion of the structure projects over a descending slope surface greater than ten percent, the area below the structure shall have all underfloor areas enclosed to within six inches of the ground, with exterior wall construction in accordance with [NEW RULE VIII].

(3) If a structure is not located in a designated WUI, this rule does not apply.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE XII STORAGE TANKS (1) Propane tanks and other flammable or combustible liquids storage shall be buried underground. If soil or subsoil conditions prohibit complete burial, then tanks shall be partially covered by at least one foot of earth, sand, or other noncombustible material.

(2) Other installation methods such as installation in vaults or other protective methods that comply with NFPA 58 standards may be used in lieu of burial.

(3) Structures not located in a designated WUI may have storage tanks installed above ground, so long as they conform to the NFPA 58 standard and be located at least 30 feet from any structure.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE XIII WATER SOURCES – PRIVATE WELLS (1) Structures served by a private well shall have the pump wired on a separate circuit or disconnect to allow the pump to remain energized if the main disconnect to the structure is disconnected or turned off.

AUTH: 50-60-901, MCA

IMP: 50-60-902, 76-3-504, MCA

5. 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 the department, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to cwhite@mt.gov, and must be received no later than 5:00 p.m., June 1, 2010.

6. An electronic copy of this Notice of Public Hearing is available through the department's 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.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions. 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 for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on February 23, 2010, by electronic mail.

9. 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 April 19, 2010