

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 23.12.401, 23.12.406,	)	AMENDMENT AND REPEAL
23.12.407, 23.12.408, 23.12.430,	)	
23.12.431, 23.12.501, 23.12.502,	)	NO PUBLIC HEARING
23.12.601, and 23.12.605 concerning	)	CONTEMPLATED
fire safety, fireworks, and the	)	
International Fire Code and the	)	
repeal of ARM 23.12.603 concerning	)	
additional definitions	)	

TO: All Concerned Persons

1. On February 27, 2023, the Department of Justice proposes to amend and repeal the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Justice no later than 5:00 p.m. on February 10, 2023, to advise us of the nature of the accommodation that you need. Please contact Dirk Johnson, State Fire Marshal, Fire Prevention and Investigation Section, Division of Criminal Investigation, Department of Justice, P.O. Box 991, Great Falls, Montana, 59403; telephone (406) 771-1510; fax (406) 791-2729; or e-mail [dirk.johnson@mt.gov](mailto:dirk.johnson@mt.gov).

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.12.401 DEFINITIONS Unless the context requires otherwise, the following definitions apply to the rules in ARM Title 23, chapter 12:

(1) "Building code" means the current version of the State Building Code adopted by the Department of Labor and Industry, Building ~~Codes and Commercial Measurements~~ Bureau, including the International Building Code as amended by administrative rule. Copies of the building code may be obtained from the ~~Building Codes Bureau of the Department of Labor and Industry, 301 South Park, Room 430, P.O. Box 200517, Helena, MT 59620-0517~~ International Code Council at [www.iccsafe.org](http://www.iccsafe.org).

(2) ~~"Building official" means the chief of the Building Codes Bureau of the Department of Labor and Industry, or when made applicable by statute or rule, the building official of the certified city, county, or town.~~

(3) remains the same.

(4) "Chief," "fire chief," "fire marshal," and "fire prevention ~~engineer~~ officer" all mean the state fire marshal or, when made applicable by statute or rule or the context thereof, the chief official of the appropriate local fire protection agency.

(5) through (7) remain the same.

~~(8) "Explosive" means a chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, and display fireworks. See Chapter 2, Section 202 – General Definitions 1.3 G (Class B, Special), International Fire Code, 2012 Edition.~~

~~(9) "Fire alarm system" means a system or portion of a combination system consisting of components and circuits arranged to monitor and annunciate the status of a fire alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals. This definition does not include single- and multiple-station smoke or heat alarms.~~

~~(10)(8) "Fire code" or "IFC" means the currently adopted edition of the International Code Council, International Fire Code (IFC), 2012 Edition, as published by the International Code Council, currently adopted by the as modified by FPIS, and any additions thereto currently adopted by the FPIS. See ARM 23.12.601.~~

~~(11)(2) "Fire department" and "bBureau of fire prevention" are is treated as referring to the FPIS of the Department of Justice or, when made applicable by statute or rule or the context thereof, to the appropriate local certified jurisdiction.~~

(12) remains the same, but is renumbered (9).

~~(13)(10) "Fire extinguishing system" means a fire sprinkler suppression system designed in accordance with nationally recognized standards that consists of an assembly of piping or conduits that conveys water, foam or air with or without other extinguishing agents to dispersal openings or devices to extinguish, control or contain fire and to provide protection from exposure to fire or the products of combustion. Included are underground and overhead piping, ponds, tanks, pumps, extra or special hazard applications and other related components or devices necessary for water supplies.~~

(14) remains the same, but is renumbered (11).

~~(15)(12) "Fire protection equipment" means the components of any fire alarm system, special agent fire suppression system, portable fire extinguisher, or fire extinguishing system.~~

(16) through (20) remain the same, but are renumbered (13) through (17).

~~(21)(18) "Mechanical code" means the latest edition of the International Mechanical Code (IMC) adopted by the Department of Labor and Industry. Whenever a provision of the mechanical code is incorporated within the International Fire Code by reference, such provision is hereby adopted for application to all buildings within the jurisdiction of the FPIS, unless the state fire marshal determines otherwise. Copies of the mechanical code may be obtained from the Building Codes Bureau of the Department of Labor and Industry, 301 South Park, Room 430, P.O. Box 200517, Helena, MT 59620-0517 International Code Council at www.iccsafe.org.~~

(22) and (23) remain the same, but are renumbered (19) and (20).

~~(21) "Pyrotechnic article" means a pyrotechnic device, other than a device classed as fireworks, for use in the entertainment industry.~~

~~(22) "Pyrotechnic composition" means a chemical mixture that, upon burning, produces visible, brilliant displays, bright lights, or sounds.~~

(24) through (26) remain the same, but are renumbered (23) through (25).

(26) "Smoke alarm" means a single or multiple-station alarm, responsive to smoke. This is a general term that applies to self-contained smoke alarms that are not part of an automatic fire detection system.

(27) "Smoke detector" is a *listed* device that senses visible or invisible particles of combustion that activates a fire alarm system.

(27) remains the same, but is renumbered (28).

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

REASON: The Building Codes Bureau title changed and this bureau does not provide copies of the building code. The appropriate version of the International Building Code must be purchased from the International Code Council. The definition for "Building Official" was moved and added to ARM 23.12.601. The term "engineer" in the fire service is the title given to drivers of fire apparatus. "Officer" is a more appropriate term when describing an individual that enforces rules, codes, and regulations. The definitions for "Explosive" and "Fire Alarm System" are given in Section 202 of the 2021 IFC. Changes make the "Fire Code" paragraph clearer and add the reference to ARM 23.12.601 which adopts the appropriate version of the IFC. The definitions for "Pyrotechnic Articles" and "Pyrotechnic Composition" as used in ARM 23.12.501 and 23.12.502 were added. The definitions for "Smoke Alarm" and "Smoke Detector" as used in ARM 23.12.406 were added. Jurisdictions that perform the duties of inspection and prevention must be certified by the State Fire Marshal. To indicate that any fire department can perform these functions would be false. There are many different types of fire extinguishing systems utilizing different mediums to extinguish a fire. Portable fire extinguisher was added as it is included as fire protection equipment. The appropriate version of the International Mechanical Code must be purchased from the International Code Council. With the addition and deletion of some definitions, some sections were renumbered.

#### 23.12.406 SMOKE DETECTORS/SMOKE ALARMS IN RENTAL UNITS

(1) In accordance with the Residential Landlord and Tenant Act of 1977, either an approved smoke alarm or smoke detector, or both, shall be installed by the landlord in each dwelling unit rented to another person, in accordance with the provisions of Section 907 of the IFC.

~~(2) An approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion, that emits an alarm signal, and that bears a label or other identification issued by an approved testing agency which inspects materials and workmanship at the factory during fabrication and assembly.~~

AUTH: 50-3-102, 70-24-303, MCA

IMP: 50-3-102, 70-24-303, MCA

REASON: There is a differentiation between smoke alarms and smoke detectors. This change describes them and refers to section 907 of the IFC for their proper installation.

23.12.407 CERTIFICATE OF APPROVAL FOR DAY CARE CENTERS FOR 13 16 OR MORE CHILDREN (1) Any applicant for a license from the Department of Public Health and Human Services to operate a day care center for ~~13~~ 16 or more children under Title 52, chapter 2, MCA, must obtain a certificate of approval from the state fire marshal in accordance with this rule.

(2) through (4) remain the same.

(5) Day care centers shall also comply with the following additional requirements:

(a) A single, fixed space heater (wood, coal or fuel oil) may be used, provided it is properly installed and surrounded by a suitable barrier to prevent contact by children and is so located as to not obstruct egress. Installation shall be in accordance with the ~~Uniform Mechanical Code~~ various codes adopted by the Department of Labor and Industry.

(b) Portable unvented oil-fueled heating appliances are prohibited.

(c) through (f) remain the same.

(g) In sleeping rooms, windows having a minimum of 5.7 square feet of clear, unobstructed opening shall be readily accessible for rescue or fire suppression, except the minimum net clear opening for grade floor windows shall be 5.0 square feet. Windows shall be capable of being opened from the inside without the use of tools or special knowledge. Clear opening shall not be less than 20 inches in width or 24 inches in height. The bottom of the window shall not be more than 44 inches from the floor.

(h) Every day care center shall provide operational smoke alarms or smoke detectors in locations designated by ~~the FPIS or chief fire official~~ IFC Section 907. Smoke alarms shall be tested at least every 30 days and a log of such tests maintained on the premises. Smoke detectors connected to a fire alarm system shall be tested in accordance with the IFC.

(i) through (8) remain the same.

AUTH: 50-3-102, 52-2-734, MCA

IMP: 50-3-102, 52-2-733, 52-2-734, MCA

REASON: Section 52-2-703, MCA, changed the number of children from 13 to 16 for day care centers. The Mechanical Code is not the only code that regulates the installation/use of space heaters. Portable heating appliances can be operated with several types of fuels that produce carbon monoxide, not just oil. The window opening statement was added as it is an exception in the 2021 IFC 1031.3.1. IFC Section 907 dictates where fire alarms or smoke detectors are required.

23.12.408 CERTIFICATE OF APPROVAL FOR COMMUNITY HOMES

(1) through (3) remain the same.

(4) Upon receipt of an application for certificate of approval, the fire marshal or a representative shall conduct an inspection of the community home, and shall promptly thereafter issue findings indicating whether the fire code and applicable rules ~~has~~ have been met.

(5) For purposes of determining compliance with the fire code, all community homes shall comply with the IFC ~~as adopted~~, and with all other rules promulgated by the FPIS.

(6) and (7) remain the same.

AUTH: 50-3-102, MCA

IMP: 52-4-204; 53-20-307, MCA

REASON: Community homes not only have to abide by fire safety rules of the fire code but also safety rules as outlined in the MCA and ARM. It is implied that FPIS adopts a specific fire code.

23.12.430 SERVICE TAGS (1) through (5) remain the same.

(6) Stored pressure extinguisher tags must follow the guidelines listed in the National Fire Protection Association (NFPA) 10, 2010 currently referenced Edition of the IFC, and include the information listed in (3).

(7) A blank tag shall be submitted for approval to the ~~department~~ state fire marshal at the time of application.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

REASON: By deleting the reference to 2010, the IFC edition adopted by FPIS in future years will eliminate the need to change this paragraph in the future. The state fire marshal shall be the approving individual for all service tags throughout the State.

23.12.431 RULES RELATING TO THE BUILDING CODE (1) A notice of adoption or amendment by the department of a rule relating to building and equipment standards covered by the state or a municipal building code must be signed by the director of the Department of ~~Commerce~~ Labor and Industry. Such rules "are effective upon approval of the Department of ~~Commerce~~ Labor and Industry and filing with the Secretary of State." 50-3-103(2), MCA.

AUTH: 2-4-201(2), 52-4-201(1), MCA

IMP: 50-3-103(2), 50-39-107, MCA

REASON: The responsibility for building and equipment standards was transferred from the Department of Commerce to the Department of Labor and Industry. Earmarked MCA section references were removed per the Secretary of State's guidance.

23.12.501 RETAIL FIREWORKS SALE (1) through (11) remain the same.

(12) Portable heaters utilized in booths shall not have exposed heating elements.

(12) remains the same, but is renumbered (13).

~~(13)~~(14) All fireworks stands shall be subject to inspection by the chief, or the chief's representative FPIS, in accordance with the IFC. Violations shall be handled in accordance with 50-61-115, MCA. If immediate action is necessary to safeguard life and property, the chief FPIS may issue an order to remedy in accordance with ~~50-62-102, MCA~~ a stop work order in accordance with IFC Section 113.

AUTH: 50-3-102(3), MCA

IMP: 50-3-102(3), MCA

REASON: Exposed heating elements provide an open ignition source. Sections (12) and (13) are renumbered. Bureau of Fire Prevention is treated as referring to the FPIS of the Department of Justice or, when made applicable by statute or rule or the context thereof, to the appropriate local certified jurisdiction. IFC Section 113 outlines stop work orders for work regulated by the IFC being performed that is dangerous or done in an unsafe manner. Earmarked MCA section references were removed per the Secretary of State's guidance.

#### 23.12.502 FIREWORKS REPACKAGING, STORAGE, AND SHIPPING

(1) All buildings where fireworks are stored, opened for repacking, repackaged, or prepared for shipping shall conform to the provisions of the 2012 International Building Code and the IFC. Where those codes are silent, NFPA pamphlet 1124 (2006 currently referenced edition by the IFC) shall be applied.

(2) NFPA pamphlet 1124 (2006 currently referenced edition by the IFC), which is the code governing the manufacture, transportation, and storage of fireworks and pyrotechnic articles, and which can be found in the National Fire Code (NFC), is hereby incorporated by reference. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169 and at [www.NFPA.org](http://www.NFPA.org).

AUTH: 50-3-102(3), MCA

MP: 50-3-102(3), MCA

REASON: By deleting the year, the need to change the reference to the IBC edition adopted by DLI in future years will be eliminated. NFPA documents are standards and are referenced by NFPA and the appropriate number. The adopted IFC references NFPA standards and the appropriate year edition. NFPA documents are standards and are referenced by NFPA and the appropriate number. The adopted IFC references NFPA standards and the appropriate year edition. By deleting the words "which is" the sentence is grammatically correct. The National Fire Code was changed to the International Fire Code and is redundant in the sentence. NFPA standards can be obtained on its website. Earmarked MCA section references were removed per the Secretary of State's guidance.

23.12.601 ADOPTION OF THE INTERNATIONAL FIRE CODE (2012 (2021 EDITION)) (1) The FPIS adopts and incorporates by reference the International Fire Code 2012 2021 Edition (2012 2021 IFC) with the additions and amendments enumerated in this subchapter. Copies of the IFC and related materials may be

obtained from the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, [www.iccsafe.org](http://www.iccsafe.org).

(2) and (3) remain the same.

(4) ~~The building code adopted by the Building Codes Bureau of the Department of Labor and Industry controls design and construction in Montana. If there is any conflict between the construction standards in the IFC and construction standards set forth in the building code, the provisions of the building code control.~~

(a) This code shall apply to new construction as required in the building code and existing conditions. Existing buildings shall be maintained in accordance with the building code in effect at the time of construction. However, where existing conditions or buildings ~~post~~ pose an imminent hazard or risk to public health and safety and are not, therefore, within the purview of the building code, the FPIS may take corrective action pursuant to the provisions of 50-61-101, et seq., MCA, and 50-62-101, et seq., MCA.

(5) through (5)(b) remain the same.

(c) The Permit sections of the following chapters are not adopted: 3, 5, 6, 9, 11-13, 12, 20-through 35, 37, 39, and 50-through 67.

(d) ~~408 Board of Appeals~~ 106 CONSTRUCTION DOCUMENTS is not adopted.

(e) ~~443 107 Fees~~ EES is not adopted.

(f) 108.2.1 Inspection requests is not adopted.

(g) 108.2.2 Approval required is not adopted.

(h) 108.3 Concealed work is not adopted.

(i) 111 MEANS OF APPEALS is not adopted.

~~(f)(j)~~ 202 GENERAL DEFINITIONS is amended by adding or modifying the following definitions:

(i) BUILDING OFFICIAL. Add "The Chief of the Building and Commercial Measurements Bureau of the Department of Labor and Industry, or when made applicable by statute or rule, the building official of the certified city, county, or town."

(ii) FARM. A tract of land devoted to agricultural purposes.

(iii) FIRE DEPARTMENT. - Governmental fire agencies. Any fire department organized under Montana law under the jurisdiction of a city, county, state, fire district, or fire service area.

(iv) NATIONALLY RECOGNIZED STANDARDS. Includes, but is not limited to, any of the standards referenced in: NFPA; IFC 2021 edition, Underwriters Laboratories Inc. (UL); American Petroleum Institute (API); American Society for Testing and Materials (ASTM); and American National Standards Institute (ANSI).

(v) OCCUPANCY CLASSIFICATION. Group E, day care facilities.

(A) Fifteen or fewer children.

(B) Fifteen or fewer children in a dwelling unit.

(vi) RANCH. A tract of land devoted to agricultural purposes.

(vii) RURAL AREA. Those areas located three miles or more beyond (outside) the corporate limits of a Class 1 or Class 2 city, as defined in 7-2-4111, MCA, when the Class 3 city's population is more than 1,500 residents. In the case of any unincorporated place, city, or community, or town, the unincorporated place, city, community, or town, the unincorporated place, city, community, or town will be

considered rural if it has a population of less than 1,500 and a density of less than 800 persons per square mile, according to the most recent U.S. census.

(g) remains the same, but is renumbered (k).

~~(h) 308.2 Permits required - is not adopted.~~

(l) 311.6 Unoccupied tenant spaces in mall buildings. 2. and 3. are not adopted.

(m) 319.1 General. Add last sentence "Mobile food preparation vehicles manufactured prior to the adoption of this code shall comply with sections 319.3 and 319.4 on or before May 1, 2024."

(n) 319.10.3 Fuel gas systems is not adopted.

(i)(o) 405.2 405.3 Delete section and replace with: "Frequency. Required emergency evacuation drills shall be held at the intervals specified in 20-1-402, MCA. There must be at least eight emergency evacuation/disaster drills held a year in a school. At least four of the drills must be fire exit drills. Drills must be held at different hours of the day or evening to avoid distinction between drills and actual disasters." In Table 405.2 405.3, delete the word "monthly" from the Frequency column, applicable to Group E, and replace with "20-1-402, MCA."

(p) 407.5 Hazardous Materials Inventory Statement is not adopted.

(q) 407.6 Hazardous Materials Management Plan is not adopted.

(r) 407.7 Facility closure plans is not adopted.

(j) 603.4 Portable unvented heaters is adopted, but the "Exceptions" are not adopted.

(k) 603.4.1 Prohibited locations - is not adopted.

(s) 903.2.4.2 Group F-1 distilled spirits. Amend by adding the following paragraph: "Exception: An automatic sprinkler system is not required where a Group F-1 fire area used for the manufacture of distilled spirits is not more than one story above-grade plane, and not exceeding 2,500 square feet."

(t) 903.2.8 Group R. Delete and replace with the following:

(i) "An approved automatic sprinkler system installed in accordance with Section 903.3 shall be provided in all Group R buildings meeting any of the following criteria:

(A) nine or more transient guests or five or more transient guest rooms;

(B) nine or more occupants in other than dwelling units;

(C) five or more dwelling units; or

(D) more than two stories.

(ii) In lieu of the above-required automatic sprinkler system in buildings not more than three stories above the lowest level of exit discharge, each transient guest room may be provided with at least one door leading directly to an exterior exit access that leads directly to approved exits.

(iii) "Transient guest" for the purpose of this subsection shall mean an occupant who is primarily transient in nature, staying at one location for 30 days or less."

(u) 903.2.9.3 Group S-1 distilled spirits or wine. Amend by adding the following paragraph: "Exception: An automatic sprinkler system is not required where a Group S-1 fire area used for the bulk storage of distilled spirits or wine is not more than one story above grade plane, and not exceeding 2,500 square feet."



(v) 903.3.5 Water Supply. Amend by adding the following: "This subsection shall apply to buildings which are required by the International Building Code to be provided with an automatic fire extinguishing system and do not have access to an existing multiple user water supply system, such as a municipal water supply system or a private community water supply system, capable of providing the water supply requirements of National Fire Protection Association Standard for the Installation of Sprinkler Systems, 2019 edition (NFPA 13). Under such circumstances, water storage requirements may be modified by the building official. The modified design shall include sufficient storage onsite to operate the hydraulically remote area for the response time of the local fire department. Response time is the time from alarm to the time the fire department can apply water to the fire. Response time shall be established by the use of the formula  $T = 6.5 \text{ minutes (mobilization time)} + 1.7 \text{ minutes/mile } D$  (travel time), where T is response time, in minutes, and D is distance, in miles, from the fire station to the building. The modified water supply shall be sufficient to operate the system for the response time calculated above but not be less than 20 minutes. Water supply requirements shall be established by using the area/density method as defined in NFPA 13. A reduction in water storage of up to 50 percent, but not less than that required for a 20-minute supply is allowed. All automatic fire sprinkler system designs and components shall be in compliance with NFPA 13. When a modified water storage is allowed, the automatic fire sprinkler system must be equipped with a flow alarm, digital alarm communicator transmitter, and a fire department connection. The automatic fire sprinkler system shall be monitored by an approved central station in accordance with NFPA 72, National Fire Alarm Code, 2019 edition."

~~((w))~~ 903.6 Where required in Existing buildings and structures -- is not adopted.

~~((m))~~(x) 906.1 Portable fire extinguishers -- (1) Where required. Exception -- 1 is not adopted.

~~((n))~~ 1008.1.9.4 Door operations. Adopted adding the sentence "Exit doors shall not be locked, chained, bolted, barred, latched, or otherwise rendered unusable. All locking devices shall be of an approved type."

(y) 1009.8 Two-way communication. Add "Emergency elevator communication equipment systems for the deaf, hard of hearing, and speech impaired, is amended as follows: Emergency elevator communication systems for the deaf, hard of hearing, and speech impaired. An emergency two-way communication system shall be provided in accordance with the provisions of ASME A17.1/CSA B44 and NFPA 72."

(z) 1010.2 Door operations. Adopted, adding the sentence "Exit doors shall not be locked, chained, bolted, barred, latched, or otherwise rendered unusable. All locking devices shall be of an approved type."

(aa) 1020.2 Construction. Amend by adding the following: "Upgrading of corridors in existing E occupancies serving an occupant load of 30 or more, may have walls and ceilings of not less than one-hour fire-resistive construction as required by this code. Existing walls surfaced with wood lathe and plaster in good condition or 1/2-inch gypsum wallboard or openings with fixed wired glass set in steel frames are permitted for corridor walls and ceilings and occupancy separations when approved. Doors opening into such corridors shall be protected by 20-minute

fire assemblies or solid wood doors not less than 1 3/4 inches (45 mm) thick. Where the existing frame will not accommodate the 1 3/4-inch-thick door, a 1 3/8-inch-thick solid bonded wood-core door or equivalent insulated steel door shall be permitted. Doors shall be self-closing or automatic closing by smoke detection. Transoms and openings other than doors from corridors to rooms shall comply with this code or shall be covered with a minimum of 3/4-inch plywood or 1/2-inch gypsum wallboard or equivalent material on the room side. Exception: Existing corridor walls, ceilings, and opening protection not in compliance with the above may be continued when such buildings are protected with an approved automatic sprinkler system throughout. Such sprinkler system may be supplied from the domestic water system if it is of adequate volume and pressure."

(ab) Table 1020.2 CORRIDOR FIRE-RESISTANCE RATING, R Occupancy, replace "Greater than 10" with "Greater than 8."

(ac) 1031.2 Where required. Amend as follows: "In addition to the means of egress required by this chapter, emergency escape and rescue openings shall be required in all sleeping rooms in Group R occupancies located in buildings that do not have an automatic sprinkler system and in the following occupancies:"

(ad) Table 1103.1 OCCUPANCY AND USE REQUIREMENTS. Amend to include "R" (required to comply) for Section 1103.9 under "E" Occupancy Classification column.

(ae) 1103.5 Sprinkler systems is not adopted.

(af) 1207.1.2.1 Communication utilities is not adopted.

(ag) 1207.10.4 Construction documents is not adopted.

(ah) 1207.10.5 Approved locations is not adopted.

(ai) 1207.10.7.5 Local staging. Delete words "when the permit is issued."

(aj) 2006.2 Airport fuel systems. Change NFPA 407 to NFPA 407-12.

(ak) 2006.3 Construction of aircraft-fueling vehicles and accessories.

Change NFPA 407 to NFPA 407-12.

(al) 2306.2.3 Above-ground tanks located outdoors, above grade, is adopted. See 50-3-103, MCA, for modifications. In paragraph 4., change Section 5706.2 to ARM 23.12.605.

(o) and (p) remain the same, but are renumbered (am) and (an).

(ao) 3103.7 Inspections. Delete the word "permit." After Exception: delete the word "Permit."

(ap) 3104.2 Flame propagation performance testing and certification. In the first and last sentence of the paragraph, change the word "permit" to "approval."

(aq) 3105.5 Required documents. Delete the words "the fire code official and."

(ar) 3106.4.1 Public safety plan for gatherings. Delete the words "with the application for an operational permit as required by section 3106.2.2."

(as) 3201.3 Construction documents. In the first sentence, delete the words "and at the time of application for a storage permit." In the second sentence, change the words "storage permit" to "building permit."

(at) 3201.4 Fire safety and evacuation plan. Delete the words "at the time of permit application."

(au) 3504.3 Area reviews. In the first sentence, delete the words "while the permit is in effect" and delete the second sentence "Information shown on the permit

shall be verified prior to signing the permit in accordance with Section 105.5."

(av) 5001.6.1 Temporarily out-of-service facilities. Delete the words "maintain a permit and."

(aw) 5001.6.2 Permanently out-of-service facilities. Replace paragraph with "Facilities not monitored and inspected on a regular basis shall be deemed to be permanently out of service and shall be closed in an *approved manner*."

(ax) 5003.3.1.1 Records. Delete the words "by the permittee."

(ay) 5003.5 Hazard identification signs. Delete the words "in quantities requiring a permit and."

(az) 5307.4.1 Documentation. Change the words "with the application for permit" to "to the fire code official for approval."

(ba) 5503.1.1.1 Data submitted for approval. Delete the words "with the application."

(q)(bb) 5601.1.3 Fireworks - is not adopted and is replaced by Title 50, chapter 37, MCA.

(bc) 5601.2 Permit required. Replace section 105.5 with 50-37-107, MCA.

(r)(bd) 5601.2.2 through 5601.2.4.2 are not adopted and are replaced with Title 50, chapter 37, MCA.

(s) ~~5606.5.2.1 Smokeless propellant~~ is not adopted. The maximum quantities, storage conditions and fire protection requirements for gunpowder and ammunition stored in a building shall be as follows: Smokeless powder and small arms primers or percussion caps shall be in accordance with 50-61-120 and 50-61-121, MCA.

(be) 5606.5 through 5606.5.2.3 Display and storage in Group M occupancies are not adopted and are replaced with 50-61-120 and 50-61-121, MCA.

(t) ~~5606.5.2.3 Small arms primers~~ is not adopted. See 50-61-120 and 50-61-121, MCA.

(u) ~~5608 Fireworks Display~~ is not adopted. See Title 50, chapter 37, MCA.

(bf) 5608.1 General. Add "and Title 50, chapter 37, MCA" at end of sentence.

(bg) 5608.2 Permit application. Delete words "Prior to issuing permits for a fireworks display." Add sentence "An application shall be submitted to FPIS a minimum of 15 days prior to the date of display."

(v)(bh) 5706.1 General. -- In paragraph numbered 1., delete "farms and."

(w)(bi) 5706.2 Storage and dispensing of flammable and combustible liquids on farms and construction sites. Delete "farms and" from the heading, and "on farms and rural areas and" from the paragraph. Add at the end of the paragraph "See ARM 23.12.605 for requirements of farms and rural areas."

(x) ~~3406.2.5.1(2)~~ is not adopted.

(bi) 5706.2.5.1 Tanks with top openings only. Paragraph 2. is not adopted.

(bk) 5706.5.4.5 Commercial, industrial, governmental or manufacturing. Paragraph 1. is not adopted. Delete the first sentence in paragraph 3.

(bl) 5707.1.1 Approval required. Delete the words "first obtaining a permit and."

(bm) On page 80-12, Referenced Standards, change NFPA 407-17 to NFPA 407-12.

(y)(bn) Appendix B<sub>1</sub> - Fire Flows<sub>1</sub> - is adopted.

~~(z)~~ (bo) Appendix C<sub>1</sub> - Hydrants<sub>1</sub> - is adopted.

(bp) Appendix E, Hazard Categories, is adopted.

(bq) Appendix F, Hazard Ranking, is adopted.

(br) Appendix G, Cryogenic Fluids - Weight and Volume Equivalents, is adopted.

~~(aa)~~(bs) Appendix I<sub>1</sub> - Fire Protection Systems Non-Compliant Conditions<sub>1</sub> - is adopted.

AUTH: 50-3-102, MCA

IMP: 50-3-103, MCA

REASON: The department has adopted the International Fire Code (IFC), which is published every three years. The amendments to this rule are necessary to conform to the current edition of the IFC, add Montana specific rules, and promote consistency with the Building Code as adopted by the Department of Labor and Industry. The adopted 2021 edition of the IFC can be ordered from the ICC website. The 2017 edition of NFPA 407 requires a third overflow detection device that is economically unfeasible to small airports throughout Montana to retrofit their existing refueling vehicles. Keeping with the 2012 edition that requirement is not included. Through attrition in the purchasing of newer refueling vehicles eventually this requirement will be met. Appendixes are not mandatory unless adopted. Once adopted they become a requirement of the adopted IFC.

23.12.605 PROCESSES (1) Chapters 23, ~~56~~, and 57 of the IFC are adopted with the following additions and amendment:

(a) through (h) remain the same.

(i) 2304.7 Locations of aboveground tanks. Aboveground storage tanks are not prohibited for private use on farms and ranches. EXCEPTION: Pursuant to 50-3-103~~(6)~~, MCA, there are no requirements regarding diked areas or heat actuated or other shut-off devices for storage tanks containing Class I or Class II liquids.

(j) 2304.7.1 Disposal of Tanks. Tanks shall be disposed of in accordance with the following:

1. Underground tanks shall be disposed of in accordance with American Petroleum Institute (API) 1604, Third Edition, March 1996, and the Department of Environmental Quality's underground storage tank requirements;<sub>1</sub>

2. All "unlisted" aboveground tanks which are no longer fit for continued service or which cannot be internally lined in accordance with nationally recognized standards, shall be disposed of in accordance with ~~API 2202, Third Edition, January 1991; and~~ nationally recognized standards.

3. API documents can be obtained from the American Petroleum Institute, ~~1220 "L" Street, N.W.~~ 200 Massachusetts Ave NW, Suite 1100, Washington, D.C. ~~20005~~ 20001-5571 or www.api.org.

(k) remains the same.

AUTH: 50-3-102, MCA

IMP: 50-3-102, 50-3-103, MCA

REASON: Chapter 56 of the IFC pertains to explosives and fireworks. API 2202 is an inactive document and not referenced in the 2021 IFC. Address has changed for API and can be ordered on its website. Earmarked MCA section reference was removed per the Secretary of State's guidance.

4. The department proposes to repeal the following rule:

23.12.603 ADDITIONAL DEFINITIONS

AUTH: 50-3-102, 50-61-102, MCA

IMP: 50-3-102, 50-61-102, MCA

REASON: This rule is being repealed because the definitions have been incorporated into ARM 23.12.601.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Dirk Johnson, State Fire Marshal, Fire Prevention and Investigation Section, Division of Criminal Investigation, Department of Justice, P.O. Box 991, Great Falls, Montana, 59403; telephone (406) 771-1510; fax (406) 791-2729; or e-mail [dirk.johnson@mt.gov](mailto:dirk.johnson@mt.gov), and must be received no later than 5:00 p.m., February 24, 2023.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dirk Johnson at the above address no later than 5:00 p.m., February 24, 2023.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 25 persons based on 11 fire marshals throughout the state, 27 certified cities, and the number of small businesses in the state directly affected by these rules.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. 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 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 mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ DAVID ORTLEY

David Ortley  
Rule Reviewer

/s/ AUSTIN KNUDSEN

Austin Knudsen  
Attorney General  
Department of Justice

Certified to the Secretary of State January 17, 2023.