

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.180.301 definitions, 24.180.401) ON PROPOSED AMENDMENT
fees, 24.180.404 applications, 24.180.407) AND ADOPTION
examinations, 24.180.504 journeyman)
qualifications, 24.180.506 master)
qualifications, 24.180.603 reciprocity,)
24.180.607 temporary practice permits,)
24.180.704 medical gas piping)
endorsement, and adoption of NEW RULE)
I reissuance of retirement status license)

TO: All Concerned Persons

1. On August 11, 2008, 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 amendment and 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 Board of Plumbers (board) no later than 5:00 p.m., on August 6, 2008, to advise us of the nature of the accommodation that you need. Please contact Jason Steffins, Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdplu@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board has determined that reasonable necessity exists to generally amend the board rules at this time. Some of the amendments are technical in nature, such as renumbering or amending punctuation to comply with ARM formatting requirements. Other changes replace out-of-date terminology for current language and processes, delete unnecessary or redundant sections, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use. Authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.180.301 DEFINITIONS (1) and (2) remain the same.

(3) "Installation of plumbing and drainage systems" means, but is not limited to, the measuring, laying-out, cutting, fitting, soldering, and gluing of pipe and/or the installation of fixtures and equipment for the purpose of connecting potable water or sewage.

(4) through (6) remain the same.

(7) "Supervision" means:

(a) is readily available for consultation with journeyman plumbers and with the authority having jurisdiction;

(b) provides periodic evaluation of journeyman plumbers' professional competence; and

(c) provides professional guidance to journeyman plumbers on an on-going basis.

AUTH: 37-69-202, 37-69-401, MCA

IMP: 37-69-102, ~~37-69-202~~, 37-69-401, MCA

REASON: The board determined it is reasonable and necessary to amend this rule and add a definition for "supervision" to clearly set forth the responsibilities of master plumbers as supervisors of journeyman plumbers in their employ. The absence of a definition has at times inhibited the board's ability to enforce its rule against masters loaning their licenses to others, i.e., being designated the person in charge of a plumbing shop to enable it to pull permits and bid jobs but providing virtually no supervision to the journeyman plumbers who perform the work.

24.180.401 FEE SCHEDULE (1) Applicants approved by the board to take the licensing examination(s) shall pay the examination fee directly to the vendor. The fee is set by the vendor and varies by examination. Information concerning current vendor examination fees is available from the board office.

(1) <u>(2)</u> Application fee	\$ 60
(2) Examination fee	175
(3) Reexamination fee	175
(4) Administration of examination on alternate date	400
(5) through (10) remain the same but are renumbered (3) through (8).	
<u>(9) Retirement status certificate fee (one-time fee)</u>	<u>25</u>
(11) remains the same but is renumbered (10).	

AUTH: 37-1-134, 37-69-202, 37-69-401, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-69-303, 37-69-306, 37-69-308, 37-69-311, 37-69-401, MCA

REASON: It is reasonably necessary to amend this rule to implement the board's decision to convert to vendor examinations. Following the shift to vendor exams, the board will no longer be responsible for setting or collecting exam fees, or administering the examinations and the board is eliminating the three fees as unnecessary. Applicants will pay fees directly to the examination vendor. The board notes that the initial decrease in board revenue will balance out with a related decrease in board costs with the shift to vendor administered exams.

The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), which created a retirement license for plumbers. The bill was signed by the Governor on May 16, 2007, and became effective October 1, 2007. The board is adding a new fee at (9) to implement the legislation. The board has determined that the license in retirement status does not have to be annually renewed in the retirement status and it will not lapse, expire, or terminate on account of nonrenewal.

It is estimated that approximately 165 applicants and licensees will be affected by these proposed fee changes resulting in a \$27,725 reduction in annual revenue.

24.180.404 APPLICATIONS (1) ~~Applications~~ An application for a master plumber's license or journeyman plumber's plumber license may must be submitted to the department be made by anyone professing the qualifications set forth in 37-69-304 and 37-69-305, MCA. The application for examination shall be made to the department, and must be accompanied with by the proper appropriate fee.

~~(2) No application for examination will be considered unless it is accompanied by the proper duly documented supporting evidence and is received 15 days prior to the next scheduled board meeting. Approved applicants may take the next available quarterly exam following the board meeting at which their application is approved.~~

~~(3) Those applications received after the deadline will be processed for the following examination.~~

~~(4) Upon receipt and approval of an application for the journeyman or master plumber's examination, the department will send to the applicant an admittance notice for the examination. The admittance notice must be presented by the candidate at the examination.~~

~~(5)~~(2) An application will remain be on file for one year from the date of receipt. If no action is taken by the applicant has not met all qualifications and been issued a license within one year that period, the application terminates, the fee is will be forfeited, and any passing score achieved by the applicant on the written licensure examination is no longer valid. To reapply, an application and appropriate fee must be submitted and reapplication will be required.

AUTH: 37-1-131, 37-69-202, MCA
IMP: 37-69-303, MCA

REASON: It is reasonable and necessary to amend this rule to comply with the board's shift to vendor administered exams. Setting examination deadlines and scheduling and administering the exams will no longer be done by the board and these provisions are no longer necessary.

The board is also amending this rule to clarify the process and implications for stale applications. While not a new process, the board is specifically delineating that after a year, the application will terminate and any passing written exam score will be invalidated. The board concluded that invalidating the written exam score due to an application's termination will ensure that licensure is based upon a demonstration of current competencies. The amendment also clarifies that meeting licensure requirements within one year is in an applicant's best interest.

24.180.407 EXAMINATIONS (1) ~~Individuals who have been approved for the examination or are reexamining shall be required to submit an examination fee 15 days prior to the examination date. Applicants whose fees are not received by the deadline shall be required to sit for the next available examination. All master applicants must successfully complete a written examination with a score of 70 percent or greater.~~

~~(2) All journeyman applicants must successfully complete a written examination and a practical examination with a score of 70 percent or greater on each examination. The written examination must be passed before an applicant may take the practical examination.~~

~~(3) If an applicant fails three written examinations within the one year period of an application's viability, the applicant must submit proof of completion of 20 hours of continuing education as provided in ARM 24.180.2102 before the applicant will be approved to take the examination a fourth time. An applicant who fails the fourth written examination may not reapply for licensure for one year.~~

~~(2) Examinations to determine the fitness of an applicant, either master plumber or journeyman plumber, will be held at the pleasure of the board, at not less than three month intervals. The examination will be held in the city of Helena, Montana, unless the board specifically designates a different place for any such examination.~~

~~(3) Special examinations may be held in event the examination date and place regularly set by the board conflicts with religious beliefs of the applicant, and in that event, the applicant may petition the board by letter requesting such special examination. If the board allows such a special examination, it shall set a time and place thereof in its discretion.~~

~~(4) Requests for administration of examination on an alternate date must be submitted in writing to the department and include the proper fee. Requests must include the reason for the request, and a desired date of the examination. If the department approves the alternate date, it shall set a time and place thereof in its discretion.~~

~~(5) All master applicants will be required to successfully complete a written examination with a score of 70 percent or better before the appropriate license will be issued. All journeyman applicants will be required to successfully complete a written and practical examination with a score of 70 percent or better before the appropriate license will be issued.~~

~~(6) Examination papers may be reviewed in the board office for a period of 60 days immediately following the examination date only. Note taking will be allowed during the time of review, but the notes must be left in the board office.~~

~~(7) Appeals concerning the examination must be submitted in writing for response by the board.~~

~~(8) Any applicant for the journeyman's or master's license who shall sit for and fail the examination two consecutive times will not be allowed to retake the examination for a period of one year commencing with the date of the last examination that he failed. After one year, the applicant shall submit a notarized statement from an individual acceptable to the board, which attests to 20 hours of~~

~~additional training acceptable to the board before the applicant will be approved to again take the examination.~~

~~(9) When an applicant fails to take the examination for which the applicant was scheduled, the fee shall be forfeited and application for any subsequent examination will require another examination fee.~~

AUTH: 37-1-131, 37-69-202, MCA

IMP: 37-69-304, 37-69-305, 37-69-306, ~~37-69-307~~, MCA

REASON: The board has chosen to convert to vendor produced, maintained, and administered licensing examinations in lieu of having its own examinations. The vendor has special expertise and experience in developing, maintaining, and administering psychometrically validated and defensible licensing examinations for plumbers.

The board is amending this rule to require separate passing scores on the written and practical journeyman examinations. The current requirement of a consolidated score of 70 percent or greater on the written and practical exams allows an applicant to do quite poorly on the written exam and very well on the practical exam and still pass. The board concluded that a separate passing score for each component is necessary so that applicants' knowledge of the Uniform Plumbing Code can be independently verified.

The board is adding (3) in conjunction with other amendments in this notice to allow applicants to take the written exam three times before further education is required and to test a maximum of four times before having to wait a year to reapply. The board concluded that this amendment gives applicants a greater value for their application fee without compromising public safety. The current requirements regarding retakes were largely dictated by the frequency that exams were offered but the vendor exams will be available more frequently and in more locations.

24.180.504 QUALIFICATIONS - JOURNEYMAN (1) The board will accept the following documentation of experience for journeyman plumber applicants ~~plumbers~~:

(a) ~~a notarized statement~~ written affirmation from a licensed master plumber(s) or a licensed plumbing contractor(s) by whom the applicant was employed, certifying by detailed description of the applicant's plumbing experience, that the applicant meets the qualifications set by 37-69-304, MCA. The written affirmation must verify that the applicant has a minimum of 7500 aggregate hours of experience in the field of plumbing over a period of not less than five years the time and dates of employment and the type of plumbing work that was performed during the applicant's employment. Verification statements must verify five years of actual experience in the field of plumbing, at a minimum of 1500 hours per year;

(b) a copy of an apprenticeship completion certificate or certified statement issued by the United States Department of Labor, Employment and Training Administration (ETA), Office of Apprenticeship Training, Employer and Labor Services (OATELS), or a recognized state apprenticeship agency/council. Experience granted for a registered apprenticeship is contingent upon successfully completing the requirement of the apprenticeship program;

(c) through (d)(ii) remain the same.

(iii) completion of a course of study in a technical institute or other recognized educational program, none of the above to exceed two years of the five-year experience requirement;

(e) upon documentation of practice in the fields of steam fitting, hydronics, and industrial piping, the experience will be accepted as equivalent to a maximum of two years of the five-year experience requirement.

~~(2) Other documentation such as W-2 forms or other time/pay records may only be used to supplement experience documentation when none of the other forms listed above are available due to unusual or unforeseen circumstances, which circumstances must be explained fully and the records approved for use by the board.~~

AUTH: 37-1-131, 37-69-202, MCA

IMP: 37-69-304, MCA

REASON: The board is amending this rule to eliminate the notarization requirement for employer experience verifications to be consistent with renewal applications which are no longer notarized. The board may still deem a false or misleading representation to be actionable against the applicant and any Montana-licensed master who makes such a representation concerning the applicant's experience.

The current rule defines one year of experience for journeyman licensure qualification purposes as 1500 hours of experience per year which is consistent with the statutory definition of one year of experience for master licensure in 37-69-305, MCA. Requiring 1500 hours of experience per year for five years has led to denial of journeyman licensure where, for example, an applicant has less than 1500 hours experience in one year and more than 1500 hours in another year even though the total hours meet or exceed 7500 hours. The board notes that five years of plumbing experience is legislatively mandated and the amended rule will still not allow an applicant who obtains 7500 hours in less than five years to take the journeyman license exam early.

Section 37-69-304(1)(a), MCA, specifically allows time and pay records as proof of plumbing experience and so (2) of this rule qualifying the acceptability of those records or disallowing them was inconsistent with statute. Therefore, (2) is being deleted.

24.180.506 QUALIFICATIONS - MASTER (1) The board will accept the following documentation of experience for master plumber applicants ~~plumbers~~:

(a) ~~A notarized statement~~ Written affirmation from a licensed master plumber(s) or a licensed plumbing contractor(s) by whom the applicant was employed certifying by detailed description of the applicant's plumbing experience, that the applicant meets the qualifications set by 37-69-305, MCA. ~~time and dates of employment of applicant as a journeyman plumber and the type of plumbing work performed, which must include evidence of three years of experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing.~~

(b) Practice in the fields of steam fitting, hydronics, and industrial piping will not be considered as acceptable experience in the field of plumbing for the master license experience requirement.

~~(2) Other documentation such as W-2 forms or other time/pay records may only be used to supplement experience documentation when none of the other forms listed above are available due to unusual or unforeseen circumstances, which circumstances must be explained fully and the records approved for use by the board.~~

AUTH: 37-1-131, 37-69-202, MCA

IMP: 37-69-305, MCA

REASON: It is necessary and reasonable to amend the rule to eliminate the notarization requirement for employer experience verifications to be consistent with renewal applications which are no longer notarized. The board may still deem a false or misleading representation to be actionable against the applicant and any Montana-licensed master who makes a false or misleading representation concerning the applicant's experience. Section 37-69-305(1)(a), MCA, specifically allows time and pay records as proof of plumbing experience and so (2) of this rule qualifying the acceptability of those records or disallowing them was inconsistent with statute. Therefore, (2) is being deleted.

24.180.603 RECIPROCITY (1) The board may enter into a written reciprocal agreement for journeyman licensure with the license licensing authority of another state or jurisdiction if the other state or jurisdiction's qualifications for journeyman licensure include the following conditions are met and are reviewed annually to ensure ongoing equivalent standards:

~~(a) the state requires five years of actual and documented experience in the field of plumbing; and~~

~~(b) the state's a written examination is based on the Uniform Plumbing Code with a minimum passing score of 70 percent.;~~

~~(c) the state requires both a written and practical portion on the state's examination; and~~

~~(d) the state requires a minimum passing score of 70 percent on their examination.~~

(2) If the other state or jurisdiction does not require a practical examination with a minimum passing score of 70 percent, the applicant for journeyman licensure by reciprocity shall be required to pass the Montana practical examination with a score of 70 percent or greater.

(3) The board shall review the journeyman licensure qualifications of the reciprocal states or jurisdictions annually to verify ongoing equivalency.

~~(2)(4)~~ A current copy of the reciprocal state's state or jurisdiction's journeyman licensure requirements must be kept on file at the board office.

~~(3) The board shall approve the reciprocal agreement in open session and shall execute the agreement by the presiding chairperson's signature.~~

AUTH: 37-1-131, 37-69-202, MCA

IMP: 37-1-304, MCA

REASON: It is reasonable and necessary to amend this rule to establish that if a state has qualifications for journeyman plumber licensure equivalent to Montana's qualifications except that the other state does not require a practical examination, the board may still enter into a reciprocal agreement with that state's licensing authority. The applicant licensed in that state who seeks licensure in Montana by reciprocity would not have to retake the written licensure examination or have plumbing experience verification but the applicant would have to pass the Montana practical examination as a condition of licensure. The word "actual" in reference to plumbing experience is deleted because it is superfluous. The deletion does not signify any change in the nature or quality of plumbing experience required for licensure.

Section (3) is being deleted as unnecessary since all nonadjudicatory board business must be conducted in open session and a majority vote is required to take any action.

24.180.607 TEMPORARY PRACTICE PERMITS (1) ~~An applicant for a master or journeyman plumbing or master plumber license shall be issued a temporary practice permit to perform only journeyman plumber functions upon approval of the applicant to take the examination for the licensure sought and upon receipt of the~~ may act as a journeyman plumber after making application to the board for licensure, paying appropriate fees. Master applicants holding temporary practice permits may not perform plumbing functions requiring a master plumber license, being approved to write the examination and being issued a temporary permit.

(2) ~~A temporary practice permit terminates 110 days after issuance, or upon the applicant's fourth failure of the written examination, or upon the applicant's failure of the practical examination with a score of less than 65 percent shall run out on the last day of the month of the next scheduled examination or upon receipt of the results, whichever occurs first. If the applicant fails or does not write the next scheduled examination, a temporary permit may be renewed at the discretion of the board, on a case-by-case basis upon receipt of a letter requesting renewal of a temporary practice permit and stating their intention to take the next scheduled examination. The letter must be accompanied by the examination fee. If the applicant does not take the next scheduled examination, the temporary practice permit will run out and the examination fee will be forfeited.~~

(3) A second temporary practice permit will be issued ~~only~~ to an applicant who:

(a) ~~has failed the examination with a score of~~ scores between 65 through and 69 percent; on the practical examination or, in the board's discretion, to an applicant

(b) ~~is scheduled~~ unable to take the practical examination for which the applicant is next scheduled due to a documented hardship. examination; and

(c) ~~upon receipt of:~~

(i) ~~a letter from the applicant requesting a second temporary permit and requesting to be scheduled for the next scheduled examination;~~

~~(ii) a letter from the employer stating that the applicant is employed and under the direct supervision of a licensed master plumber; and~~

~~(iii) payment of the appropriate fees.~~

~~(4) If the applicant does not appear for, cancels, or fails the next scheduled examination, the second temporary permit runs out on the date the board office learns of that occurrence.~~

~~(5) An applicant for the master plumbing license may not work as a master until such time as the applicant successfully passes the master's examination and a master plumber's license has been issued to the applicant.~~

AUTH: 37-1-319, MCA

IMP: 37-1-305, MCA

REASON: It is reasonably necessary to amend (2) to clarify when a temporary practice permit terminates and under what circumstances a second temporary permit will be issued. The board concluded that the current section is poorly written and served to confuse readers. Following amendment, the termination of temporary practice permits will no longer be linked to scheduled exam dates. Since the exam dates will be set by an exam vendor, aligning temporary permit termination with exam dates is no longer workable. The board notes that the amendment carries forward the restriction on the functions that may be performed by a master applicant holding a temporary practice permit which the board deems necessary for public protection.

24.180.704 APPLICATION FOR MEDICAL GAS PIPING ENDORSEMENT

(1) through (2)(a) remain the same.

(b) documentation that provides proof the applicant has successfully completed an approved training program which meets the criteria of ASSE series 6000 professional qualification standards and a third-party testing source acceptable to the board, and has obtained certification in the installation of medical gas systems, based on NFPA 99C and Section IX of the ASME Welding and Brazing Codes; and

~~(c) a recent photograph of the applicant; and~~

~~(d) the nonrefundable application fee.~~

(3) and (4) remain the same.

AUTH: 37-1-131, 37-69-202, 37-69-401, MCA

IMP: 37-69-401, MCA

REASON: The board is amending this rule to eliminate the photograph requirement for medical gas piping installation endorsement applicants. The physical license does not include a photograph and the board concluded that simply having a photograph in the applicant's file is not necessary for the public protection.

5. The proposed new rule provides as follows:

RULE I REISSUANCE OF LICENSE ON ACTIVE STATUS FOLLOWING RETIREMENT

(1) A plumber whose license has been placed on retirement status pursuant to 37-69-311, MCA, may have the license reissued on active status by submitting a written request together with a renewal fee.

(2) In the event a license has been on retirement status for more than three years at the time a request to have the license reissued on active status is received, the retired plumber must pass the written licensure examination before the license may be reissued.

AUTH: 37-1-131, 37-69-202, MCA

IMP: 37-69-311, MCA

REASON: The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), which created a retirement license for plumbers. The bill was signed by the Governor on May 16, 2007, and became effective October 1, 2007. The board is adopting this new rule to establish the competency requirements for reissuance plumbers that must be met in certain circumstances before a license on retirement status may be reissued on active status. The Uniform Plumbing Code is reviewed and modified approximately every three years. The board concluded that it is necessary for the public's protection to require a plumber who has been on retirement status for more than three years to demonstrate knowledge of the current plumbing code before reissuing the license on active status. When the license is reissued in an active status, the plumber need not have met the regular continuing education requirements.

6. 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 Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdplu@mt.gov, and must be received no later than 5:00 p.m., August 19, 2008.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.plumber.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.

8. The Board of Plumbers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. 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 Board of Plumbers 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 the Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdpplu@mt.gov, or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on February 4, 2008, by regular mail.

10. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PLUMBERS
TIM REGAN, PRESIDING OFFICER

/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 July 7, 2008