

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT,
ARM 24.201.301 definitions,)	ADOPTION, AND REPEAL
24.201.707 discreditable acts,)	
24.201.1108 alternatives and)	
exemptions, 24.201.2101 renewals,)	
the adoption of NEW RULES I)	
through III peer review programs, and)	
the repeal of ARM 24.201.1102)	
definitions, 24.201.1106 statement by)	
permit holders, 24.201.1107 filing of)	
reports, and 24.201.1115 profession)	
monitoring program reviews and)	
enforcement)	

TO: All Concerned Persons

1. On May 9, 2013, the Board of Public Accountants (board) published MAR Notice No. 24-201-46 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 763 of the 2013 Montana Administrative Register, Issue No. 9.

2. On May 30, 2013, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the June 7, 2013, deadline.

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

COMMENT 1: Noting that the terms "assure" and "ensure" were used throughout the proposal notice, one commenter suggested the board use "reasonable assurance" instead.

RESPONSE 1: The board agrees that the term "reasonable assurance" may more accurately express the board's intent, but notes that "ensure" and "assure" appeared predominately in the reasonable necessity statements. The board is striking "assurance" from ARM 24.201.1108(1)(b) in this final notice.

COMMENT 2: One commenter suggested reordering the definitions rule, adding a definition of "Engagement review," and amending ARM 24.201.301(3), (4), and (5) to more closely align the definitions with nationally recognized terminology.

RESPONSE 2: The board notes that definitions are organized alphabetically per ARM formatting standards of the Secretary of State. The board decided not to make

the other suggestions at this time, but will consider them in future relevant rules discussions.

COMMENT 3: Several commenters recommended the board add language to ARM 24.201.301(4) and (5), to align with the Peer Review Standards of the AICPA.

RESPONSE 3: The board decided not to make the suggested changes at this time, but will consider them in future relevant rules discussions.

COMMENT 4: A commenter recommended eliminating the reference to the Montana Society of Certified Public Accountants (MSCPA)-sponsored peer review program from ARM 24.201.301(11). The commenter pointed out that while the MSCPA administers the AICPA peer review program, it does not sponsor a separate peer review program.

RESPONSE 4: The board determined that the definition as proposed allows for possible alternatives should the MSCPA develop an alternative program. The board wants the flexibility to accept those alternatives.

COMMENT 5: One commenter suggested using the existing statutory language in 37-50-101(9), MCA, for the definition of "peer review" at ARM 24.201.301(11).

RESPONSE 5: The board is attempting to further clarify the statutory language by this definition of "peer review."

COMMENT 6: A commenter suggested the board amend ARM 24.201.301(12), (13), and (14) to use the term "Systems Peer review report," in lieu of "Peer review report," for better differentiation between systems and engagement reviews. The commenter opined that the titles of the engagement review definitions in (3), (4), and (5) of this rule are properly titled.

RESPONSE 6: See response 3.

COMMENT 7: Several commenters recommended adding additional clarifying language at the beginning of ARM 24.201.301(14). The commenters also suggested the board amend the definition of "Peer review report 'Pass with deficiencies'" to identify the extent of the deficiency or deficiencies, which would result in a "Pass with deficiency" rating.

RESPONSE 7: The board is relying on the MSCPA peer review program. The board does not want to tie the hands of an approved peer review program in administering their own program. These deficiency elements would be included in the review process when the board considers an alternative program for approval.

COMMENT 8: One commenter recommended that the board amend ARM 24.201.301(18)(c) to clarify that it is the licensee that is subject to peer review, not the governmental organization.

RESPONSE 8: See response 3.

COMMENT 9: A commenter asked the board to clarify ARM 24.201.707(1)(b) by identifying who would impose the conditions that must be complied with, to avoid a board finding that a licensee committed discreditable acts.

RESPONSE 9: The board agrees that clarifying language should be added to identify who imposed the conditions and is amending the rule accordingly.

COMMENT 10: One commenter praised the board for identifying the failure to comply with conditions imposed by the sponsoring organization as a discreditable act in ARM 24.201.707(1)(b). The comment further suggested adding as a discreditable act when a firm misrepresents in writing that it is not subject to peer review when the firm is performing attest or compilation services that are subject to peer review.

RESPONSE 10: The board believes that it already has authority over this type of activity. Misrepresentation by a firm is a violation of current board statutes and rules and the board has the authority to take appropriate action.

COMMENT 11: Several commenters recommended eliminating the reference to compilation when identifying who is exempt from the peer review requirement in ARM 24.201.1108(1)(a), (b), and (c). Both comments indicated a compilation service is an attest service and it is redundant to include "attest and compilation services" when compilation is an attest service.

RESPONSE 11: The board notes that this issue is under consideration at NASBA, being that compilations may be removed from attest services. The board will make a determination once a consensus is reached, and is striking (1)(b) from the rule at this time.

COMMENT 12: One commenter requested clarification to the exemption of an out-of-state firm's peer review requirement in ARM 24.201.1108(1)(a). The comment suggested that if the out-of-state firm has a peer review report of "Pass with deficiencies" or "Fail" from their resident state, they must provide a copy of the administering entity's acceptance letter, which confirms the firm has agreed to certain corrective action.

RESPONSE 12: See response 3.

COMMENT 13: A commenter pointed out that the MSCPA administers the AICPA peer review program, but the AICPA program is not an alternative to the MSCPA program. ARM 24.201.1108(2) clarifies it is not necessary to list the AICPA peer review program as an alternative to the MSCPA program.

RESPONSE 13: The board agrees with the commenter and is striking ARM 24.201.1108(2)(b).

COMMENT 14: One commenter stated that clarification is necessary to ARM 24.201.1108(2)(a), because the Public Company Accounting Oversight Board (PCAOB) inspection program only covers PCAOB standards. The firm's overall system of quality control and engagements outside of the PCAOB should be reviewed.

RESPONSE 14: The board believes the current drafted language for PCAOB inspections does not eliminate the peer review requirement on work outside PCAOB standards.

The board did decide to clarify in the rule that the board would be required to approve and identify acceptable alternative programs, and is therefore amending ARM 24.201.1108(2) accordingly.

COMMENT 15: A commenter suggested the board adopt a definition of expert knowledge as it is used in ARM 24.201.2101(6)(a).

RESPONSE 15: See response 3.

COMMENT 16: Several commenters suggested that New Rule I should include a requirement for practitioners to enroll in and meet board-approved peer review program standards if they perform engagements under the attestation standards (SSAE), which is more comprehensive than an agreed upon procedures engagement found in New Rule I (1)(d).

RESPONSE 16: See response 3.

COMMENT 17: A commenter noted that in New Rule I (4), the board intends to require that all Montana practice units have a peer review completed and must enroll in the MSCPA program or other board-approved program. The MSCPA administers the AICPA peer review program and does not have a separate peer review program.

RESPONSE 17: The board concluded that the language as proposed is appropriate.

COMMENT 18: One commenter requested clarification of what is intended as a follow-up action in New Rule I (5) and recommended alternative language in lieu of "follow-up actions."

RESPONSE 18: The board agrees and is amending (5) by replacing "follow-up actions" with "remediation."

COMMENT 19: One commenter suggested the board add a new rule(s) that would clarify the relationship of peer review sponsoring organizations, establish program and standard minimums, and identify who would approve sponsoring organizations.

The commenter recommended this section should adopt the AICPA and those entities administering the AICPA peer review program as the board-recognized peer review program. The new rule(s) should adopt the Standards for Performing and Reporting on Peer Reviews as the minimum peer review standards, while acknowledging there may be other organizations the board might consider.

RESPONSE 19: See response 3.

COMMENT 20: A commenter recommended the board add a new rule(s) that would allow the board to utilize the AICPA Facilitated State Board Access Process (FSBA) in its practice unit reporting requirements. FSBA is a web-based process that gives the board electronic access to a variety of peer review documents and several reports, allowing the board to easily monitor the performance of remedial action required of firms. The recommended new rule(s) would require practice units to submit documents to the board, but would not mandate the use of FSBA. The commenter did provide additional recommended language if the board wanted to mandate the use of FSBA.

RESPONSE 20: See response 3.

COMMENT 21: A commenter recommended expanding the types of engagements that would require a firm to enroll in peer review. The recommendation is to add a new rule(s) that would include the existing types of engagements, but would also add another engagement level. The board should also create an effective date for transition to the peer review requirement.

RESPONSE 21: The board determined the transition date is included in the proposed notice and the recommended additional language will be considered in a future rulemaking package.

4. The board has amended ARM 24.201.301 and 24.201.2101 exactly as proposed.

5. The board has adopted NEW RULES II (24.201.1105) and III (24.201.1112) exactly as proposed.

6. The board has repealed ARM 24.201.1102, 24.201.1106, 24.201.1107, and 24.201.1115 exactly as proposed.

7. The board has amended ARM 24.201.707 and 24.201.1108 with the following changes, stricken matter interlined, new matter underlined:

24.201.707 DISCREDITABLE ACTS (1) and (a) remain as proposed.

(b) a practice unit fails to comply with conditions imposed by the peer review program as a result of a "pass with deficiencies" or "failed" peer review classification.

24.201.1108 ALTERNATIVES AND EXEMPTIONS (1) remains as proposed.

(a) out-of-state practice units that do not have a physical location in this state, but perform attest or compilation services in this state, and have a peer review in the state in which they are located, and are otherwise qualified for practice privileges; or

~~(b) practice units that do not perform attest services, compilation services, or other professional services for which a report expressing assurance is prescribed by professional standards in Montana; or~~

(c) remains as proposed, but is renumbered (b).

(2) Alternative programs to the board-approved peer review program of the AICPA, administered by the Montana Society of Certified Public Accountants Accountants (MSCPA), shall include:

~~(a) the inspection processes of the Public Company Accounting Oversight Board (PCAOB);~~

~~(b) peer review programs administered by the American Institute of CPAs (AICPA); and~~

~~(c) other non-AICPA programs recognized and approved by the board.~~

8. The board has adopted NEW RULE I (24.201.1103) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I PEER REVIEW ENROLLMENT (1) through (4) remain as proposed.

(5) A practice unit enrolled in a peer review program that receives a "pass" or "pass with deficiencies," and completes all ~~follow-up~~ remediation actions must have a peer review completed every three years. A practice unit that receives a "fail" rating must follow peer review program requirements for subsequent peer reviews.

(6) and (7) remain as proposed.

BOARD OF PUBLIC ACCOUNTANTS
BEATRICE ROSENLEAF, CPA,
PRESIDING OFFICER

/s/ DARCEE L. MOE

Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 12, 2013