

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.201.301 definitions,	)	PROPOSED AMENDMENT,
24.201.707 discreditable acts,	)	ADOPTION, AND REPEAL
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 30, 2013, at 1:00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal 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 Public Accountants (board) no later than 5:00 p.m., on May 24, 2013, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdpac@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Following an in-depth review of the current board-conducted Profession Monitoring Program (PMP), and discussion of available alternatives to the program by the board and a voluntary task force, the board determined it is reasonably necessary to amend PMP at this time. All proposed rule changes are a direct result of this review and recommended changes to the PMP, and will transition the board-sponsored program to a mandatory board-approved peer review program.

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

24.201.301 DEFINITIONS (1) remains the same.

(2) "Client" means the person, entity, or enterprise, whether organized for profit or not, which retains a permit holder for the performance of professional services. A client may be an entity served by governmental or nongovernmental agencies performing services similar to public accounting firms.

(3) "Engagement peer review report 'Fail'" means the engagements submitted for review by the review practice unit were not performed and reported on in conformity with applicable professional standards in all material respects.

(4) "Engagement peer review report 'Pass'" means the engagements submitted for review by the review practice unit were performed and reported on in conformity with applicable professional standards in all material respects.

(5) "Engagement peer review report 'Pass with deficiencies'" means except for the deficiencies described in the report, the engagements submitted for review by the review practice unit were performed and reported on in conformity with applicable professional standards in all material respects.

~~(3)~~ (6) "Financial statement" means a presentation of financial data, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time. Financial presentations included in tax returns are not financial statements for purposes of this definition. Financial statements include, but are not limited to, the following:

(a) through (k) remain the same.

(4) through (7) remain the same, but are renumbered (7) through (10).

(11) "Peer review" means a review under a formal peer review program sponsored by the American Institute of Certified Public Accountants (AICPA), or the Montana Society of Certified Public Accountants (MSCPA) or their successors, or such other formal peer review programs approved by the Board of Public Accountants (board).

(12) "Peer review report 'Failed'" means the system of quality control for the accounting and auditing practice of the reviewed practice unit, in effect for the year most recently ended, has not been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

(13) "Peer review report 'Pass'" means the system of quality control for the accounting and auditing practice of the reviewed practice unit, in effect for the year most recently ended, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

(14) "Peer review report 'Pass with deficiencies'" means except for the deficiencies described in the report, the system of quality control for the accounting and auditing practice of the reviewed practice unit, in effect for the year most recently ended, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

(8) through (10) remain the same, but are renumbered (15) through (17).

(18) "Practice unit" means:

(a) each licensee who practices public accounting as an individual or sole proprietor;

(b) a sole proprietorship, partnership, or professional corporation that practices public accounting; or

(c) a governmental organization that employs a licensee in a public accounting capacity.

~~(11)~~ (19) "Professional services" means any ~~services~~ service performed or offered to be performed by a permit holder for a client in the course of the practice of public accountancy.

~~(12)~~ (20) "Report" (when used with reference to financial statements) means an opinion, report, or other form of language which states or implies assurance as to the reliability of any financial statements (examples include: audits, reviews, and compilations) and which:

(a) ~~also~~ includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing;

(i) Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or the firm is an accountant or auditor, or from the language of the report itself.

(b) ~~The term "report"~~ includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to and/or special competence on the part of the person or firm issuing such language; and

(c) ~~it~~ includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: The board is amending this rule to consolidate all definitions into a single location within the board rules. This consolidation will eliminate the need to search in several places to find definitions of relevant board terms.

The board is adding (3), (4), and (5) to identify the ratings used to evaluate the work product in a review of an engagement report. The evaluation of an engagement report is essential in measuring continual competence of a licensee to ensure consumer protection. The board concluded that licensees must be notified of the acceptable standards in order to comply with them.

The board is relocating the definition of "peer review" to (11) from ARM 24.201.1102 and amending the definition to identify the MSCPA or its successor as a board-approved peer review program that will satisfy this definition.

The board is identifying the three levels of ratings for peer review in (12), (13), and (14). These peer review ratings evaluate the quality control systems to determine if those systems are adequate to ensure that the firm is adhering to professional standards. Peer review is a holistic look at a firm to determine if its processes ensure compliance with standards of practice.

The board is moving the definition of "practice unit" to (18) from ARM 24.201.1102 to consolidate all definitions into a single rule.

24.201.707 DISCREDITABLE ACTS (1) A firm, permit holder, certificate holder, license holder, or practice privilege holder shall not commit any act discreditable to the profession. A discreditable act will be considered to have occurred if, for example,:

(a) a firm, permit holder, or practice privilege holder retains any records rightfully belonging to the client in order to enforce payment of fees; or

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

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, 37-50-325, MCA

REASON: Because the PMP is being eliminated and licensees will transition to a board-approved peer review program administered by an outside entity, the board concluded that it is essential that licensees who do not meet peer review expectations understand they must comply with conditions imposed by that peer review program. The board is amending this rule to clarify that failure to comply with those conditions can result in the board taking disciplinary action against the licensee.

~~24.201.1108 ALTERNATIVES AND EXEMPTIONS (1) A practice unit enrolled in the AICPA peer review program is exempt from the board's profession monitoring program (PMP), provided a peer review has been completed within the three preceding calendar years, the report did not receive a peer review rating of "fail," and the practice unit fully participated in the Facilitated State Board Access (FSBA) program. Fully participating in the FSBA means board staff must be able to retrieve the peer review report, letter of response (if any), and acceptance letter from the administering entity.~~

~~(2) Alternative peer reviews (such as legislative audits of government entities) may be sanctioned by the board, which may also exempt a practice unit from the board's PMP.~~

~~(3) The board reserves the authority to request a practice unit to submit a copy of any or all reports, financial statements, and supporting work papers for engagements subject to peer review.~~

~~(4) The board reserves the authority to exempt permit holders who would otherwise be required to file a report under ARM 24.201.1107 for good cause.~~

~~(1) Exemption of the peer review requirement will apply to:~~

~~(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;~~

~~(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) practice units that prepare financial statements which do not require reports under Statements on Standards for Accounting and Review Services (SSARS) 8 as codified in SSARS 19 (management use only compilation reports) and that perform no other attest or compilation services. Such engagements~~

conducted by a firm that is otherwise required to participate in a peer review program shall be included in the selection of engagements subject to peer review.

(2) Alternative programs to the board-approved peer review program of the Montana Society of Certified Public Accounts (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 programs recognized and approved by the board.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clearly identify who is exempt from the board-approved peer review requirement and to specifically list peer review programs that are board-approved.

The requirement to comply with peer review does not pertain to out-of-state practice units if they have a peer review completed in their state of residence. If a practice unit does not perform the level of service required for a peer review, they are exempt from the peer review requirement. Additionally, certain attestation and compilation reports are exempt from the peer review requirement if they have been completed according to specific standards for management use only compilation reports. These exemptions and alternatives assure that all practices units performing work in Montana are competently doing so.

24.201.2101 RENEWALS (1) through (4) remain the same.

(5) Every practice unit must submit a statement to the board on their original application and at each renewal, which describes the practice unit's level of association with financial statements.

(6) A practice unit shall be required to file a statement with the board if they:

(a) issue reports which indicate an expert knowledge of accounting or auditing; or

(b) allow their name and designation as a CPA or LPA practice unit to be included on a report that indicates expert knowledge of accounting or auditing.

(7) A practice unit shall not be required to file a statement with the board if they:

(a) do not issue reports which indicate an expert knowledge of accounting or auditing; or

(b) do not allow their name and designation as a CPA or LPA practice unit to be included on a report that indicates expert knowledge of accounting or auditing.

AUTH: 37-1-131, 37-50-201, 37-50-203, MCA

IMP: 37-1-141, 37-50-203, 37-50-314, MCA

REASON: The board determined it is reasonably necessary to amend this rule to include the reporting requirements for practice units at renewal. Currently these annual reporting requirements are found under the PMP process at ARM

24.201.1106, which is proposed for repeal in this notice. Since this is actually a renewal requirement for practice units, the board is relocating it to the renewal rule for clarity.

5. The proposed new rules provide as follows:

NEW RULE I PEER REVIEW ENROLLMENT (1) Practice units shall enroll in and meet board-approved peer review program standards, and pay the required fees associated with the peer review, if they perform any of the following services:

- (a) an audit;
- (b) a review;
- (c) a compilation; or
- (d) agreed upon procedures engagements.

(2) If a practice unit is required to enroll in a board-approved peer review program, the practice unit must provide to the board the name of the approved peer review program in which the practice unit is enrolled, and the period covered by the practice unit's most recent peer review.

(3) At renewal of the practice unit, it must provide the results of its most recent peer review.

(4) Every Montana practice unit that is required to enroll in a peer review program shall enroll with the Montana Society of Certified Public Accountants (MSCPA) or other such board-approved program and have a completed peer review within 18 months of establishing the practice unit. The permit holder shall not be required to become a member of any organization administering a board-approved peer review program.

(5) A practice unit enrolled in a peer review program that receives a "pass" or "pass with deficiencies," and completes all follow-up 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) The peer review completion date for each practice unit enrolled under (2) will be determined by the board, based on the reporting schedule established under the previous board-sponsored profession monitoring program.

(7) Practice units under the pre-issuance review requirement of the board's previous profession monitoring program will remain under board-monitored pre-issuance review until their next peer review is completed. At that time, (4) will apply.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule to outline the peer review enrollment requirements and process. The requirements mirror the previous PMP in determining who must participate in a board-approved peer review program. If a practice unit participated in the PMP, it will participate in a board-approved peer review program, unless its scope of work has changed.

Because the board-approved peer review programs will not be board-administered, the practice unit will have to provide the board with the name of the

program being utilized by the unit and the results of the most recent peer review. Otherwise, the board would not have access to the information.

The board is establishing a timing requirement for new practice units to enroll in a board-approved peer review program if their scope of work requires a peer review as defined in this rule. Board-approved peer review programs are administered by professional associations and societies. It is important to note that membership in those private organizations is not a requirement to have a board-mandated peer review completed.

The board is proposing (6) to facilitate transition from the board PMP to the board-approved peer review. Currently under PMP, if a practice unit receives a "pass" or "pass with deficiencies" and complies with the conditions imposed by the board, it does not have to submit work product for review under the PMP for three years. If it receives a "fail," it must resubmit the following year. Under the new rules, this schedule would continue as the program transitions from the PMP to peer review and the board will provide the date each practice unit needs to submit under the peer review, based on its PMP requirement.

The board notes that it will maintain oversight of all practice units currently under PMP pre-issuance review, until those practice units have a peer review. After an initial peer review, the peer review submission requirement will apply, depending on the initial peer review outcome.

NEW RULE II PARTICIPATION IN PEER REVIEW (1) Any firm that is dropped from or terminated by a peer review program for any reason shall have 21 days to provide written notice to the board of such termination or drop and to request authorization from the board to enroll in another board-approved peer review program.

(2) In the event a firm is merged, otherwise combined, dissolved, or separated, the peer review program shall determine which firm is considered to be the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(3) A firm choosing to change to another peer review program may do so only if there is not an open active peer review and if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: The board determined it is reasonably necessary to adopt New Rule II and address the requirement for firms to remain under a peer review program. If a firm is dropped from a peer review program, it is essential that the firm timely notifies the board of this fact and that the firm enrolls in another board-approved program to maintain peer review oversight.

If a firm combines with another firm, or separates into multiple firms, the peer review program will determine what reporting status the firm maintains, and the submission schedule that will apply to the newly configured firm, since the peer

review program is the entity best equipped to make that determination based on the current peer review status.

Firms may choose to change board-approved peer review programs as long as they are not in the middle of an ongoing peer review. This would eliminate the possibility of a firm changing peer review programs to avoid adverse findings. The new peer review must be completed according to minimum standards of performing and reporting peer reviews, so that all reviews are conducted using comparable evaluation criteria.

NEW RULE III QUALITY ASSURANCE OVERSIGHT (1) The board will appoint a compliance assurance oversight committee to provide oversight of the administration of approved peer review programs in order to provide reasonable assurance that peer reviews are being conducted and reported on in accordance with the AICPA standards for performing and reporting on peer reviews.

AUTH: 37-50-203, MCA  
IMP: 37-50-203, MCA

REASON: The board is proposing New Rule III to establish a board oversight committee to assist in administering board-approved peer review programs. This oversight committee will ensure consistent application of peer review criteria among the various programs approved by the board. Consistency among the board-approved programs is essential to retain the credibility of the peer review requirement and ensure practice unit compliance with standards is universally enforced.

6. The rules proposed to be repealed are as follows:

24.201.1102 DEFINITIONS found on page 24-22681.

AUTH: 37-50-203, MCA  
IMP: 37-50-203, MCA

REASON: The board is repealing this rule as part of the consolidation of all definitions into ARM 24.201.301. This will allow licensees and consumers to more easily locate the definitions of various terms used throughout the rules, instead of having to search through several locations in the rules.

24.201.1106 STATEMENT BY PERMIT HOLDERS found on page 24-22681.

AUTH: 37-50-203, MCA  
IMP: 37-50-203, MCA

REASON: The board determined it is reasonably necessary to repeal this rule as the board transitions from the PMP to a board-approved peer review since the board will no longer track a firm's level of association with financial statements. This information was previously used by the board to determine whom the board would

contact for participation in the PMP and following the transition, the board will no longer require such information.

The requirement for a permit holder to file reports with the board in compliance with the PMP is being eliminated as unnecessary. The same criteria for required filing under the PMP is being applied to the peer review enrollment, but is being relocated to New Rule I.

24.201.1107 FILING OF REPORTS found on page 24-22682.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: The board determined it is reasonably necessary to eliminate the submission requirements for the PMP, since the board is eliminating the PMP and transitioning to a board-approved peer review requirement.

24.201.1115 PROFESSION MONITORING PROGRAM (PMP) REVIEWS AND ENFORCEMENT found on page 24-22684.

AUTH: 37-1-319, 37-50-203, MCA

IMP: 37-1-312, 37-50-203, MCA

REASON: The board determined it is reasonably necessary to repeal this rule in conjunction with the elimination of PMP and transition to a board-approved peer review. Relevant definitions of the types of review classifications and terminology to comply with current peer review terminology are relocated to ARM 24.201.301.

The follow-up requirement for the PMP is unnecessary, as it will be done by the peer review program. The requirement to comply with the conditions imposed by the peer review program is relocated to ARM 24.201.707. The conditions available to the peer reviewers are established by the individual peer review programs and are part of the program requirements that the board evaluates when determining whether to approve a program.

7. 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 Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to [dlibsdpac@mt.gov](mailto:dlibsdpac@mt.gov), and must be received no later than 5:00 p.m., June 7, 2013.

8. An electronic copy of this Notice of Public Hearing is available through the department and board's web site at [www.publicaccountant.mt.gov](http://www.publicaccountant.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.

9. The board 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 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 Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2323; e-mailed to [dlibsdpac@mt.gov](mailto:dlibsdpac@mt.gov); or made by completing a request form at any rules hearing held by the agency.

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

11. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

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 April 29, 2013