

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT,
ARM 24.101.413 renewal dates and)	ADOPTION, AND REPEAL
requirements, 24.183.301 definition of)	
responsible charge, 24.183.402)	
board meetings, 24.183.404 fee)	
schedule, 24.183.501 approval of)	
schools, 24.183.503 application)	
references, 24.183.509 examination)	
procedures, 24.183.510 grant and)	
issue licenses, 24.183.701 and)	
24.183.801 comity, 24.183.702 and)	
24.183.802 classification of)	
experience, 24.183.1001 form of)	
corner records, 24.183.1101 uniform)	
standards for monumentation,)	
24.183.1107 uniform standards for)	
final subdivision plats, the adoption of)	
NEW RULE I remonumentation and)	
rehabilitation, II architectural services)	
incidental to engineering, III exhibits)	
of land surveying projects, IV)	
unprofessional conduct, and the)	
repeal of 24.183.2201 introduction,)	
24.183.2203 performance of services,)	
24.183.2204 conflicts of interest,)	
24.183.2205 avoidance of improper)	
solicitation, and 24.183.2206)	
issuance of public statements)	

TO: All Concerned Persons

1. On June 26, 2014, the Department of Labor and Industry (department) and the Board of Professional Engineers and Professional Land Surveyors (board) published MAR Notice No. 24-183-41 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1339 of the 2014 Montana Administrative Register, Issue No. 12.

2. On July 17, 2014, 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 July 25, 2014, 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: One commenter stated that the rules notice was too large and sweeping and that the timing of the notice, at the height of the surveying and engineering season, was inappropriate. The commenter asked the board to re-notice the changes in the winter in several phases.

RESPONSE 1: The board notes that because publication of each rule notice costs the board, it is expensive and wasteful to break a large notice into smaller notices. The board has no control of the timing of rules notices as they are published by the Secretary of State according to their set schedule.

COMMENT 2: One commenter approved all the proposed rule changes.

RESPONSE 2: The board appreciates all comments made during rulemaking.

COMMENT 3: Two commenters questioned the notification of the public in this rulemaking project and suggested the board provide an actual link to the MAR notice in the e-mail.

RESPONSE 3: The board complied with all the public notice requirements in the Montana Administrative Procedure Act when filing and publishing MAR Notice No. 24-183-41.

COMMENT 4: Four commenters opposed the new renewal process for engineer interns (EIs). One commenter opposed the \$25 renewal fee in ARM 24.101.413, because the fee and the required biennial renewal paperwork would be a burden on EIs. Another commenter stated that the certificate should not expire and renewal should be the EI's choice. Two commenters stated that the EI certificates have moved from being indefinite to six years, and now to biennial, and wanted grandfathering of those EIs. Commenters asserted that the required renewal workload was onerous on both staff and EIs, and renewal dates seemed arbitrary.

RESPONSE 4: The board concluded that \$25 (\$12.50 per annum) is not unreasonable for the privilege of being certified as an EI. EIs are beginning their professional careers and should be aware of the requirements for licensing and renewal, and should observe the obligations of professional practice early in their careers. The board is also aware that some EIs may need to renew for longer than the previous six-year time period allowed. The changes will maintain the professional certification for EIs and allow them the flexibility to work at an individual pace towards a full professional engineer (PE) license, while maintaining ties with the licensing board.

COMMENT 5: One commenter strongly agreed with the new definition of "responsible charge" as added to ARM 24.183.301.

RESPONSE 5: The board appreciates all comments made during rulemaking.

COMMENT 6: One commenter suggested the board insert "professional" in each place in ARM 24.183.301 where the word "engineer" or "land surveyor" stands alone, asserting it would add consistency.

RESPONSE 6: The board agrees with the comment and is amending ARM 24.183.301(1) and (2) as suggested.

Comments 7-9 relate to ARM 24.183.404

COMMENT 7: Two commenters complained there needed to be more information about the renewal process and that e-mails should be sent to EIs explaining the renewal. Both wanted the renewal process to be as easy as possible.

RESPONSE 7: The department strives to make renewal easy and efficient. Online renewals now comprise the majority of renewals department-wide and notice is always sent prior to renewals.

COMMENT 8: One commenter noted that "\$" is being removed from (3)(g)(i), but not from (3)(a), and that it should be removed for consistency.

RESPONSE 8: The board appreciates this comment and will make the suggested change in a future rule notice as the requested change appears in a subsection that was not noticed for public comment.

COMMENT 9: One commenter noted that a professional engineer license by comity remains at \$150, but a professional land surveyor license by comity is \$200, with an additional \$100 for the Montana-specific examination, for a total of \$300. The commenter stated that it is discriminatory because it costs twice as much to become a licensed professional land surveyor by comity and asked the board to reduce the license by comity fee to \$150.

RESPONSE 9: The new fees are commensurate with cost. A land surveyor application by comity requires verification and review of other state licenses, including possible discipline, and thus, requires more staff time to process.

COMMENT 10: Two commenters noted that the land surveying curriculum should require the historical six credits of English, not seven, so that the sum equals the 60 credits required. One of the commenters also asked that the current approved curriculum remain as adopted (with the change of one credit in English) so that the Associate of Applied Science (AAS) benchmarks remain in place.

RESPONSE 10: The board agrees with the comment and is amending ARM 24.183.501 as suggested.

COMMENT 11: One commenter noted the teaching of land surveying courses is the practice of land surveying, and suggested that, logically, the instructors of such courses should be licensed professional land surveyors, and the work that is supervised should be under the supervision of a licensed professional land surveyor.

RESPONSE 11: The board agrees that surveying courses should be taught by, and/or supervised by, a licensed professional land surveyor. The board is amending ARM 24.183.501(2) accordingly.

COMMENT 12: Two commenters argued that 37-1-141, MCA, does not include certificates, only licenses, and stated that clear descriptions of the terms "lapse, expiration, and termination" should be added to the rules. The commenters supported renewals, but not a two-year certificate change in ARM 24.183.510.

RESPONSE 12: The board points out that 37-1-130(8), MCA, specifically provides that "license" includes the term "certificate," and that the statute also includes definitions of lapse, expiration, and termination.

COMMENT 13: One commenter asked that both ARM 24.183.701 and 24.183.801 have the same wording and grammar so that engineer and land surveyor rules match syntactically and grammatically in ARM 24.183.701(1) and 24.183.801(1), 24.183.701(2) and 24.183.801(2), 24.183.701(3)(a) and 24.183.801(1)(a), and 24.183.701(3)(c) and 24.183.801(1)(c). This comment notes the sections did match until the rule changes two years ago.

RESPONSE 13: The board appreciates the detailed analysis of the structural grammar and wording of these subsections, and agrees to amend ARM 24.183.701 and 24.183.801 as suggested.

Comments 14-16 relate to ARM 24.183.702 and 24.183.802

COMMENT 14: One commenter asked that the board amend the titles of ARM 24.183.702 and 24.183.802 for consistency.

RESPONSE 14: The board agrees and is amending the title of ARM 24.183.802.

COMMENT 15: One commenter objected to the word "programs" in (1)(b)(viii), stating that it should be "curriculum."

RESPONSE 15: The board uses the word "programs" because ABET approves engineering programs, not curricula, and the board's approved programs are ABET-approved.

COMMENT 16: One commenter asked the board to amend ARM 24.183.802(2) and 24.183.802(4) to parallel the language of ARM 24.183.702(3) regarding experience gained under supervision of a licensed professional.

RESPONSE 16: The board agrees and is amending the sections as suggested.

COMMENT 17: Three commenters objected to the board striking (2) from ARM 24.183.1001, stating the section provides land surveyors with the detailed information necessary for filing a corner record. One commenter argued that online forms are just instructions and if the rule is amended, an improperly drafted corner record will only be a failure to follow instructions for which a land surveyor could not be disciplined. A commenter noted that the corner record form is missing the information currently contained in (2)(b)(iii), (c)(i), and (e)(i), and asked the board to either retain (2) or revise the instructions attached to the corner record forms by adding "refer to the instructions attached to the forms for the information to be included" to ensure that corner records are properly recorded.

RESPONSE 17: The board agrees with the comment and is amending the rule to retain (2).

COMMENT 18: Two commenters supported the addition of (1)(g) to ARM 24.183.1101, but requested the board strike "that is on, is a part of," arguing that a monument is not a part of a property line.

RESPONSE 18: The board notes that this language reflects exactly the statutory language of 70-22-103(6), MCA, and is amending this rule exactly as proposed.

COMMENT 19: One commenter said that the requirement in (1)(c)(i) of NEW RULE I for references to conform to the current BLM manual, is impractical and should be stricken. The commenter further asked that multiple reference monuments be encouraged and monuments in roadways discouraged.

RESPONSE 19: The board agrees and is amending (1)(c)(i) accordingly.

COMMENT 20: One commenter suggested the board make grammatical corrections in (1)(b) of NEW RULE IV, specifically striking the comma after "deception," replacing the semicolon after "licensure" with a period, and changing the "a" in the next clause to an upper case "A" so it becomes a sentence.

RESPONSE 20: The board agrees and is replacing the semicolon with a comma and the comma after "licensure" with a period. However, formatting rules of the Secretary of State require the separation of all word strings by commas, even before an "and."

4. The department has amended ARM 24.101.413 exactly as proposed.

5. The board has amended ARM 24.183.402, 24.183.404, 24.183.503, 24.183.509, 24.183.510, 24.183.702, 24.183.1101, and 24.183.1107 exactly as proposed.

6. The board has adopted NEW RULES II (24.183.410) and III (24.183.505) exactly as proposed.

7. The board has repealed ARM 24.183.2201, 24.183.2203, 24.183.2204, 24.183.2205, and 24.183.2206 exactly as proposed.

8. The board has amended ARM 24.183.301, 24.183.501, 24.183.701, 24.183.801, 24.183.802, and 24.183.1001 with the following changes, stricken matter interlined, new matter underlined:

24.183.301 STANDARDS OF RESPONSIBLE CHARGE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

(1) The term "responsible charge" directly relates to the degree of control an a professional engineer is required to maintain while exercising independent control and direction of engineering work, and to the decisions which can be made only under the direct supervision of a professional engineer.

(a) through (b)(i) remain as proposed.

(2) The term "responsible charge" means that a professional land surveyor is required to maintain independent control over all facets of land surveying work.

(a) through (c) remain as proposed.

24.183.501 BOARD-APPROVED CURRICULA (1) remains as proposed.

(2) The board-approved curriculum for land surveying applicants shall contain a minimum of 60 semester credits and must include ~~seven~~ six credits in English, seven credits in math, six credits in drafting, nine credits in basic science, five credits in humanities and social sciences or approved Associate of Applied Science benchmarks, 11 credits in surveying techniques, and 16 credits in principles and practice of land surveying courses taught by a licensed professional land surveyor. One academic quarter's credit shall be credited at two-thirds semester credit.

(3) remains as proposed.

24.183.701 COMITY CONSIDERATION FOR PROFESSIONAL ENGINEERS

(1) The board may, upon receipt of an application and payment of proper fee, issue a license as a professional engineer to any person who submits verification of licensure from any state or territory or possession of the United States. Applicants shall submit to the department, either electronically or by mail, the department-approved application form with the appropriate fee, and a completed engineer laws and rules questionnaire.

(2) and (3) remain as proposed.

24.183.801 COMITY CONSIDERATION FOR PROFESSIONAL LAND SURVEYORS

(1) The board may, upon receipt of an application and payment of proper fee, issue a license as a professional land surveyor to any person who submits verification of licensure from any state or territory or possession of the United States. ~~All applicants~~ Applicants shall ~~complete and~~ submit, either electronically or by mail, to the department, a department-approved application form

with the appropriate fee, and a completed land surveyors laws and rules questionnaire, and the following:

- (a) ~~college or university~~ educational transcripts, when applicable;
 - (b) remains as proposed.
 - (c) verification of licensure from ~~the state of original licensure, including all states and~~ verification of passing both the Fundamentals of Land Surveying examination and the Principles and the Practices of Land Surveying examination.
- (2) Applicants ~~who have~~ with a current National Council of Examiners for Engineering and Surveying (NCEES) record may arrange for NCEES to deliver their most current record directly to the board office.
- (3) remains as proposed.

24.183.802 CLASSIFICATION OF EXPERIENCE FOR LAND SURVEYING APPLICANTS EXPERIENCE (1) remains as proposed.

- (2) Non-progressive experience is experience that must be gained under the supervision of a licensed professional land surveyor and may include:
- (a) through (3) remain as proposed.
 - (4) Progressive experience is experience that must be gained under the supervision of a licensed professional land surveyor and may include one or more of the following:
 - (a) through (6) remain as proposed.

24.183.1001 FORM OF CORNER RECORDS - INFORMATION TO BE INCLUDED (1) remains as proposed.

- (2) The information to be included in a corner record is as follows:
- (a) A description or quotation of those portions of the original or subsequent record which were used in evaluating the corner position.
 - (i) The original record for corners of government surveys will usually be the general land office field notes.
 - (ii) The original record for nongovernment surveys will usually be subdivision plats, certificates of survey, or other surveys of record.
 - (iii) Subsequent record can come from sources such as previously filed corner records, maps and plats, private and public records, etc. Some of the subsequent record, even though not in the public record, but known to have validity by the surveyor, may be quoted and appropriately noted. The record data help support the reestablished corner position because they clearly show on what history the surveyor based the corner position. In some cases, however, the record may be unknown or not pertinent. A statement to that effect, if applicable, must appear on the corner record.
 - (b) A description of the original or subsequent record evidence found that locates the corner position.
 - (i) If portions of the found evidence cannot be reconciled with the record, then the disregarded record must be noted, and if possible, an opinion as to its cause narrated.
 - (ii) If no physical evidence of the original or subsequent monuments and accessories can be found, then the method used to reestablish the lost or obliterated

corner (single proportion, fence intersection, parcel evidence, terrain calls, centerline of road, etc.) shall be indicated.

(iii) Measurements used to establish proportioned positions must be shown on the corner recordation form or on a filed certificate of survey or subdivision plat referenced on the recordation form.

(c) A listing of all details about the corner and its location which will help exclusively identify the corner position, including size and type of monument and accessory, how marked if not shown in sketch, and distinguishing topographic calls which help locate the corner. In many cases, instructions on how to find the corner should be included.

(i) For public land survey system corners requiring recordation, sufficient information must be shown on the form to enable subsequent surveyors to verify the corner position identified on the form, and to reestablish the corner position if the monument is obliterated. Ideally, the references will be to at least two identifiable accessories or surveyed dimensions to two survey monuments.

(ii) References or ties to other corners are optional and may be drawn on the face or back of the corner record form, or references to certificate of survey may be made. Separate drawings may be attached to the corner form. If state plane coordinate values for the corner position are shown, then the control upon which they are based should be indicated.

(d) A sketch of the corner to show how a found or set corner is marked or show topography or accessory monuments found or set and their relation to the corner. There is no stipulated format; the sketch could be transcribed field note entries. For corners which were first shown on subdivision plats or on recorded or filed surveys, enough information must be shown so that the corner can be identified.

(e) The surveyor who performed or directed the field work which is depicted on the corner record shall sign and affix the licensee's seal in the certification.

(i) The affixing of the licensee's seal constitutes a certification by the surveyor that the corner record has been prepared in conformance with the Corner Recordation Act of Montana and the rules implementing the Act.

(ii) The employer blank is optional but useful in tracking down original field note data or adjacent record if, in the future, questions arise about the corner. The name and signature of the ground party chief is also optional information on the record form.

(f) For public land survey system corners, the cross index at the bottom of the page must be completed by the surveyor. Only the single township and range index where the corner is filed is to be completed.

(i) For corner records to be filed under the survey of record index, the index information must be filled in as completely as possible by the surveyor and made clear the name and number(s) of the recorded survey and the lot or parcel designation. The corner location diagram must have the pertinent section number filled in and a closed circle indicating the appropriate corner position in the section. This is intended to be an aid in searching the record once it has been filed.

9. The board has adopted NEW RULES I (24.183.1002) and IV (24.183.2207) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I REMONUMENTATION AND REHABILITATION OF PUBLIC LAND SURVEY CORNERS AND MONUMENTS (1) through (1)(c) remain as proposed.

(i) unless prohibitive, placement of a reference or accessory conforming to material described in the most current edition of the U.S. Bureau of Land Management Manual of Surveying Instructions;

(ii) through (d) remain as proposed.

NEW RULE IV UNPROFESSIONAL CONDUCT (1) and (1)(a) remain as proposed.

(b) fraud, misrepresentation, deception, or concealment of a material fact in applying for or securing a license or license renewal; ~~or in taking an examination required for licensure, as~~ As used herein, "material" means any false or misleading statement or information;

(c) through (t) remain as proposed.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DAVID ELIAS, ENGINEER SURVEYOR,
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 November 10, 2014