

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

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| In the matter of the amendment of |) | NOTICE OF PUBLIC HEARING ON |
| ARM 6.2.101, 6.2.120, and 6.2.121 |) | PROPOSED AMENDMENT, |
| pertaining to agency rulemaking and |) | REPEAL, AND TRANSFER AND |
| contested case procedures; the |) | AMENDMENT |
| repeal of ARM 6.2.103, 6.2.104, |) | |
| 6.2.107, 6.2.123, and 6.2.124 |) | |
| pertaining to agency contested case |) | |
| procedures; and the transfer and |) | |
| amendment of ARM 6.6.4401 through |) | |
| 6.6.4404 pertaining to agency debt |) | |
| collection practices |) | |

TO: All Concerned Persons

1. On August 24, 2017 at 9:00 a.m., the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), will hold a public hearing in the second floor conference room, at the Office of the Montana State Auditor, 840 Helena Ave., Helena, Montana, to consider the proposed amendment, repeal, and transfer and amendment of the above-stated rules.

2. The CSI 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 the CSI no later than 5:00 p.m. on August 14, 2017, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

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

6.2.101 INCORPORATION OF ATTORNEY GENERAL'S MODEL PROCEDURAL RULES BY THE INSURANCE DEPARTMENT (1) The insurance department ~~of the state auditor's office~~ has adopted the Attorney General's Model Procedural Rules by reference to such rules as stated in ARM 1.3.101 through ~~1.3.234~~ 1.3.233 with the exceptions enumerated in this chapter.

(2) The insurance department has adopted the Secretary of State's Model Organizational and Procedural Rules by reference to such rules as stated in ARM 1.3.301 through 1.3.313.

AUTH: 33-1-313, MCA
IMP: 2-4-201, MCA

REASON: The department proposes to amend this rule because it refers to a rule that does not exist. Specifically, the rule incorporates by reference ARM 1.3.234 of the Attorney General's Model Procedural Rules. The amendment corrects this reference to a nonexistent rule. The amendment also eliminates an unnecessary reference to the State Auditor's Office, as the agency is already adequately identified as the Insurance Department.

The amendment also adopts by reference the Secretary of State's Model Organizational and Procedural rules. The majority of these rules were previously located in ARM Title 1, chapter 3, subchapter 2, and so had been adopted under the prior iteration of this rule; this amendment accounts for those rules' subsequent transfer to subchapter 3. It also adopts by amendment two additional model rules adopted under subchapter 3 following the transfer.

6.2.120 INCORPORATION OF ATTORNEY GENERAL'S MODEL PROCEDURAL RULES BY THE SECURITIES DEPARTMENT (1) The securities department of ~~the State Auditor's Office~~ has adopted the Attorney General's Model Procedural Rules by reference to such rules as stated in ARM 1.3.101 through ~~1.3.234~~ 1.3.233 with the exceptions enumerated in this chapter.

(2) The securities department has adopted the Secretary of State's Model Organizational and Procedural Rules by reference to such rules as stated in ARM 1.3.301 through 1.3.313.

AUTH: 30-10-107, MCA

IMP: 2-4-201, 30-10-107, MCA

REASON: The CSI proposes to amend this rule because it refers to a rule that does not exist. Specifically, the rule incorporates by reference ARM 1.3.234 of the Attorney General's Model Procedural Rules. The amendment corrects this reference to a nonexistent rule. The amendment also eliminates an unnecessary reference to the State Auditor's Office, as the agency is already adequately identified as the Securities Department.

The amendment also adopts by reference the Secretary of State's Model Organizational and Procedural rules. The majority of these rules were previously located in ARM Title 1, chapter 3, subchapter 2, and so had been adopted under the prior iteration of this rule; this amendment accounts for those rules' subsequent transfer to subchapter 3. It also adopts by amendment two additional model rules adopted under subchapter 3 following the transfer. Finally, the amendment adds 2-4-201, MCA as an implementing statute as it is this statute requiring the agency to adopt rules of practice.

6.2.121 ORDERS (1) All orders issued pursuant to the Securities Act of Montana shall be signed by the Securities Commissioner or a designee of the Securities Commissioner. ~~In the absence of the Securities Commissioner, the Deputy Securities Commissioner shall sign such orders.~~

AUTH: 30-10-107, MCA
IMP: 30-10-107, MCA

REASON: The CSI proposes to amend this rule to allow for greater flexibility in the signing of orders and for consistency with statute. At times, neither the Securities Commissioner nor the Deputy Securities Commissioner is available to sign orders, some of which are time sensitive. However, other senior staff authorized by the Securities Commissioner may be available to fulfill this duty. Additionally, the rule currently conflicts with 2-15-602, MCA, which expressly authorizes the Deputy State Auditor to perform the duties of the Securities Commissioner in his or her absence. Therefore, the proposed amendment is also necessary in order to conform the rule to existing law.

4. The CSI proposes to repeal the following rules:

6.2.103 RULEMAKING, NOTICE on page 6-9 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA
IMP: 2-4-201, MCA

REASON: The CSI proposes to repeal this rule because it is no longer necessary to the operation of the agency. The CSI is simultaneously proposing to adopt the Secretary of State Model Organizational and Procedural Rules. These include ARM 1.3.309, addressing rulemaking proposal notices. That rule, and 2-4-302, MCA, adequately set forth the circumstances in which a public hearing is required, and duplicate much of the substance of ARM 6.2.103. As a result, ARM 6.2.103 will be rendered superfluous in the event the proposal to incorporate by reference ARM 1.3.309 is adopted.

6.2.104 CONTESTED CASES, NOTICE OF OPPORTUNITY TO BE HEARD on page 6-9 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA
IMP: 2-4-201, MCA

REASON: The CSI proposes to repeal this rule because it is no longer necessary to the operation of the agency. In significant part, the rule substantively restates portions of 2-4-102 and 2-4-601, MCA, as well as ARM 1.3.212, which the CSI has adopted by reference through ARM 6.2.101 and 6.2.120. The remaining portion, pertaining to timing of a hearing under 33-1-701, MCA, is inaccurate as the statute was updated during the 2015 legislative session, and now follows the timing requirements under MAPA. Therefore, the rule is superfluous and no longer accurately reflects Montana law.

6.2.107 CONTESTED CASES, FINAL ORDERS on page 6-10 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA
IMP: 2-4-201, MCA

REASON: The CSI proposes to repeal this rule because it is no longer necessary to the operation of the agency. The rule sets forth required contents of a final decision or order adverse to a party in a contested case. However, 2-4-623, MCA, already provides extensive guidance on the required contents of such an order; the rule restates requirements in the statute, and in one instance contradicts it. Additionally, ARM 1.3.224, which the department has adopted by reference through ARM 6.2.101 and 6.2.120, includes a sample form final order providing the agency with sufficient guidance. Finally, (1)(c) through (e) contain significant grammatical and syntactical errors, do not have logical placement within the subsection in which they are located, and unnecessarily define basic legal principles.

6.2.123 HEARINGS -- FINAL ORDER on page 6-15 of the Administrative Rules of Montana.

AUTH: 30-10-107, MCA
IMP: 30-10-201, 30-10-207, 30-10-305, MCA

REASON: The CSI proposes to repeal this rule as it unnecessarily restricts the authority of the hearing examiner. The rule establishes fixed deadlines for certain briefing schedules and the issuance of a final order in matters involving cease and desist orders and licensing actions. While the apparent intent of the rule is to provide for an expedited process in these cases, by establishing immovable deadlines it hampers the ability of the hearing examiner to respond to the circumstances of the specific case. For example, in some cases the parties may agree that the matter should be resolved more quickly, or conversely that additional time is needed to fully brief the matter. Additionally, the rule potentially allows insufficient time for the parties to file exceptions and present briefs and oral argument to the final decision maker pursuant to 2-4-621, MCA. The repeal will allow the hearing examiner to regulate the course of the proceedings as contemplated under 2-4-611, MCA.

6.2.124 JUDICIAL REVIEW on page 6-16 of the Administrative Rules of Montana.

AUTH: 30-10-107, MCA
IMP: 30-10-308, MCA

REASON: The CSI proposes to repeal this rule because it both restates and conflicts with MAPA. Section 30-10-308, MCA and this rule both provide that appeals of final orders under the Securities Act of Montana are subject to Title 2, chapter 4, part 7 of MAPA. Section 2-4-702, MCA advises of the procedure for obtaining judicial review in greater detail than this rule. Additionally, the rule conflicts

with 2-4-702, MCA in that the two provide for different timeframes within which an appeal may be taken.

5. The CSI proposes to transfer and amend the following rules:

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|------------------------------|------------|--------------------------|
| <u>OLD</u> | <u>NEW</u> | |
| 6.6.4401 | 6.2.201 | <u>PURPOSE AND SCOPE</u> |
| (1) and (2) remain the same. | | |

AUTH: 30-10-107, 33-1-313, MCA
IMP: 17-4-110 ~~17-3-110~~, MCA

REASON: The CSI proposes to transfer this rule in order to locate it in a chapter applicable to both the Securities and Insurance Departments. The rule pertains to the debt collection practices applicable to both departments, but is currently located solely in the Insurance Department chapter. The amendment is necessary to correctly reference the implemented statute; it appears that a typographic error resulted in an inaccurate statutory citation when the rule was initially adopted.

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|----------------------------------|------------|--------------------|
| <u>OLD</u> | <u>NEW</u> | |
| 6.6.4402 | 6.2.202 | <u>DEFINITIONS</u> |
| (1) through (4) remain the same. | | |

AUTH: 30-10-107, 33-1-313, MCA
IMP: 17-4-110 ~~17-3-110~~, MCA

REASON: The CSI proposes to transfer this rule for the reasons stated above regarding ARM 6.6.4401.

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|------------------------------|------------|---|
| <u>OLD</u> | <u>NEW</u> | |
| 6.6.4403 | 6.2.203 | <u>REFERRAL FOR RECOVERY AND OFFSET</u> |
| (1) and (2) remain the same. | | |

AUTH: 30-10-107, 33-1-313, MCA
IMP: 17-4-110 ~~17-3-110~~, MCA

REASON: The CSI proposes to transfer this rule for the reasons stated above regarding ARM 6.6.4401.

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|----------------------------------|------------|---------------------------|
| <u>OLD</u> | <u>NEW</u> | |
| 6.6.4404 | 6.2.204 | <u>UNCOLLECTIBLE DEBT</u> |
| (1) through (3) remain the same. | | |

AUTH: 30-10-107, 33-1-313, MCA
IMP: 17-4-110 ~~17-3-110~~, MCA

REASON: The CSI proposes to transfer this rule for the reasons stated above regarding ARM 6.6.4401.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Michael A. Kakuk, Attorney, Office of the Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-0385; fax (406) 444-3497; or e-mail MKakuk@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

7. Michael A. Kakuk, Attorney, has been designated to preside over and conduct this hearing.

8. The CSI 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 may sign up by clicking on the blue button on the CSI's website at: <http://csimt.gov/laws-rules/> to specify 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. Request may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

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

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

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Kris Hansen
Kris Hansen
Chief Legal Counsel

Certified to the Secretary of State July 24, 2017.