

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 6.6.1601, 6.6.1605, 6.6.1607,) PROPOSED AMENDMENT AND
6.6.1608, 6.6.1610, 6.6.1611, and) REPEAL
6.6.1613 and the repeal of 6.6.1602,)
6.6.1603, 6.6.1604, 6.6.1606,)
6.6.1609, 6.6.1612, 6.6.1614,)
6.6.1615, and 6.6.1616, relating to)
licensing of public adjusters)

TO: All Concerned Persons

1. On February 15, 2018, at 9:00 a.m., the Commissioner of Securities and Insurance, Montana State Auditor (CSI), will hold a public hearing in basement floor conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, to consider the proposed amendment and repeal 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 February 6, 2018, 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:

6.6.1601 PURPOSE (1) remains the same.

AUTH: 33-1-313, 33-17-102, MCA
IMP: 33-17-102(1)(c), 33-17-301, MCA

REASON: The CSI proposes to amend this rule to correct the citation to the implementing statute. Subsection (1)(c) of the statute no longer exists, but 33-17-102, MCA otherwise continues to be the correct implementing statute. The proposal also inserts an additional implementing statute, which more directly governs adjuster (including public adjuster) qualifications and examination.

6.6.1605 SEPARATE LICENSES (1) Separate licenses ~~shall be~~ are required for independent adjusters and public adjusters. No person ~~shall~~ may be concurrently licensed both as an independent adjuster and a public adjuster.

AUTH: 33-1-313, 33-17-102, MCA

IMP: 33-17-102(4)(e), 33-17-303, MCA

REASON: The CSI proposes to amend this rule to conform its language to accepted rule drafting formulations; these changes are non-substantive. Additionally, the proposal amends the implementation statute 33-17-102(1)(c), MCA reference for the reasons stated above under ARM 6.6.1601. Finally, the proposal also inserts an additional implementing statute, which more directly addresses the duty of loyalty prohibiting dual adjuster licensure.

6.6.1607 SCOPE OF EXAMINATION (1) remains the same.

~~(2) The commissioner shall prepare and make available to applicants a manual of instructions specifying in general terms the subjects which may be covered in any examination for such a license.~~

AUTH: 33-1-313, 33-17-102, MCA

IMP: 33-17-102(4)(e), 33-17-301, MCA

REASON: The CSI proposes to amend this rule to correct the citation to the implementing statute for the reasons stated above under ARM 6.6.1601. The proposal also inserts a new implementing statute; this amendment is necessary because 33-17-301, MCA sets forth the examination requirement, and this rule addresses the scope of such examinations. Finally, the proposal strikes (2). The CSI currently provides applicants an outline of the examination, but otherwise does not offer pre-licensing education. The rule unnecessarily prescribes a single method of preparing applicants for examination, when other methods may be more efficient and advantageous to applicants.

6.6.1608 EXAMINATIONS--FORM--TIME (1) ~~The answers of the applicant to any such examination shall be written by the applicant under the supervision of the division of insurance. Any such written examination may be supplemented by oral examination at the commissioner's discretion.~~

~~(2) The examination shall be given at such times and places within this state as the commissioner deems necessary to serve the convenience of both the commissioner and applicants.~~

(3) remains the same but is renumbered (2).

AUTH: 33-1-313, 33-17-102, MCA

IMP: 33-17-102(4)(e), 33-17-301, MCA

REASON: The CSI proposes to amend this rule because it no longer reflects the realities of examination of regulated individuals. Examinations are now administered electronically by a third-party testing firm at designated testing sites. The CSI also proposes to amend the implementing statutes for the reasons stated above under ARM 6.6.1607.

6.6.1610 THE COMMISSIONER SHALL COLLECT IN ADVANCE THE FEES FOR A PUBLIC ADJUSTER'S LICENSE (1) The commissioner shall collect in advance the fees as for an adjuster's license listed in 33-2-708, MCA.

AUTH: 33-1-313, 33-17-301, MCA
IMP: 33-2-708, MCA

REASON: The CSI proposes to amend this rule to strike superfluous language inadvertently included in the previous iteration of the rule. This change does not affect the meaning of the rule.

6.6.1611 PUBLIC ADJUSTER'S BOND (1) Prior to the issuance of a license as a public adjuster, the applicant ~~therefor~~ shall file with the commissioner a surety bond in favor of the people of Montana in the amount of \$5,000, executed by a surety company authorized to do business in the state ~~in the amount of \$5,000~~. ~~The total aggregate liability on the bond may be limited to the payment of \$5,000.~~ The bond shall be conditioned on the accounting of the adjuster to any insured whose claim ~~he~~ the adjuster is handling for moneys or any other settlement in connection with the claim.

(2) remains the same.

AUTH: 33-1-313, 33-17-102, MCA
IMP: 33-17-102(4)(e), 33-17-302, MCA

REASON: The CSI proposes to amend this rule to correct the citation to the implementing statute 33-17-102, MCA for the reasons stated above under ARM 6.6.1601. The proposal also inserts an additional implementing statute, which more directly governs adjuster (including public adjuster) qualifications and examination. Also, the proposal adds a second implementing statute addressing public adjuster bonding. Finally, the proposal amends the text to make it more readable, strike redundant language and render the rule gender neutral.

6.6.1613 POWERS CONFERRED BY THE PUBLIC ADJUSTER'S LICENSE
(1) ~~A public adjuster has authority under his license only to investigate and report to his principal.~~ Public adjusters shall adjust first party physical damage claims only.

AUTH: 33-1-313, 33-17-102, MCA
IMP: 33-17-102(4)(e), MCA

REASON: The CSI proposes to amend this rule because it conflicts with the powers conferred upon a public adjuster by statute. Specifically, 33-17-102(1)(a), MCA states that an adjuster (including a public adjuster) "investigates and negotiates the settlement of claims." As a result, the language of the rule unnecessarily restricts the abilities of public adjusters. Additionally, the CSI proposes to correct the citation to the implementing statute for the reasons stated above under ARM 6.6.1601.

4. The CSI proposes to repeal the following rules:

6.6.1602 DEFINITIONS

AUTH: 33-1-313, 33-17-102, MCA
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it is superfluous. Specifically, the rule provides a definition of "public adjuster," when one is already codified in 33-17-102, MCA. Additionally, the restriction of public adjuster activity to first-party physical damage claims is also stated in ARM 6.6.1613.

6.6.1603 LICENSE REQUIRED -- PENALTY

AUTH: 33-1-313, 33-17-102, MCA
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because the rule substantively restates 33-17-1004, MCA, regarding the prohibition on unlicensed activity.

6.6.1604 QUALIFICATIONS FOR A PUBLIC ADJUSTER'S LICENSE

AUTH: 33-1-313, 33-17-102, MCA
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it essentially restates 33-17-301, MCA, and ARM 6.6.1611. Additionally, the rule refers to an examination requirement in ARM 6.6.1609; the applicable examination requirement is actually found in 33-17-301(2), MCA.

6.6.1606 EXAMINATION FOR PUBLIC ADJUSTER'S LICENSE

AUTH: 33-1-313, 33-17-102, MCA
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it restates the examination requirement of 33-17-301, MCA. Additionally, the rule cites ARM 6.6.1616, which this proposal would repeal if adopted.

6.6.1609 THE COMMISSIONER SHALL PRESCRIBE THE FORM OF THE ADJUSTER'S LICENSE

AUTH: 33-1-313, 33-17-102, MCA
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it is unnecessary to the regulation of public adjusters. The first sentence references information that must

be included in a license document, but that information is no longer contained in 33-17-301, MCA. Additionally, as issuer of the public adjuster license pursuant to 33-17-301(1), MCA, the CSI already has the ability to ensure the licensing document makes clear the person is licensed as a public adjuster.

6.6.1612 PLACE OF BUSINESS

AUTH: 33-1-313, 33-17-102, MCA
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it restates the requirements of 33-1-301, MCA.

6.6.1614 DENIAL, SUSPENSION OR REVOCATION OF LICENSE

AUTH: 33-1-313, 33-17-102, MCA
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it restates the CSI's authority under 33-17-1001, MCA.

6.6.1615 PROCEDURE FOR REFUSAL, SUSPENSION OR REVOCATION

AUTH: 33-1-313, 33-17-102, MCA
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it restates the procedural requirements of statutes applicable to licensure actions.

6.6.1616 NONRESIDENT PUBLIC ADJUSTERS

AUTH: 33-1-313, 33-17-102, MCA
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it no longer reflects the licensing requirements applicable to nonresident public adjusters. For example, 33-1-301, MCA, provides for licensure even if the applicant's resident state does not license public adjusters. The statute already provides an adequate framework for licensure of nonresident public adjusters.

5. 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 Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-5223; fax (406) 444-3499; or e-mail MKakuk@mt.gov, and must be received no later than 5:00 p.m., February 23, 2018.

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

7. 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.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will 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 on January 16, 2018.