



July 1, 2022

Senator Kenneth Bogner  
Economic Affairs Interim Committee  
PO Box 201706  
Helena, MT 59620  
(via interoffice mail)

Re: MAR Notice Number 24-2-390

Dear Senator Bogner:

The Department of Labor & Industry is in receipt of the Economic Affairs Interim Committee's formal objection to MAR Notice Number 24-2-390, pertaining to public participation.

The letter states objection pursuant to Mont. Code Ann. § 2-4-406 "because the rules do not go far enough to ensure that the department receive public comment." It goes on: "Put simply, the adopted rules should provide more avenues for which the public may provide public comment and provide more definitive procedures that would require agency action." DLI is committed to receiving public comment in any form; however, DLI respectfully disagrees that the rule was adopted in violation of Mont. Code Ann. § 2-4-305(5) or (6) or that it violates its authorizing or implementing statute.

As further set forth here, DLI does not believe any violation of Mont. Code Ann. § 2-4-305(5) or (6) exists and respectfully requests the objection be withdrawn.

### **I. Legal background for the rule**

DLI is required to adopt public participation rules by statute:

(1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

Mont. Code Ann. § 2-3-103. In short, the statute requires “coordinated rules” by the agency to ensure public participation. DLI is obligated to adopt these rules; the governor is required to ensure such adoption.

In furtherance of these obligations, Anita Milanovich, General Counsel to Governor Gianforte, reminded agencies of their obligations with regard to public participation rules by memorandum, dated February 18, 2022. Exhibit A. This Committee is additionally aware that the Governor placed a high priority on cleaning up Montana’s administrative rules by identifying “excessive, outdated, and unnecessary regulations. Executive Order Number 1-2021.

With these obligations and priorities in mind, DLI undertook review of its public participation rules. As required by Mont. Code Ann. § 2-3-103(2), this review encompassed not solely the principal department, but also those agencies administratively attached to it.

In completing this review, DLI did not have a public participation rule for the agency as a whole. Further, the vast majority of boards lacked such a rule, or referred to public participation rules of the Department of Commerce—dating back to the time they were attached to that agency, some twenty years prior. DLI therefore undertook rulemaking.

## **II. MAR Notice Number 24-2-390**

Rulemaking of this type, coordinated among multiple agencies with independent rulemaking authority, requires a careful, measured, and structured approach. First, the Department needed to clean its own rules and adopt rules for public participation in its operations. This cleanup was effectuated by MAR Notice Number 24-2-390. Exhibit B.

This rulemaking first updated DLI’s adoption of the Attorney General’s Model Rules. Though the model rules were last amended in 2008, DLI had not yet adopted updated them. The rulemaking additionally repealed several archaic rules—Admin. R. Mont. 24.2.105, 24.11.905, 24.11.906, and 24.29.201—relating to public participation or procedure.

The Attorney General has adopted a model rule for public participation at Admin. R. Mont. 1.3.102. Exhibit C. The Department believed it could provide greater clarity for the public and its own staff so as to ensure the public was able to participate in departmental functions. As such, the Department proposed the adoption of three new rules, now codified at Admin. R. Mont. 24.2.301, 24.2.305, and 24.2.309.



Admin. R. Mont. 24.2.301 (New Rule I) sets forth the general policy objectives for public participation—it is “to be provided for, encouraged, and assisted to the fullest extent practicable, consistent with other requirements of state law, and the rights and requirements of personal privacy. The department invites and encourages public participation to better identify and meet customer needs.” The rule goes on to set forth the principal objectives of public participation—“greater responsiveness ... to public concerns and priorities” and “improved public understanding” of governmental activities.

Admin. R. Mont. 24.2.305 (New Rule II) sets forth guidelines for determinations as to when a matter may be of significant interest to the public. This determination is important to ensure that “[t]he procedures ... ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.” Mont. Code Ann. § 2-3-103(1)(a). At subsection (1), the rule proscribes instances which are always deemed to be significant to the public—e.g. rulemaking and prescriptions of law. Subsection (2) recognizes that not all determinations of interest can be made prospectively; it therefore sets forth four considerations: controversy, number of persons affected, fiscal impact, and known high public interest.

Finally, Admin. R. Mont. 24.2.309 (New Rule III) sets forth the means for notifying the public that an issue may be of significant interest to the public. It also requires providing information so that the public may contact DLI to ensure any views may be considered.

### **III. Public comments received**

This MAR notice was published in conformance with Mont. Code Ann. § 2-4-301, *et seq.* The notice set a date for hearing and also provided for written comment. No members of the public attended the public hearing. Two written comments were received—the Kimmet comment appears to be the one also transmitted to this Committee. Exhibit D. As required by Mont. Code Ann. § 2-4-305, these comments were summarized and responded to in DLI’s adoption notice. Exhibit E.

There are two aspects of the Kimmet comment which might have been intended to be referenced by the Committee’s letter stating DLI’s published rules “do not go far enough.” First, Kimmet asserts that the adopted rule does not provide an opportunity for comment on items which are on the agenda—only for items not on the agenda. Second, Kimmet asserts that rulemaking hearings by boards are problematic because board members do not attend the meeting.

As to the first—that items on the agenda are not mandated by rule to hear public comment—DLI notes that the issue is statutorily addressed, and “[r]ules may not unnecessarily repeat statutory language.” Mont. Code Ann. § 2-4-305(2). Mont. Code Ann. § 2-3-103, quoted in full above, requires that the public be permitted to comment on items not on the agenda but within the jurisdiction of the board; such items may not be subject to board action at that time, but action may not be taken on the issue “unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter.” That is, items may not be acted on without providing for public comment. More specifically, Mont. Code Ann. § 2-3-111(1) requires: “Procedures for assisting public participation must include a method of affording interested

persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.” Once again, statute requires that, items of significant public interest, must provide for public participation. Therefore, the rule need not address the inclusion of public comment on an agenda because statute requires public participation.

As to the second—that board members do not attend rules hearings—though not inherently true (board members are invited, though not required, to attend rule hearings), this does not mean the boards do not hear and consider comments made at the hearings. Mont. Code Ann. § 2-4-302(7) requires a person be designated to preside at a rules hearing. Mont. Code Ann. § 2-4-305 then requires the agency adopting the rule—the board—to “fully consider written and oral submissions respecting the proposed rule.” In short, a hearing officer is designated to preside over the rules hearing, but the board is required to—and does—review and consider all comments made.

#### **IV. Adoption by administratively attached agencies**

Outside the scope of this particular rulemaking, DLI notes that this rulemaking was the first in a series. As noted above, the majority of attached agencies require updates to their public participation rules. These rules must be “coordinated.” Mont. Code Ann. § 2-3-103(2). As a result, the boards attached to DLI are in process of adopting by reference the departmental rules. Incorporation by reference requires the reference to exist at the time of adoption. Mont. Code Ann. § 2-4-307(3). As a result, the first step was for DLI to adopt public participation rules. Second, the boards would adopt the departmental rules by reference.

To ensure rulemaking was completed prior to the adoption bar, Mont. Code Ann. § 2-4-305(11), board adoption was split into two parts. The following twenty boards have proposed adoption by reference of the DLI rule in MAR Notice Number 24-101-395 (Exhibit F), which was presented for Committee consideration at the June 14 meeting:

- Board of Architects and Landscape Architects
- Board of Athletic Trainers
- Board of Barbers and Cosmetologists
- Board of Behavioral Health
- Board of Chiropractors
- Board of Clinical Laboratory Science Practitioners
- State Electrical Board
- Board of Medical Examiners
- Board of Nursing
- Board of Nursing Home Administrators
- Board of Optometry
- Board of Physical Therapy Examiners
- Board of Private Security
- Board of Public Accountants



- Board of Realty Regulation
- Board of Respiratory Care Practitioners
- Board of Veterinary Medicine
- Board of Personnel Appeals
- Human Rights Commission
- Unemployment Insurance Appeals Board

The public hearing on this rulemaking is scheduled for July 7; at this time, no public comment on the notice has been received. The remaining boards administratively attached to DLI are considering the rule for adoption in the new year. This process will ensure compliance with both administrative rulemaking and public participation requirements for DLI and its attached agencies.

## **V. The objection**

The Committee's letter stated objection pursuant to Mont. Code Ann. § 2-4-305(5) and (6). These sections will be addressed in turn.

Mont. Code Ann. § 2-4-305(5) states: "To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law." As set forth, DLI's public participation rule is statutorily required by Mont. Code Ann. § 2-3-103 and provides clarity for the department and public as to matters permitting and requiring public participation. DLI does not believe any violation of this statute exists.

Mont. Code Ann. § 2-4-305(6) states:

Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonable necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for the rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A

statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

DLI does not believe any violation of this statute exists. There is no statutory conflict between the statute implemented and the rules adopted. The rules promulgated are statutorily required and set forth the considerations for public participation in governmental functions. DLI further appropriately set forth the reasonable necessity for adoption of these rules, beyond the mere fact of statutory requirement. Specifically:

The department has not previously promulgated public participation rules pursuant to 2-3-103, MCA. As part of ongoing efforts to ensure compliance and conformity with all applicable laws, the department proposes to adopt three new rules to guide public participation for the department and its administratively attached agencies. The department intends to propose to each of its attached agencies the adoption of these model rules to ensure consistency and uniformity of public participation department wide.

8 Mont. Admin. Reg. 558 (Apr. 29, 2022) (Exhibit B). This statement reasonably states the legal bases for adoption of the new public participation rules as well as the necessity for such adoption.

## **VI. Conclusion**

DLI believes the adopted rules meet all requirements of the Montana Code. DLI is committed to soliciting and receiving public comments regarding all matters of public interest. Moreover, the adopted rules recognize that the public can raise matters of public interest to the department.

For the reasons set forth, the Department of Labor & Industry respectfully requests the Committee withdraw its formal objection. Additionally, DLI will attend the next Committee meeting at which this matter is on the agenda to resolve any questions the members may have. We will also address any concerns raised to our attention prior to that time.

Sincerely,



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Quinlan L. O'Connor  
Chief Legal Counsel

c. Jameson Walker

OFFICE OF THE GOVERNOR  
STATE OF MONTANA

GREG GIANFORTE  
GOVERNOR



KRISTEN JURAS  
LT. GOVERNOR

MEMORANDUM

**TO:** All Chief Legal Counsels  
**FROM:** Anita Y. Milanovich, General Counsel to the Governor *AYM*  
**DATE:** February 18, 2022  
**RE:** Public participation in agency decisions pursuant to MCA § 2-3-103

The right for Montanans to participate in the operation of state agencies is found in Article II, Section 8 of the Montana Constitution, which states:

The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

This right is codified in Montana statutes, which require every agency, as defined in MCA § 2-3-102(1), to “develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public.” MCA § 2-3-103(1). Where an agency fails to comply with this requirement, district courts are authorized to set aside agency decisions when the decisions have prejudiced a person’s rights. MCA § 2-3-114.

Montana’s public participation laws require that the Governor “ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state” adopt rules, setting forth guidelines to facilitate public participation in agency programs and decisions. MCA § 2-3-103(2). To that end, I ask that each of you confirm to me that your respective agencies and attached boards, bureaus and commissions have adopted rules implementing the public participation statutes. In addition, please advise of any changes to these processes in the last year.

If you or your agency needs assistance in crafting appropriate guidelines or rules to conform with Montana’s public participation laws, please let me know. If needed, model rules are available at ARM §§ 1.3.101-102.

Thank you.



BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

In the matter of the amendment of )  
ARM 24.2.101, the adoption of NEW )  
RULES I through III, and the repeal of )  
ARM 24.2.105, 24.11.905, 24.11.906, )  
and 24.29.201 pertaining to public )  
participation and model rules )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT,  
ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On May 25, 2022, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment, adoption, and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/82449420584>, Meeting ID: 824 4942 0584, Passcode: 3610701928; or

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 824 4942 0584, Passcode: 3610701928.

2. The 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 department no later than 5:00 p.m., on May 18, 2022, to advise us of the nature of the accommodation that you need. Please contact Brandon Kirchgasler, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-3359; or Montana Relay Service at 711; or e-mail [bkirchgasler@mt.gov](mailto:bkirchgasler@mt.gov).

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

24.2.101 INCORPORATION OF MODEL RULES (1) The Department of Labor and Industry has adopted the model rules proposed by the attorney general by reference to such rules as stated in ARM ~~1.3.205~~ 1.3.211 through ARM 1.3.233 with the following exceptions:

(a) through (3) remain the same.

AUTH: 2-4-110, 2-4-201, MCA

IMP: 2-4-201, MCA

REASON: Reasonable necessity exists to amend this rule to correct the adoption by reference for rules which are no longer in effect.

4. GENERAL STATEMENT OF REASONABLE NECESSITY: The department has not previously promulgated public participation rules pursuant to 2-





3-103, MCA. As part of ongoing efforts to ensure compliance and conformity with all applicable laws, the department proposes to adopt three new rules to guide public participation for the department and its administratively attached agencies. The department intends to propose to each of its attached agencies the adoption of these model rules to ensure consistency and uniformity of public participation department wide.

5. The proposed new rules are as follows:

NEW RULE I POLICIES AND OBJECTIVES IN PROVIDING PUBLIC PARTICIPATION IN THE OPERATION OF THE DEPARTMENT OF LABOR AND INDUSTRY

(1) Participation of the public is to be provided for, encouraged, and assisted with to the fullest extent practicable, consistent with other requirements of state law, and the rights and requirements of personal privacy. The department invites and encourages public participation to better identify and meet customer needs. The major objectives of public participation include:

(a) greater responsiveness of governmental actions to public concerns and priorities; and

(b) improved public understanding of official programs and actions.

(2) The public is also advised that in accordance with 2-3-103, MCA, an opportunity for public comment on any public matter not on the agenda of the department's public meetings and that is within the department's jurisdiction is given. No action will be taken on these matters until proper notice has been given under the provisions of Montana law.

(3) Department employees shall make decisions based on what is best for the customer, both internal and external, within the parameters of applicable laws and administrative rules.

AUTH: 2-3-103, MCA

IMP: 2-3-103, MCA

NEW RULE II GUIDELINES FOR DETERMINATION OF SIGNIFICANT INTEREST TO THE PUBLIC

(1) The adoption, amendment, or repeal of any rule, regulation, standard, or statement of general applicability that implements, interprets, or prescribes law, or policy, procedure, or practice requirements of the department are considered matters of significant interest to the public and require notice and opportunity for public participation in the decision-making process.

(2) In all other cases, whether or not the decision is one of significant interest to the public will be determined by the person within the department who is proposing the decision, according to the following considerations:

(a) whether the decision regards a controversial matter;

(b) the number of persons who will be affected by the decision;

(c) the fiscal impact the decision will have; or

(d) whether a high level of public interest has been witnessed by the department.

AUTH: 2-3-103, MCA

IMP: 2-3-103, 2-4-101, 2-4-102, MCA

NEW RULE III NOTICE AND MEANS FOR PUBLIC PARTICIPATION (1) If the department determines that significant interest to the public is involved, one or more of the following steps, as applicable, shall be taken to assist public participation in decision-making:

(a) a proceeding or hearing shall be held in compliance with the provisions of the Montana Administrative Procedure Act, Title 2, chapter, 4, MCA;

(b) a public hearing, after appropriate notice is given, shall be held pursuant to any other provision, state law, local ordinance, or regulation;

(c) a news release, legal advertisement, or other method of publication shall be given to news media within the area to be affected, including:

(i) department name;

(ii) name of department representative most familiar with the proposed action; and

(iii) address, e-mail address, telephone and fax numbers where interested persons may submit their data, views, or arguments, orally or in writing, concerning the proposed action.

AUTH: 2-3-103, MCA

IMP: 2-3-103, 2-3-104, MCA

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

24.2.105 RULES OF DISCOVERY IN CONTESTED CASES

AUTH: 2-4-602, 39-3-202, MCA

IMP: 2-4-602, 39-3-202, MCA

REASON: The department determined it is reasonably necessary to repeal this unnecessary rule as it is identical to ARM 1.3.217, which the department has adopted by reference.

24.11.905 PROVIDING SPEAKERS

AUTH: 2-4-103, MCA

IMP: 2-4-103, MCA

REASON: The department determined it is reasonably necessary to repeal this unnecessary rule. While the department remains ready and willing to provide speakers as it is able to do for those wishing to learn more about unemployment insurance laws, no administrative rule is necessary for this purpose.

24.11.906 MEETINGS OF THE UNEMPLOYMENT INSURANCE APPEALS BOARD, REFEREE'S HEARING, ADVISORY COUNCIL MEETINGS, AND OTHER MEETINGS

AUTH: 2-4-103, MCA  
IMP: 2-4-103, MCA

REASON: The department is repealing this rule because it duplicates the department-wide rulemaking proposed in this rulemaking. To the extent it purports to adopt rules on behalf of the Unemployment Insurance Appeals Board, the rule is also invalid, because that board is an independent agency with its own rulemaking authority.

24.29.201 INTRODUCTION

AUTH: 2-4-201, 39-71-203, 39-72-203, MCA  
IMP: Title 2, chapters 3 and 4, MCA

REASON: It is reasonably necessary to repeal this rule because of its archaic form. To the extent it is substantive, it duplicates the department-wide rule adoption of model rules in ARM 24.2.101.

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 Brandon Kirchgasler, P.O. Box 1728, Helena, Montana 59624-1728 or e-mail bkirchgasler@mt.gov, and must be received no later than 5:00 p.m., May 27, 2022.

8. The department 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 shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

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

10. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Rule Reviewer

/s/ LAURIE ESAU  
Laurie Esau, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 19, 2022.



# CHRISTI JACOBSEN

## MONTANA SECRETARY OF STATE

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### Rule: 1.3.102

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Rule Title: NOTICE OF AGENCY ACTION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC

Department: [GENERAL PROVISIONS](#)

Chapter: [MODEL RULES](#)

Subchapter: [Procedural Rules Required by MCA Chapter Implementing Article II, Section 8 of the 1972 Constitution - Right of Participation](#)



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Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

[Printer Friendly Version](#)

### 1.3.102 NOTICE OF AGENCY ACTION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC

(1) In accordance with [2-3-102](#) through [2-3-114](#), MCA, prior to making a final decision that is of significant interest to the public, the agency shall afford reasonable opportunity for public participation. Reasonable opportunity for public participation may be afforded by:

(a) any of the agency actions allowed pursuant to [2-3-104](#), MCA; or

(b) a notice of the proposed agency action published in the register in accordance with template 102a (<https://sosmt.gov/arm/templates>). The agency may grant or deny an opportunity for hearing, except a hearing is required if the proposed action is the adoption of rules in an area of significant interest to the public.

(2) For purposes of (1)(b) only, significant interest to the public is defined at [2-4-102](#), MCA, as matters an agency knows to be of widespread citizen interest.

(3) Public comment on any public matter within the jurisdiction of an agency must be allowed at any public meeting. See [2-3-103](#)(1)(b), [2-3-202](#), and [2-3-203](#), MCA, for definitions of "public matter" and "meeting" and for the requirements applicable to opening and closing meetings to the public. The opportunity for public comment must be reflected on the meeting agenda and incorporated into the official minutes of the meeting. For purposes of this rule and [2-3-103](#)(1)(b), MCA, contested case is defined at [2-4-102](#)(4), MCA.

History: [2-4-202](#), MCA; [IMP](#), [2-3-103](#), [2-4-202](#), [2-4-302](#), MCA; Eff. 12/24/77; [AMD](#), 1979 MAR p. 1200, Eff. 10/12/79; [AMD](#), 1981 MAR p. 1196, Eff. 10/16/81; [AMD](#), 1999 MAR p. 1225, Eff. 6/4/99; [AMD](#), 2004 MAR p. 2806, Eff. 11/19/04; [AMD](#), 2005 MAR p. 258, Eff. 2/11/05; [AMD](#), 2008 MAR p. 1593, Eff. 8/1/08.

MAR Notices	Effective From	Effective To	History Notes
<a href="#">44-2-145</a>	8/1/2008	Current	History: <a href="#">2-4-202</a> , MCA; <a href="#">IMP</a> , <a href="#">2-3-103</a> , <a href="#">2-4-202</a> , <a href="#">2-4-302</a> , MCA; Eff. 12/24/77; <a href="#">AMD</a> , 1979 MAR p. 1200, Eff. 10/12/79; <a href="#">AMD</a> , 1981 MAR p. 1196, Eff. 10/16/81; <a href="#">AMD</a> , 1999 MAR p. 1225, Eff. 6/4/99; <a href="#">AMD</a> , 2004 MAR p. 2806, Eff. 11/19/04; <a href="#">AMD</a> , 2005 MAR p. 258, Eff. 2/11/05; <a href="#">AMD</a> , 2008 MAR p. 1593, Eff. 8/1/08.
<a href="#">12/17/2004</a>	8/1/2008		History: <a href="#">2-4-202</a> , MCA; <a href="#">IMP</a> , <a href="#">2-3-103</a> , <a href="#">2-4-202</a> , <a href="#">2-4-302</a> , MCA; Eff. 12/24/77; <a href="#">AMD</a> , 1979 MAR p. 1200, Eff. 10/12/79; <a href="#">AMD</a> , 1981 MAR p. 1196, Eff. 10/16/81; <a href="#">AMD</a> , 1999 MAR p. 1225, Eff. 6/4/99; <a href="#">AMD</a> , 2004 MAR p. 2806, Eff. 11/19/04; <a href="#">AMD</a> , 2005 MAR p. 258, Eff. 2/11/05.

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For questions regarding the content, interpretation, or application of a specific rule, please contact the agency that issued the rule. A directory of state agencies is available online at <http://www.mt.gov/govt/agencylisting.asp>.

For questions about the organization of the ARM or this web site, contact [sosarm@mt.gov](mailto:sosarm@mt.gov).

**Exhibit**  
**C**

**From:** [Randall Knowles](#)  
**To:** [Kirchgasler, Brandon](#)  
**Subject:** [EXTERNAL] Knowles Brandon Kirchgasler  
**Date:** Thursday, April 28, 2022 1:23:47 PM

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Brandon, there needs to be a way to submit Public Comment prior to the hearing for those of us who are unable to attend. I did not see that in the notice, which is why I am contacting you. What accommodation is being made for physically handicapped persons if the public is NOT going to be allowed at the meeting?

My comment on: [In the matter of the amendment of ARM 24.2.101, the adoption of NEW RULES I through III, and the repeal of ARM 24.2.105, 24.11.905, 24.11.906, and 24.29.201 pertaining to public participation and model rules]

We need to use some common sense; all of these rules are an exercise in futility and will only frustrate the public. E.g. who determines if there is Significant Public Interest vs just Mediocre Public Interest? There should always be at least 60 days notice and 90 days would be better ... The public has to balance two balls, 1] their personal life and 2] keeping an eye on Government – City, County, State, Federal, therefore government can overwhelm the Public by throwing 12 balls into the air, at one time. For every 50 new words (new rules) let us get rid of 200 words (old rules). randy

"In any moment of decision, the best thing you can do is the right thing, the next best thing is the wrong thing, and the worst thing you can do is nothing." Theodore Roosevelt ???

– Randall Gene Knowles, 3017 Ninth Avenue South, Great Falls, MT 59405-3421 voice, cell, & text [406-799-1547](tel:406-799-1547) [KnowlesMontana@Juno.com](mailto:KnowlesMontana@Juno.com)

**Exhibit  
D**

**From:** [Deborah Kimmet](#)  
**To:** [Kirchgasler, Brandon](#)  
**Cc:** [Sullivan, Erin](#)  
**Subject:** [EXTERNAL] Oppose DLI Rule Change  
**Date:** Monday, May 23, 2022 5:03:24 PM

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Mr. Kirchgasler,

In the matter of the amendment of ARM 24.2.101, the adoption of NEW RULES I through III, and the repeal of ARM 24.2.105, 24.11.905, 24.11.906, and 24.29.201 pertaining to public participation and model rules:

I view this rule change as a housekeeping matter which does not create much change with how the DLI addresses public participation. Rather, I oppose these rule changes because they do not go far enough in allowing for public participation.

The current professional/occupational board meeting agendas for boards attached to the department have an agenda item for public participation for items *not* on the agenda. They do ***not***, however, provide opportunity for public comment on items that actually *are* on the agenda.

Every time I attend interim committee meetings for the legislative branch, such as the Economic Affairs Interim Committee, they have opportunity to comment both for items on and not on the agenda.

Making the change to allow for public comment on both is an easy addition and adheres to the public's right to participation for items of significance to the public. Boards make plenty of decision affecting the public that go beyond rulemaking – which appears to be the only time the public does get to comment. However, that is at a meeting where ***no board members are present*** which again isolates the board from the public.

In general by cutting out the public from commenting during meetings for items that are on the agenda isolates the board from the public, gives the department too much sway in providing the board with information during its deliberations, and in general leads to bad decision making, which I've witnessed on multiple occasions.

These rule changes do not go far enough.

I've cc'd the EAIC as a public comment because they provide rule making oversight to DLI. The issue of restricting public comment only to items *not* on the agenda is an issue. And as a former board chair, I am deeply concerned about the Department crossing the line between administrative support versus influencing policy making.

Sincerely,

Deborah Kimmet M.S., LMT  
Massage Therapy, Movement Education, & Corrective Exercise



Montana License # LMT-LMT-LIC-1

[www.debkimmet.com](http://www.debkimmet.com) [[debkimmet.com](http://debkimmet.com)]

406-544-4704

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT,  
ARM 24.2.101, the adoption of NEW ) ADOPTION, AND REPEAL  
RULES I through III, and the repeal of )  
ARM 24.2.105, 24.11.905, 24.11.906, )  
and 24.29.201 pertaining to public )  
participation and model rules )

TO: All Concerned Persons

1. On April 29, 2022, the Department of Labor and Industry (department) published MAR Notice No. 24-2-390 pertaining to the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 557 of the 2022 Montana Administrative Register, Issue Number 8.

2. The department held a public hearing in Helena on May 25, 2022, over the Zoom videoconference and telephonic platform at which no members of the public commented. Written comments were received during the public comment period.

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

COMMENT #1: A commenter suggested the public participation rules are futile and that rules should be shortened at a ratio of four to one.

RESPONSE #1: The department acknowledges the comment that participation rules are futile, but respectfully disagrees. The department is dedicated to public participation in its processes to the extent feasible. The adoption of these new rules will ensure standardization of considerations for public participation and protect the public's right to know and participate. With respect to the notion of shortening rules, the department is engaged in Red Tape Relief efforts geared toward clarifying, simplifying, and, where possible, shortening the administrative rules of Montana. Nonetheless, the comment is outside the scope of the present rulemaking.

COMMENT #2: A commenter suggested that the proposal is problematic because it does not require public comment on all agenda items, instead only requiring comment on items not on the agenda.

RESPONSE #2: The comment is noted, but the department respectfully disagrees. Initially, the rules do not limit public comment to items not on the agenda. Instead, the rules as proposed establish a framework for consideration as to when public comment should be received for items on an agenda—including whether the issue is controversial, the number of individuals affected, the fiscal impact, or whether the public has expressed an interest. The department understands public participation



is essential to its processes and looks forward to continuing to receive comments regarding matters of interest to the public.

4. The department has amended ARM 24.2.101 as proposed.

5. The department has adopted New Rule I (24.2.301), New Rule II (24.2.305), and New Rule III (24.2.309) as proposed.

6. The department has repealed ARM 24.2.105, 24.11.905, 24.11.906, and 24.29.201 as proposed.

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Alternate Rule Reviewer

/s/ LAURIE ESAU  
Laurie Esau, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 31, 2022.



BEFORE THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS,  
BOARD OF ATHLETIC TRAINERS, BOARD OF BARBERS AND  
COSMETOLOGISTS, BOARD OF BEHAVIORAL HEALTH, BOARD OF  
CHIROPRACTORS, BOARD OF CLINICAL LABORATORY SCIENCE  
PRACTITIONERS, STATE ELECTRICAL BOARD, BOARD OF MEDICAL  
EXAMINERS, BOARD OF NURSING, BOARD OF NURSING HOME  
ADMINISTRATORS, BOARD OF OPTOMETRY, BOARD OF PHYSICAL THERAPY  
EXAMINERS, BOARD OF PRIVATE SECURITY, BOARD OF PUBLIC  
ACCOUNTANTS, BOARD OF REALTY REGULATION, BOARD OF  
RESPIRATORY CARE PRACTITIONERS, BOARD OF VETERINARY MEDICINE,  
BOARD OF PERSONNEL APPEALS, HUMAN RIGHTS COMMISSION, AND  
UNEMPLOYMENT INSURANCE APPEALS BOARD  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of )  
ARM 24.7.101, 24.9.101, 24.26.201, )  
24.114.201, 24.114.202, 24.118.101, )  
24.118.201, 24.121.102, 24.121.201, )  
24.126.101, 24.126.201, 24.126.202, )  
24.129.101, 24.129.201, 24.129.202, )  
24.141.101, 24.141.201, 24.141.202, )  
24.156.202, 24.159.101, 24.159.201, )  
24.159.202, 24.162.101, 24.162.201, )  
24.162.202, 24.168.101, 24.168.201, )  
24.168.202, 24.177.101, 24.177.201, )  
24.177.202, 24.182.101, 24.182.202, )  
24.201.201, 24.201.202, 24.210.101, )  
24.210.201, 24.210.202, 24.213.101, )  
24.213.201, 24.213.202, 24.219.201, )  
24.219.204, 24.225.101, 24.225.201, )  
and 24.225.202, and the adoption of )  
NEW RULES I, II, and III, regarding )  
organizational, procedural, and public )  
participation rules )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
ADOPTION

TO: All Concerned Persons

1. On July 7, 2022, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment and adoption of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/82327314819>;  
Meeting ID: 823 2731 4819, Passcode: 432828; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656;  
Meeting ID: 823 2731 4819, Passcode: 432828.



The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The 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 department no later than 5:00 p.m., on June 30, 2022, to advise us of the nature of the accommodation that you need. Please contact Brandon Kirchgasser, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-3359, facsimile (406) 444-4140, or Montana Relay Service at 711; or e-mail [laborlegal@mt.gov](mailto:laborlegal@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: In 2001, the Montana Legislature transferred professional and occupational licensing functions from the Department of Commerce (DOC) to the Department of Labor and Industry (department) via Senate Bill 445. With the transfer, the professional and occupational licensing boards and programs became allocated to the department for administrative purposes. Because the department had not previously promulgated public participation rules, and to maintain procedural continuity and afford licensees, license applicants, and the public the right of public participation per 2-3-103, MCA, all references to DOC's citizen participation rules remained in place in the boards' administrative rules. Following the transfer to the department, the professional and occupational licensing boards and programs have continuously operated so as to permit and encourage the public to participate in agency decisions that are of significant interest to the public.

The department proposed to adopt three new rules regarding public participation to fully comply with the requirements of 2-3-103, MCA, and meet the needs of the department, its customers, and the Montana public. MAR Notice No. 24-2-390 was published April 29, 2022, and public comments were accepted through May 27, 2022. The department intends to file the final notice in this project on May 31, 2022, adopting the three rules exactly as proposed. These new rules will be effective June 11, 2022.

The department determined it is reasonably necessary to combine the boards' related rule amendments into two rulemaking notices for timeliness, efficiency, and cost effectiveness. Implementing the rules simultaneously for as many boards as possible will reduce confusion regarding the rulemaking process and ensure that most boards operate under the same public participation rules at the same time. Therefore, 20 of the boards administratively attached to the department are amending their rules to incorporate and align with the department's new public participation rules at this time. Where necessary, authority and implementation citations are amended to accurately reflect all statutes implemented through a rule and provide the complete sources of a board's rulemaking authority. Where additional specific bases for a proposed action exist, the individual board will identify those reasons immediately following that rule.

4. The department is proposing to amend the following rules. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

UNEMPLOYMENT INSURANCE APPEALS BOARD

24.7.101 ORGANIZATION AND PUBLIC PARTICIPATION OF THE UNEMPLOYMENT INSURANCE APPEALS BOARD

(1) remains the same.

(2) The board adopts the public participation rules of the Department of Labor and Industry as listed in chapter 2 of this title to the extent they do not conflict with statute or rule.

AUTH: 2-3-103, 2-4-201, MCA

IMP: 2-3-103, 2-4-201, MCA

UNEMPLOYMENT INSURANCE  
APPEALS BOARD  
LAURA FIX, CHAIR

HUMAN RIGHTS COMMISSION

24.9.101 ORGANIZATION AND PUBLIC PARTICIPATION OF THE HUMAN RIGHTS COMMISSION (1) and (2) remain the same.

(3) The commission adopts the public participation rules of the Department of Labor and Industry as listed in chapter 2 of this title to the extent they do not conflict with statute or rule.

AUTH: 2-3-103, 2-4-201, 49-2-204, 49-3-106, MCA

IMP: 2-3-103, 2-4-201, 49-2-501, 49-2-505, 49-2-510, 49-2-511, 49-3-315,  
MCA

HUMAN RIGHTS COMMISSION  
PETER M. DAMROW, CHAIR

BOARD OF PERSONNEL APPEALS

24.26.201 ADOPTION OF ATTORNEY GENERAL MODEL RULES ORGANIZATIONAL AND PUBLIC PARTICIPATION RULES ~~(1) To the extent that they do not conflict with statute or rule, the Board of Personnel Appeals of the Department of Labor and Industry adopts the model rules proposed by the Attorney General as adopted by the Department of Labor and Industry.~~

(1) The Board of Personnel Appeals adopts the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

(2) The Board of Personnel Appeals adopts procedural rules and public participation rules of the Department of Labor and Industry as listed in chapter 2 of this title to the extent they do not conflict with statute or rule.



AUTH: 2-3-103, 2-4-201, MCA  
IMP: 2-3-103, 2-4-201, MCA

BOARD OF PERSONNEL APPEALS  
BRIAN HOPKINS, PRESIDING OFFICER

5. Several boards administratively attached to the department are proposing to adopt and amend specific board rules to align with the department's proposed new public participation rules within this notice and correct references from the Department of Commerce to the Department of Labor and Industry. The proposed amendments and new rules are presented in alphabetical order and grouped according to each board or program for clarity, readability, and ease of reference within this notice. The rules proposed to be adopted or amended provide as follows, stricken matter interlined, new matter underlined:

BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS

24.114.201 PROCEDURAL RULES (1) remains the same.

AUTH: 2-4-201, ~~37-65-204~~, MCA  
IMP: 2-4-201, MCA

24.114.202 PUBLIC PARTICIPATION (1) The Board of Architects and Landscape Architects adopts and incorporates ~~by this reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in ARM Title 8, chapter 2 of this title, ~~except that the board does not adopt ARM 8.2.202(1)(b), which allows for public participation in the granting or denying of a license for which a hearing is required. The public is entitled to observe, but not participate in the licensing decisions and other contested cases as allowed by law.~~

AUTH: 2-3-103, 2-4-201, MCA  
IMP: 2-3-103, 2-4-201, MCA

BOARD OF ARCHITECTS AND  
LANDSCAPE ARCHITECTS  
MAIRE EITHNE O'NEILL, PRESIDENT

BOARD OF ATHLETIC TRAINERS

24.118.101 BOARD ORGANIZATION (1) remains the same.

AUTH: 2-4-201, ~~37-36-102~~, MCA  
IMP: 2-4-201, MCA

24.118.201 PROCEDURAL RULES (1) The Board of Athletic Trainers adopts and incorporates ~~by this reference~~ the ~~public participation~~ procedural rules of

the Department of Labor and Industry as listed in ~~ARM chapter 101, subchapters 3 and 4~~ chapter 2 of this title.

AUTH: 2-4-201, ~~37-36-102~~, MCA  
IMP: 2-4-201, MCA

NEW RULE I PUBLIC PARTICIPATION (1) The Board of Athletic Trainers adopts and incorporates the public participation rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-3-103, MCA  
IMP: 2-3-103, MCA

NEW RULE II FEE ABATEMENT (1) The Board of Athletic Trainers adopts and incorporates the fee abatement rule of the Department of Labor and Industry as found at ARM 24.101.301.

AUTH: 37-1-131, 37-36-102, MCA  
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The Board of Athletic Trainers is proposing New Rule II to adopt and incorporate the department's fee abatement rule. This board was established in 2007, but delayed the adoption of this rule to coincide with the department's public participation rules notice for cost savings and efficiency. Most other licensure boards already have this rule in place.

BOARD OF ATHLETIC TRAINERS  
JOHN WEIDA, CHAIR

#### BOARD OF BARBERS AND COSMETOLOGISTS

24.121.102 BOARD ORGANIZATION (1) The Board of Barbers and Cosmetologists adopts and incorporates the organizational rules of the Department of Labor and Industry (~~department~~) as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-31-203~~, MCA  
IMP: 2-4-201, MCA

24.121.201 PROCEDURAL RULES (1) The Board of Barbers and Cosmetologists adopts and incorporates the procedural rules of the ~~department~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-31-203~~, MCA  
IMP: 2-4-201, ~~37-31-203~~, MCA

NEW RULE III PUBLIC PARTICIPATION (1) The Board of Barbers and Cosmetologists adopts and incorporates the public participation rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-3-103, MCA  
IMP: 2-3-103, MCA

BOARD OF BARBERS AND  
COSMETOLOGISTS  
ANGELA PRINTZ, PRESIDENT

BOARD OF CHIROPRACTORS

24.126.101 BOARD ORGANIZATION (1) The Board of Chiropractors ~~hereby~~ adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-12-201~~, MCA  
IMP: 2-4-201, MCA

24.126.201 PROCEDURAL RULES (1) The Board of Chiropractors ~~hereby~~ adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-12-201~~, MCA  
IMP: 2-4-201, MCA

24.126.202 PUBLIC PARTICIPATION RULES (1) The Board of Chiropractors ~~hereby~~ adopts and incorporates ~~by this reference~~ the public participation rules of the ~~department of commerce~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-3-103, ~~37-12-201~~, MCA  
IMP: 2-3-103, MCA

BOARD OF CHIROPRACTORS  
MARCUS NYNAS, D.C., PRESIDENT

BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS

24.129.101 BOARD ORGANIZATION (1) The ~~board of clinical laboratory science practitioners hereby~~ Board of Clinical Laboratory Science Practitioners adopts and incorporates the organizational rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-34-201~~, MCA  
IMP: 2-4-201, MCA

24.129.201 PROCEDURAL RULES (1) ~~The board of clinical laboratory science practitioners hereby~~ Board of Clinical Laboratory Science Practitioners adopts and incorporates the procedural rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-34-201~~, MCA  
IMP: 2-4-201, MCA

24.129.202 PUBLIC PARTICIPATION RULES (1) ~~The board of clinical laboratory science practitioners hereby~~ Board of Clinical Laboratory Science Practitioners adopts and incorporates ~~by this reference~~ the public participation rules of the ~~department of commerce~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-3-103, ~~37-34-201~~, MCA  
IMP: 2-3-103, MCA

BOARD OF CLINICAL LABORATORY  
SCIENCE PRACTITIONERS  
MATTHEW KALANICK, CLS, CHAIR

#### STATE ELECTRICAL BOARD

24.141.101 BOARD ORGANIZATION (1) ~~The state electrical board hereby~~ State Electrical Board adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-68-201~~, MCA  
IMP: 2-4-201, MCA

24.141.201 PROCEDURAL RULES (1) ~~The state electrical board hereby~~ State Electrical Board adopts and incorporates the procedural rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-68-201~~, MCA  
IMP: 2-4-201, MCA

24.141.202 PUBLIC PARTICIPATION (1) ~~The state electrical board hereby~~ State Electrical Board adopts and incorporates ~~by this reference~~ the public participation rules of the ~~department of commerce~~ Department of Labor and Industry as listed in chapter 2 of ~~ARM Title 8~~ this title.

AUTH: 2-3-103, ~~37-68-201~~, MCA  
IMP: 2-3-103, MCA



STATE ELECTRICAL BOARD  
DERRICK HEDALEN, PRESIDENT

BOARD OF MEDICAL EXAMINERS

24.156.202 CITIZEN PUBLIC PARTICIPATION RULES (1) The ~~Montana State~~ Board of Medical Examiners hereby adopts and incorporates by this reference the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of ~~Title 8~~ this title.

AUTH: 2-3-103, MCA  
IMP: 2-3-103, MCA

BOARD OF MEDICAL EXAMINERS  
CHRISTINE EMERSON, R.D.,  
PRESIDENT

BOARD OF NURSING

24.159.101 BOARD ORGANIZATION (1) The Board of Nursing hereby adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-8-202~~, MCA  
IMP: 2-4-201, MCA

24.159.201 PROCEDURAL RULES (1) The Board of Nursing hereby adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-8-202~~, MCA  
IMP: 2-4-201, MCA

24.159.202 PUBLIC PARTICIPATION (1) The Board of Nursing hereby adopts and incorporates by this reference the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of ~~Title 8~~ this title.

AUTH: 2-3-103, ~~37-8-202~~, MCA  
IMP: 2-3-103, MCA

BOARD OF NURSING  
SARAH SPANGLER, R.N., PRESIDENT

BOARD OF NURSING HOME ADMINISTRATORS

24.162.101 BOARD ORGANIZATION (1) The Board of Nursing Home Administrators ~~hereby~~ adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-9-201~~, MCA  
IMP: 2-4-201, MCA

24.162.201 PROCEDURAL RULES (1) The Board of Nursing Home Administrators ~~hereby~~ adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-9-201~~, MCA  
IMP: 2-4-201, MCA

24.162.202 PUBLIC PARTICIPATION RULES (1) The Board of Nursing Home Administrators ~~hereby~~ adopts and incorporates ~~by this reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of ~~Title 8~~ this title.

AUTH: 2-3-103, ~~37-9-201~~, MCA  
IMP: 2-3-103, MCA

BOARD OF NURSING HOME  
ADMINISTRATORS  
KATHRYN BEATY, PRESIDING OFFICER

#### BOARD OF OPTOMETRY

24.168.101 BOARD ORGANIZATION (1) The Board of Optometry ~~hereby~~ adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in Chapter 1 of this title.

AUTH: 2-4-201, ~~37-10-202~~, MCA  
IMP: 2-4-201, MCA

24.168.201 PROCEDURAL RULES (1) The Board of Optometry ~~hereby~~ adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in Chapter 2 of this title.

AUTH: 2-4-201, ~~37-10-202~~, MCA  
IMP: 2-4-201, MCA

24.168.202 CITIZEN PUBLIC PARTICIPATION RULES (1) The Board of Optometry ~~hereby~~ adopts and incorporates ~~by this reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in ~~Chapter~~ chapter 2 of this title.

AUTH: 2-3-103, ~~37-10-202~~, MCA  
IMP: 2-3-103, MCA

BOARD OF OPTOMETRY  
DR. DOUGLAS KIMBALL, PRESIDENT

BOARD OF PHYSICAL THERAPY EXAMINERS

24.177.101 ORGANIZATIONAL RULE BOARD ORGANIZATION (1) The Board of Physical Therapy Examiners adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-11-201~~, MCA  
IMP: 2-4-201, MCA

24.177.201 PROCEDURAL RULES (1) remains the same.

AUTH: 2-4-201, ~~37-11-201~~, MCA  
IMP: 2-4-201, MCA

24.177.202 PUBLIC PARTICIPATION RULES (1) The Board of Physical Therapy Examiners adopts and incorporates ~~by this reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of ~~Title 8~~ this title.

AUTH: 2-3-103, ~~37-11-201~~, MCA  
IMP: 2-3-103, MCA

BOARD OF PHYSICAL THERAPY  
EXAMINERS  
HOLLY CLAUSSEN, PT,  
PRESIDING OFFICER

BOARD OF PRIVATE SECURITY

24.182.101 BOARD ORGANIZATION (1) remains the same.

AUTH: 2-4-201, MCA  
IMP: 2-4-201, MCA

24.182.202 PUBLIC PARTICIPATION (1) The Board of Private Security adopts and incorporates the public participation rules of the Department of ~~Commerce~~ Labor and Industry as ~~set out~~ listed in chapter 2 of ~~ARM Title 8~~ this title.

AUTH: 2-3-103, ~~2-4-201~~, MCA  
IMP: 2-3-103, MCA

BOARD OF PRIVATE SECURITY  
HOLLY DERSHEM-BRUCE, PRESIDENT

BOARD OF PUBLIC ACCOUNTANTS

24.201.201 PROCEDURAL RULES (1) ~~The board of public accountants~~ Board of Public Accountants adopts and incorporates the procedural rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-50-201~~, ~~37-50-203~~, MCA  
IMP: 2-4-201, MCA

24.201.202 PUBLIC PARTICIPATION RULES (1) The Board of Public Accountants adopts and incorporates ~~by this reference~~, the public participation rules of the department of commerce Department of Labor and Industry as listed in ~~Title 8, chapter 2 of this title~~, ~~except that the board does not adopt ARM 8.2.202(1)(b), which allows for public participation in the granting or denying of a license for which a hearing is required. The public is entitled to observe, but not participate in the licensing decisions and other contested cases as allowed by law.~~

AUTH: 2-3-103, ~~37-50-201~~, ~~37-50-203~~, MCA  
IMP: ~~2-3-102~~, 2-3-103, MCA

BOARD OF PUBLIC ACCOUNTANTS  
DAN VUCKOVICH, CPA,  
PRESIDING OFFICER

BOARD OF REALTY REGULATION

24.210.101 BOARD ORGANIZATION (1) ~~The board of realty regulation hereby~~ Board of Realty Regulation adopts and incorporates the organizational rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-51-203~~, MCA  
IMP: 2-4-201, MCA

24.210.201 PROCEDURAL RULES (1) ~~The board of realty regulation hereby~~ Board of Realty Regulation adopts and incorporates the procedural rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-51-203~~, MCA  
IMP: 2-4-201, MCA



24.210.202 PUBLIC PARTICIPATION (1) The Board of Realty Regulation adopts and incorporates ~~by reference~~ the public participation rules of the Department of Commerce Labor and Industry, as listed in chapter 2 of this title ARM Title 8, chapter 2, ~~except that the board does not adopt ARM 8.2.202(1)(b), which allows for public participation in the granting or denying of a license for which a hearing is required. The public is entitled to observe, but not participate in licensing decisions and other contested cases as allowed by law.~~

AUTH: 2-3-103, ~~37-51-203~~, MCA  
IMP: 2-3-103, MCA

BOARD OF REALTY REGULATION  
DAN WAGER, PRESIDING OFFICER

#### BOARD OF RESPIRATORY CARE PRACTITIONERS

24.213.101 BOARD ORGANIZATION (1) The ~~board of respiratory care practitioners (hereinafter "board") hereby~~ Board of Respiratory Care Practitioners adopts and incorporates the organizational rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, ~~37-28-104~~, MCA  
IMP: 2-4-201, MCA

24.213.201 PROCEDURAL RULES (1) The ~~board~~ Board of Respiratory Care Practitioners ~~hereby~~ adopts and incorporates the procedural rules of the ~~department of labor and industry~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, ~~37-28-104~~, MCA  
IMP: 2-4-201, MCA

24.213.202 PUBLIC PARTICIPATION RULES (1) The ~~board~~ Board of Respiratory Care Practitioners ~~hereby~~ adopts and incorporates the public participation rules of the ~~department of commerce~~ Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-3-103, ~~37-28-104~~, MCA  
IMP: ~~2-4-201~~, 2-3-103, MCA

BOARD OF RESPIRATORY CARE  
PRACTITIONERS  
JUSTIN O'BRIEN, PRESIDING OFFICER

#### BOARD OF BEHAVIORAL HEALTH

24.219.201 PROCEDURAL RULES (1) remains the same.

AUTH: ~~2-4-201, 37-22-201~~, MCA  
IMP: 2-4-201, MCA

24.219.204 PUBLIC PARTICIPATION (1) The Board of Behavioral Health adopts and incorporates ~~by this reference~~, the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of this title ARM Title 8, chapter 2, except that the board does not adopt ~~ARM 8.2.202(1)(b)~~, which allows for public participation in the granting or denying of a license for which a hearing is required. ~~The public is allowed to observe, but not participate in the licensing decisions and other contested cases as allowed by law.~~

AUTH: 2-3-103, MCA  
IMP: 2-3-103, MCA

BOARD OF BEHAVIORAL HEALTH  
ELAINE MARONICK, LCSW-LMFT, CHAIR

BOARD OF VETERINARY MEDICINE

24.225.101 BOARD ORGANIZATION (1) The Board of Veterinary Medicine ~~hereby~~ adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: ~~2-4-201, 37-18-202~~, MCA  
IMP: 2-4-201, MCA

24.225.201 PROCEDURAL RULES (1) The Board of Veterinary Medicine ~~hereby~~ adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: ~~2-4-201, 37-18-202~~, MCA  
IMP: 2-4-201, MCA

24.225.202 PUBLIC PARTICIPATION RULES (1) The Board of Veterinary Medicine ~~hereby~~ adopts and incorporates ~~by this reference~~ the public participation rules of the Department of ~~Commerce~~ Labor and Industry as listed in chapter 2 of ~~Title 8~~ this title.

AUTH: ~~2-3-103, 37-18-202~~, MCA  
IMP: 2-3-103, MCA

BOARD OF VETERINARY MEDICINE  
BARBARA CALM, DVM, PRESIDENT

6. 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 Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; facsimile (406) 444-4140; or e-mail laborlegal@mt.gov, and must be received no later than 5:00 p.m., July 8, 2022.

7. The department 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 shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

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

9. Pursuant to 2-4-111, MCA, the boards have determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

10. Department staff has been designated to preside over and conduct this hearing.

/s/ DARCEE L. MOE  
Darcee L. Moe  
Rule Reviewer

/s/ LAURIE ESAU  
Laurie Esau, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 31, 2022.