

# Nuts and Bolts of a Formal Objection Under 2-4-406, MCA

# Steps in the Objection Process

1. Committee makes an “informal” objection under 2-4-305(9), MCA
2. Committee makes a “formal” objection under 2-4-406(1), MCA
3. Agency responds under 2-4-406(2), MCA
4. Committee may withdraw, modify, vote to send the objection to the secretary of state, or do nothing under 2-4-406(3), MCA

# Step 1: Informal Objection under 2-4-305(9), MCA

## Committee Action:

- Committee votes to object to all or a portion of a proposed administrative rule
- Committee sends letter to agency that it objects and will discuss the rule at the next meeting of the Committee
- Informal objection expires if Committee meets and does not vote to renew objection

## Effect:

- Informal objection prevents agency from adopting a proposed rule until the objection expires or the end of the 6-month period during which an adoption notice must be published under 2-4-305(9), MCA

## Step 2: Formal Objection under 2-4-406(1), MCA

### Committee Action:

- Committee may lodge a formal objection by majority vote if it believes the rule was not proposed or adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-305
- Committee sends written objection to the agency which must include a “concise statement of the committee’s reasons for its action”

### Effect:

- If lodged after an informal objection and before adoption of the rule, a formal objection prevents the rule from going into effect until the day after sine die of the next regular session of the legislature under 2-4-306(3)(c), MCA

## Step 3: Agency responds under 2-4-406(2), MCA

- Within 14 days after the mailing of the formal objection, the agency is required to provide a response to the committee

Step 4: Committee  
withdraws,  
modifies, sends  
objection to SOS,  
or does nothing  
under 2-4-406(3),  
MCA

- After receipt of the agency response, the committee may:
  - Withdraw its objection;
  - Modify its objection;
  - Vote to send the objection to the secretary of state for publication in the ARM; or
  - Do nothing
- Effect of publishing objection:
  - The burden of proof is shifted to the agency in any subsequent court case challenging the legality of the rule;
  - The court may award attorney fees against the agency if the agency loses
- NOTE: The committee must pay for the costs of publication

# Step 5: Rescinding a formal objection

- 2 ways for committee to rescind a formal objection:
  - Before adoption of the rule:
    - By a majority vote at a committee meeting after receiving the response from the agency, 2-4-406(2), MCA;
  - After adoption of the rule:
    - By a majority of the committee informing the presiding officer that the agency adopted the rule with changes that make it comply with the committee's objections and concerns, 2-4-305(4)(c)(ii), MCA.

What's in  
2-4-302,  
2-4-303,  
and  
2-4-305,  
MCA?

**2-4-302** includes requirements for notice, hearing, and submission of views

**2-4-303** provides requirements from emergency adoption of rules

**2-4-305** provides requirements for validity and for the agency to provide authority and statement of reasons



## Section 2-4-302, MCA

- Provides procedural requirements for the adoption of rules, such as:
  - Written notice of the proposed rule published in Montana Administrative Register (MAR) and provided to appropriate interim committee
  - Contact with primary sponsor of any rule that initially implements legislation
  - Hearing is required if requested by certain number of interested parties or if the proposed rulemaking involves matters of significant interest to the public

## Section 2-4-305, MCA

- Provides requisites for validity of rule, such as:
  - Specific citation to specific grant of rulemaking authority and cite to statute the rule implements, 2-4-305(3), MCA
    - Cited authority must clearly and specifically authorize the agency to make rules on the subject matter of the proposed rule
  - Rule “**must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law**”, 2-4-305(4), MCA
  - Rule must be “**consistent and not in conflict with statute**” and “**reasonably necessary to effectuate the purpose of the statute**”, 2-4-305(6), MCA

# Suggested Next Steps

- If the Committee elects to pursue a formal objection on MAR Notice Number 37-1044:
  - At this meeting:
    - Review and discuss draft formal objection letter
    - Vote on whether to approve formal objection letter
  - Then the committee has two options:
    - (1) Call a special meeting after the committee has received the response from DPHHS but before April 2:
      - Review and discuss response from Department
      - Vote to withdraw, modify, or publish the objection or do nothing
    - (2) At the regularly scheduled May meeting:
      - Review and discuss response from Department
      - Vote to withdraw, modify, or publish the objection, or take no further action
- Potential Additional Steps:
  - Legislation during the next session to amend Title 52, chapter 2, part 7, and/or instruct Department to repeal or amend specific rules