

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.201.101 board organization,)
24.201.301 definitions, 24.201.505)
firms – registration, and 24.201.532)
nonroutine applications, and the)
repeal of 24.201.401 board meetings,)
24.201.405 committees, 24.201.524)
cheating, 24.201.1101 introduction,)
and 24.201.2101 renewals)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On October 15, 2021, at 1:00 p.m., a public hearing will be held via remote conferencing to consider the proposed amendment 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/82691975975>
Meeting ID: 826 9197 5975, Passcode: 685047
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 826 9197 5975, Passcode: 685047

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 of Labor and Industry (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 Board of Public Accountants no later than 5:00 p.m., on October 8, 2021, to advise us of the nature of the accommodation that you need. Please contact Kevin Bragg, Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdpac@mt.gov (board's e-mail).

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

24.201.101 BOARD ORGANIZATION (1) The Board of Public Accountants hereby adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title with the following exception:

- (a) ~~The organizational chart does not indicate that the board of public~~

~~accountants is subject to the overall supervision and control of the department or the director of that department. The autonomy of the board of public accountants is clearly preserved by law and no intent exists to change that fact.~~

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

REASON: During a comprehensive review of board rules, staff noted that this rule states a 1984 board opinion when autonomous boards were changed to administrative attachments. Since 2-15-1756(6), MCA, provides the board-department relationship, the board concluded that the exception creates unnecessary confusion and striking (1)(a) will also standardize the board's organizational rule with the other licensing boards attached to the department.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.201.301 DEFINITIONS (1) through (3) remain the same.

~~(4) "Commission" means compensation for recommending or referring any product or services to be supplied by another person or entity.~~

~~(5) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged, unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this rule, fees are not regarded as being contingent if fixed by courts or other public authorities, or in tax matters, if determined based on the result of judicial proceeding or the finding of governmental agencies. A firm's permit holder's or practice privilege holder's fees may vary depending, for example, on the complexity of services.~~

(6) through (12) remain the same but are renumbered (4) through (10).

~~(13) "GAAP" means the generally accepted accounting principles.~~

(14) through (17) remain the same but are renumbered (11) through (14).

~~(18) "MSCPA" means the Montana Society of Certified Public Accountants.~~

(19) through (32) remain the same but are renumbered (15) through (28).

(29) "SEC" means the Securities and Exchange Commission.

(33) through (42) remain the same but are renumbered (30) through (39).

AUTH: 37-1-319, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, MCA

REASON: Following a comprehensive review of board rules, staff noted several definitions that are never utilized in board rule. While the definitions are of note to the profession, they are not material to understanding board requirements. Staff also noted that several definitions relate to prior unprofessional conduct regulations that are now codified at 37-1-316, MCA. Finally, staff noted that the acronym "SEC" is used in the definition of PCAOB/Public Company Accounting Oversight Board at (21) but is not defined. Following staff recommendations, the board is amending this rule to remove unused and unnecessary definitions and add the definition of "SEC."

24.201.505 FIRMS – REGISTRATION (1) and (2) remain the same.

(3) All firms must annually register with the board by December 31. Annual registration must include all of the items of a new firm registration as outlined above and the level and type of public accounting services provided since the last firm registration.

AUTH: 37-50-203, MCA

IMP: 37-50-335, MCA

REASON: While repealing ARM 24.201.2101 in this notice, the board is moving a relevant provision to (3) so that all firm registration requirements are in a single rule.

~~24.201.532 NONROUTINE APPLICATIONS (1) All applications, except applications for firm registration, out-of-state licensees seeking a Montana license under ARM 24.201.528, and foreign applicants seeking a Montana license under ARM 24.201.529, are considered nonroutine and must be reviewed by the board to determine compliance with qualifications for licensure.~~

~~(2) (1) For the purpose of processing nonroutine applications, the board incorporates the definitions of routine and nonroutine at ARM 24.101.402 by reference. Further, applications in which staff is unable to determine whether the experience requirements of ARM 24.201.502 have been met are nonroutine.~~

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

AUTH: 37-1-131, MCA

IMP: 37-1-101, 37-1-131, MCA

REASON: In May of 2021, all boards amended their rules as part of a cooperative project to standardize the processing of nonroutine applications and specifically those applications with past criminal convictions. Following the project, the board's new executive officer comprehensively reviewed the board's processes and administrative rules and suggested amendments to this rule.

Historically, the board has reviewed all initial licensure applications for satisfaction of licensure requirements, and more recently, for completion of experience requirements. Noting that application review occupies a significant part of both staff and board meeting time, the board agrees that staff can properly assess experience and licensure qualifications in the majority of applications. When staff cannot make the assessment, the board will review those nonroutine applications. The board determined it is reasonably necessary to amend this rule to further align with department standardization by allowing staff review of initial applications.

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

24.201.401 BOARD MEETINGS

AUTH: 37-50-201, 37-50-203, MCA

IMP: 37-50-201, 37-50-203, MCA

REASON: To standardize rules across the division, the board is repealing this unnecessary rule on procedural meeting standards. All professional licensing boards may follow parliamentary procedure, but there is no express requirement to strictly adhere to those rules. Additionally, the board is statutorily mandated by 37-50-201, MCA, to meet once a year and elect officers. Repealing this rule will not affect the board's operations nor the statutory requirements on meeting notices.

24.201.405 COMMITTEES

AUTH: 37-50-201, MCA

IMP: 37-50-201, MCA

REASON: After reviewing the board's use of committees and external contacts for consultation and noting that this rule had not been revisited since its adoption in 1980, the board decided to repeal this rule since the board holds sole statutory authority and accountability to act on behalf of the public. The repeal will not affect the board's ability to consult with subject matter experts when needed. Further, given the board's direct appointment to represent the public, the board should not be convening committees of external parties.

24.201.524 CHEATING

AUTH: 37-50-204, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, MCA

REASON: The board determined it is reasonably necessary to repeal this rule as it relates to an examination administered by a third party. The board has statutory authority to address applicants or licensees who may cheat, falsify, or mispresent, and this rule only provides for disqualification for a period, again, set by a third party and as such the rule is unnecessary.

24.201.1101 INTRODUCTION

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: In reviewing the board's rules, the board concluded this rule is unnecessary as it simply provides the general authority for the peer review subchapter. The board notes that each specific rule already references both the authority behind the rule as well as the statutes implemented by the rule.

24.201.2101 RENEWALS

AUTH: 37-1-131, 37-50-201, 37-50-203, MCA

IMP: 37-1-141, 37-50-203, 37-50-314, MCA

REASON: Following recommendation by department staff, the board determined it is reasonably necessary to repeal this unnecessary and outdated rule as renewal cycles and corresponding requirements are adequately set forth in department rule ARM 24.101.413 and the board's fee schedule. The board is relocating (2) to ARM 24.201.505 to house all firm registration requirements in a single rule.

5. 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 the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdpac@mt.gov, and must be received no later than 5:00 p.m., October 22, 2021.

6. An electronic copy of this notice of public hearing is available at publicaccountant.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdpac@mt.gov; or 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. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.201.101, 24.201.301, 24.201.505, and 24.201.532 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.201.401, 24.201.405, 24.201.524, 24.201.1101, and 24.201.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or to dlibsdpac@mt.gov.

10. Kevin Bragg, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PUBLIC ACCOUNTANTS
DAN VUCKOVICH, CPA
PRESIDING OFFICER

/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 September 14, 2021.