

Administrative Rule Review by Interim Committees

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Interim committees must review administrative rules (5-5-215, MCA). Administrative rules are laws adopted by executive branch agencies to implement statutory law. The Montana Administrative Procedure Act (MAPA), Title 2, chapter 4, MCA, governs how state agencies may adopt administrative rules. If a law is repealed or changed, the administrative rule must be repealed or changed to conform.

- * An agency must have express statutory authority to adopt rules (2-4-301, MCA).

- * Notice of a proposed rule adoption or amendment must be published in the Montana Administrative Register (MAR), printed biweekly by Secretary of State. Notice must comply with specific timelines and procedural requirements (2-4-302, MCA). A second notice of an agency's final action must be published in MAR. Final rules are published in Administrative Rules of Montana (ARM), published by the Secretary of State.

- * An agency must consider all oral and written submissions received by the agency with respect to a proposed rule adoption or amendment (2-4-305, MCA).

- * A rule must include a citation to the specific grant of rulemaking authority and must be "reasonably necessary to effectuate the purpose of the statute" (2-4-305, MCA).

Under the provisions of law governing legislative review of rules in MAPA, a legislative interim committee may:

- * Object to a proposed rule adoption or amendment and require up to a 6-month delay in adoption (2-4-305(9), MCA).

- * Request records for checking compliance with MAPA (2-4-402(2)(a), MCA).

- * Submit written recommendations and participate in hearings on rule adoption (2-4-402(2)(b), MCA).

- * Require that a hearing be held on rule adoption (2-4-402(2)(c), MCA).

- * Institute or participate in legal proceedings relating to validity of the rules (2-4-402(2)(d), MCA).

- * Commence a legislative poll upon an objection to a rule (2-4-403, MCA) -- poll results are admissible in any court proceeding on the validity of the rule (2-4-404, MCA). Failure of a committee to object to a rule proceeding is not admissible in court.

- * Require an economic impact statement relating to the adoption of a rule (2-4-405, MCA).

- * Object to a rule that is not adopted in conformance with MAPA (2-4-406, MCA). A committee objection filed with Secretary of State must be published in the MAR adjacent to the notice and in the ARM adjacent to the rule. If a court invalidates a rule adopted over a legislative committee's objection, the court may award costs and attorney fees against an agency.

- * Recommend adoption or changes to MAPA and any rule (2-4-411, MCA). The Legislature may repeal any rule in ARM.

Agencies must report to appropriate interim committee any litigation relating to construction or interpretation of MAPA and may report litigation relating to the agency's rules. (2-4-410, MCA).