

Montana Administrative Procedure Act (MAPA)

Title 2, Chapter 4

MAPA Requirements

Regular Rules Timeline

- Day 1 – Notice of Agency Action
 - ≥ 20 days – Public hearing (if held)
 - ≥ 28 days – Submit oral or written comments
 - ≥ 30 days – minimum time to adopt rule
 - 6 months – maximum time to adopt rule
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Temporary Rules Timeline (only for bills effective before Oct. 1; expires Oct. 1)

- ≥ 30 days after proposal notice passed Any abbreviated notice/hearing allowed that the agency finds practicable.
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Emergency Rules Timeline: Imminent peril to the public health, safety, or welfare

- Agency may adopt upon special notice with the rulemaking oversight committee
Expires after 120 days; must state reasons for finding of imminent peril in writing
(and must stand on own merits in a judicial review)
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Attorney Review

- Express statutory authority to adopt rules
- Statute being implemented by the rule
- “Reasonable necessity” statement for the proposed rule

Committee Authority

Pre Rulemaking

- Recommend adoption of rule (2-4-402, 2-4-411, and 2-4-412, MCA).

During Rulemaking Process

- Majority of members object regarding proposed rules in order to delay adoption of the rule by an agency to the last issue of register published before 6-month period during which rule must be adopted (2-4-305(9), MCA).
 - After written notification of objection, committee can object again to delay the effective date of the rule until the day after final adjournment of the regular session (2-4-306(4)(c))
- Object to a proposed rule for purposes of shifting the burden of showing legality of adoption was not in substantial compliance with 2-4-302/303/305 (2-4-406, MCA.) [requires renewal of objection at every meeting]
- Conduct poll of Legislature to see if proposed rule follows legislative intent (admissible in any court proceeding involving the validity of the proposed/adopted rule) (2-4-403, MCA)
- Submit oral or written comments to agency rulemaking record (2-4-402, MCA)
- Request publication of committee opinion that rule is adjective or interpretive and therefore is only advisory (2-4-308, MCA)
- Request rulemaking hearing be held (2-4-402, MCA).
- Request or have prepared an economic impact statement regarding a proposed rule (2-4-405, MCA).

Post Rulemaking

- Recommend amendment, rejection, or repeal of rule (2-4-402, 2-4-411, and 2-4-412, MCA).

General

- Request and obtain agency rulemaking record for review (2-4-402, MCA)
- Review "incidence and conduct" of proceedings under MAPA (2-4-402, MCA)
- Monitor operations of agency within committee's jurisdiction (5-5-215, MCA)
- Request publication of material adopted by reference in a rule (2-4-307, MCA).
- Request and receive copies from the agency of documents in litigation involving judicial construction of rule or MAPA (2-4-410, MCA)
- Recommend amendments to MAPA or other state laws (2-4-411, MCA)
- Hold hearings and conduct investigations involving agency compliance with MAPA and other statutes (5-11-107, MCA)
- Bring or participate in litigation involving MAPA (2-4-402, MCA)

Individual Legislator Authority

Pre Rulemaking

- Join agency's list of interested persons for purposes of rulemaking (2-4-302, MCA)
- Request agency form informal conference or committee to develop proposed rule before agency publishes notice (2-4-304, MCA)
- Petition for adoption of a rule (2-4-315, MCA)
- **Primary sponsor:** receive notice from agency, before it writes a rule, of its intent to write the rule (2-4-302, MCA)

During Rulemaking Process

- Contribute to agency rulemaking record during public comment period
- Object to committee presiding officer regarding proposed rule in order to delay adoption of rule so committee can review proposed rule (2-4-305(9), MCA). If a majority of the committee notifies the presiding officer of the objection, then the committee notifies the agency in writing of the objection and the agency must delay adoption of the proposal notice
- Request, by motion, that interim committee take any of those actions authorized by law for committee to take.

Post Rulemaking

- Petition for amendment or repeal of a rule (2-4-315, MCA)

SAVA Oversight

- Department of Administration and administratively attached entities* (e.g. PERS / TRS)
 - Exceptions: State Fund, Office of Public Defender, Division of Banking and Financial Institutions
- Department of Military Affairs
- Secretary of State and administratively attached entities (e.g. CoPP)

Committee Rule Review Website

<http://leg.mt.gov/css/Committees/interim/2015-2016/State-Administration-and-Veterans-Affairs/default.asp>