



ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704
HELENA, MONTANA 59620-1704
(406) 444-3742

GOVERNOR JUDY MARTZ
DESIGNATED REPRESENTATIVE
Todd O'Hair

HOUSE MEMBERS
DEBBY BARRETT
NORMA BIXBY
PAUL CLARK
CHRISTOPHER HARRIS
DONALD HEDGES
JIM PETERSON

SENATE MEMBERS
DANIEL MCGEE
WALTER MCNUTT
GLENN ROUSH
ROBERT STORY
KEN TOOLE
MICHAEL WHEAT

PUBLIC MEMBERS
THOMAS EBZERY
JULIA PAGE
ELLEN PORTER
HOWARD STRAUSE

LEGISLATIVE ENVIRONMENTAL ANALYST
TODD EVERTS

October 7, 2003

TO: EQC Agency Oversight Subcommittee

FR:  Todd Everts, Staff Attorney

RE: EQC Administrative Rule Review Authority

The requirement that the EQC review administrative rules is found in 75-1-324(10), MCA.

The Montana Administrative Procedure Act (MAPA), Title 2, Chapter 4, MCA, governs how state agencies may adopt administrative rules. An administrative rule is a type of law that implements a law adopted by the Legislature or by initiative. If the law is repealed or changed, the administrative rule must be repealed or changed to conform. MAPA provides that:

- An agency must have specific authority in law to adopt rules (2-4-301, MCA).
- Notice of the proposed rule must be published in the Montana Administrative Register, which printed by the Secretary of State. The notice must comply with specific time lines and provision requirements. (2-4-302, MCA).
- An agency must consider all oral and written submissions respecting a proposed rule (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).

The provisions governing the Legislative review of rules is in Title 2, Ch. 4, part 4, MCA. The EQC may:

EQC - Agency Oversight Subcommittee
October 8, 2003

EXHIBIT #2

- Object to a proposed rule and require up to a 6-month delay in adoption (2-4-304, 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 rules (2-4-402(2)(d), MCA).
- Commence a poll on an objection to a rule (2-4-403, MCA).
- Require an economic impact statement relating to the adoption of a rule (2-4-405).
- Object to a rule not adopted in conformance with MAPA (2-4-406, MCA).
- Recommend rule adoption or changes (2-4-411, MCA).

Failure of a committee to object to a rule proceeding is not admissible in court.

The Department must report judicial proceedings relating to the construction or interpretation of laws on committee review of rules and may report judicial proceedings relating to the agency's rules. (2-4-410, MCA).

CI0425 3280texa.