

## Rulemaking and Powers of Rule Review Committees and Individual Members

1. General committee powers
  - a. Montana Administrative Procedure Act (MAPA), Title 2, chapter 4, MCA.
  - b. 5-5-215, MCA (interim committees generally).
  - c. 5-11-107, MCA (interim committees' investigatory powers).
  - d. "Rule" is adoption, amendment, or repeal.
  
2. Rulemaking generally
  - a. Rule adoption system in MAPA similar to Federal Register (governs procedure only; generally, MAPA is not authority for rules) (2-4-301, MCA).
  - b. MAPA is procedure most used to adopt rules (some agencies exempted completely; a few may have different statutory system (PSC ratemaking may be one such exception)).
  - c. Authority to adopt most rules must be express, not implied, authority (2-4-305, MCA).
  - d. Two notices by agency necessary to be published in MAR: proposal notice and adoption notice (format specified by Secretary of State's rules) (2-4-306, MCA).
  - e. Hearing on rule proposal only required in some instances (but agency can do voluntarily) (2-4-302, MCA):
    - (1) matter of significant interest to public.
    - (2) requested by rule review committee.
    - (3) requested by minimum of 10% or 25 of those persons affected.
    - (4) requested by association (similar formula).
    - (5) request by agency or political subdivision.
  - f. Time periods (2-4-302, MCA):
    - (1) minimum 30 days' notice before agency action on proposed rule.
    - (2) minimum 20 days' notice of public hearing (if held) on proposal.
    - (3) minimum 28 days to submit comments on proposal.
    - (4) total minimum time for adoption of proposal is 30 days, plus approx. 2 weeks to publish adoption notice. This includes:
      - (a) time for hearing and written comments, or
      - (b) time for written comment alone if no hearing.
    - (5) 6 months maximum allowed for adoption and publication of rule (2-4-302 and 2-4-305, MCA).
    - (6) emergency rules exception (2-4-303, MCA).
  - g. Minimum requirements for content of notice of proposed rulemaking (2-4-305, MCA):
    - (1) must cite statutory authority for rules (usually not in MAPA; see 2a above).
    - (2) must cite statute being implemented (sometimes the same as authority, though frequently different).
    - (3) must state rationale (statement of reasonable necessity).

- h. Committee work starts with committee staff review on committee's behalf; committee review mandatory (2-4-402(1) and 5-5-215, MCA).
  - (1) no comment by committee staff to agency on many proposed rules.
  - (2) proposed rule usually brought to committee attention only if staff can't resolve issue with agency (result of staff review is usually that agency renounces proposed rules, fixes citation in notice of adoption, or responds to comment by adopting amendment).

### 3. Committee powers

- a. Mostly in MAPA - some in other statutes (5-5-215 and 5-11-107, MCA, mentioned earlier).
- b. Committee powers:
  - (1) request and obtain agency rulemaking record (2-4-402, MCA).
  - (2) recommend adoption, amendment, or repeal of a rule (2-4-402 and 2-4-411, MCA).
  - (3) request rulemaking hearing be held (2-4-402, MCA).
  - (4) bring or participate in litigation involving MAPA (2-4-402, MCA).
  - (5) review "incidence and conduct" of proceedings under MAPA (2-4-402, MCA).
  - (6) notify agency of objection by individual members to proposal notice and make same objection previously made by individual members for purpose of delaying adoption of rule (2-4-305(9), MCA).
  - (7) submit oral or written comments to agency rulemaking record (2-4-402, MCA).
  - (8) conduct poll of Legislature to see if rules follow legislative intent.
    - (a) discretionary or mandatory poll (2-4-403, MCA).
    - (b) effect of poll (2-4-404, MCA).
    - (c) publication of results of poll (2-4-306, MCA).
  - (9) request or prepare economic impact statement (2-4-405, MCA).
  - (10) object to rule for purposes of burden shifting (2-4-306 and 2-4-406, MCA).
  - (11) hold hearings and conduct investigations (5-11-107, MCA).
  - (12) monitor operations of assigned agencies (5-5-215).
  - (13) recommend amendments to MAPA and other laws (2-4-314, 2-4-411, and 5-5-215, MCA).
  - (14) request publication of material adopted by reference (2-4-307, MCA).
  - (15) request publication of statement on adjective or interpretive rules (2-4-308, MCA).
  - (16) request and receive from an agency copies of documents in litigation involving construction of rule or MAPA (2-4-410).

### 4. Powers of individual member of committee, legislature, or public

- a. As member of Legislature, petition for adoption, amendment, or repeal of a rule (2-4-315, MCA).
- b. As prime sponsor, receive notice from agency, before it writes rules, of its intent to do so (2-4-302, MCA).
- c. Request agency to use informal conference or committee to develop proposed rule before agency publishes notice (2-4-304, MCA).
- d. Join agency's list of interested persons for purposes of rulemaking (2-4-302, MCA).
- e. Contribute to agency rulemaking record (2-4-302 and 2-4-305, MCA) by:
  - (1) writing to agency.
  - (2) testifying at agency hearing on proposed rule.
- f. Contributing to interim committee rule review by notifying committee staff or committee members of satisfaction or dissatisfaction with proposed rule (2-4-402, MCA).
- g. Be one of 15 members of Legislature requesting economic impact statement (2-4-405, MCA).
- h. 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).
- i. Make motion that interim committee take any of those actions authorized by law for committee to take (see 3b above).