



## Revenue Interim Committee

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### 66th Montana Legislature

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#### COMMITTEE STAFF

MEGAN MOORE, Research Analyst  
JARET COLES, Staff Attorney  
LAURA SHERLEY, Secretary

TO: Committee Members

FROM: Jaret Coles, Staff Attorney

RE: Overview of Rulemaking and Administrative Rule Activity

DATE: June 10, 2019

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

### 1. General concepts:

- a. What is a rule? The [Montana Administrative Procedure Act](#) (MAPA) defines it as an agency regulation, standard, or statement that implements, interprets, or prescribes law or policy. Most agency rules have the force and effect of law.
- b. Where are Montana's rules located? The Administrative Rules of Montana (ARMs) are the administrative rules in their entirety. They are updated by the [Montana Administrative Register](#) (MAR), which is a twice-monthly publication containing all proposed new, transferred, amended, and repealed rules as well as adopted rule changes. The ARMs are also published to the Internet at <http://www.mtrules.org/>.
- c. Why are rules adopted?
  - (1) To "fill in gaps" left by legislation and provide the public with certainty as to what is required.
  - (2) To allow the public input into what the rules will be.

### 2. Citations to statutes concerning rulemaking:

- a. Montana Administrative Procedure Act (MAPA), Title 2, chapter 4, MCA.
- b. Section 5-5-215, MCA -- interim committee powers generally.
- c. Section 5-5-227, MCA -- specific rulemaking review authority of Revenue and Interim Committee.
  - 2019 Legislation: [Senate Bill No. 226](#) split the former Revenue and Transportation Interim Committee into the Revenue Interim Committee and

the Transportation Interim Committee. Consequently, the unlike the former Revenue and Transportation Interim Committee, the Revenue Interim Committee does not review Montana Department of Transportation rules.

- 2017 Legislation: [House Bill No. 16](#) reassigned administrative rule review functions regarding administration of the Montana Alcoholic Beverage Code to the Economic Affairs Interim Committee. Consequently, the Revenue Interim Committee does not review Department of Revenue administrative rules that pertain to this subject area.

- d. Section 5-11-106, MCA -- interim committee investigatory powers generally.
- e. Section 2-4-102, MCA -- "rule" is adoption of an entire rule, an amendment to a rule, or repeal of a rule.

### 3. **Rulemaking generally:**

- a. Rule adoption system -- governs procedure only; generally, MAPA is not authority to adopt rules (2-4-301, MCA).
- b. MAPA is the procedure most used by agencies to adopt rules. Some agencies are exempted completely from MAPA; a few agencies have a different statutory system for rule adoption.
- c. Authority to adopt most rules must be express and not implied authority (2-4-305, MCA).
- d. Two notices must be published in Montana Administrative Register (MAR): proposal notice and adoption notice. The notice format is specified by Secretary of State's rules (2-4-306, MCA).
- e. Hearing on rule proposal required in some instances, but an agency can voluntarily hold a hearing (2-4-302, MCA) on the following:
  - (1) matter of significant interest to public.
  - (2) request by a rule review committee.
  - (3) request by minimum of 25, or 10%, of those affected by proposed rule.
  - (4) request by association.
  - (5) request by agency or governmental subdivision.
- f. Time periods (2-4-302, MCA):
  - (1) minimum 30 days' notice before agency action.
  - (2) minimum 20 days' notice of public hearing (if held).
  - (3) minimum 28 days to submit comments.
  - (4) total minimum time for rule adoption is 30 days' notice, plus approximately 2 weeks to publish adoption notice. This includes:
    - a. time period for hearing and written comments; or

- b. time for written comment alone if no hearing.
  - (5) 6-month maximum for adoption and publication (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) agency must have and cite in the proposal notice express statutory authority for rules (usually not in MAPA, per above).
  - (2) agency must have and cite statute being implemented by proposed rule, which sometimes is the same as authority, though frequently different.
  - (3) agency must state rationale or statement of "reasonable necessity" for proposed rule.
  - (4) foregoing three requirements are where most agency errors occur in the rulemaking process.
- h. Committee work starts with committee staff review, on committee's behalf, for those three items in paragraph 3g above. Committee review is mandatory in accordance with 2-4-402(1), MCA.
  - (1) Problems with a proposed rule will be brought to committee for resolution only if staff can't resolve the issue with the agency.
  - (2) All proposals and adoptions will be brought to committee's attention at every meeting and sometimes by e-mail between meetings if the situation warrants.
- i. After rule is adopted through publication in the MAR, the rule is published in the Administrative Rules of Montana.

**4. 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 for review (2-4-402, MCA).
  - (2) recommend to the appropriate agency adoption, amendment, rejection, or repeal of any rule (2-4-402, 2-4-411, and 2-4-412, 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) object to proposed rules or a portion of the proposed rules in order to delay adoption of all or a portion of the rule by an agency (2-4-305(9), MCA -- amended by [Senate Bill No. 72](#) (2019)).
  - (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 poll 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 have prepared an economic impact statement regarding a proposed rule (2-4-405, MCA).
- (10) object to a proposed rule for purposes of shifting the burden of showing legality of adoption (2-4-306 and 2-4-406, MCA.)
- (11) hold hearings and conduct investigations involving agency compliance with MAPA and other statutes (5-11-107, MCA).
- (12) recommend amendments to MAPA or other state laws (2-4-411, MCA).
- (13) request publication of material adopted by reference in a rule (2-4-307, MCA).
- (14) request publication of statement on adjective or interpretive rules (2-4-308, MCA).
- (15) request and receive copies of documents in litigation involving judicial construction of rule or MAPA (2-4-410, MCA).
- (16) monitor operations of agency within committee's jurisdiction (5-5-215, MCA).

**5. Powers of individual members of committee or Legislature:**

- a. As member of Legislature, petition for adoption, amendment, or repeal of a rule (2-4-315, MCA).
- b. As primary sponsor, receive notice from agency, before it writes a rule, of its intent to write the rule. The manner and date of notice to the primary sponsor must be stated in the notice of proposed rulemaking (2-4-302, MCA).
- c. Request agency to form 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 or e-mailing agency, as provided in agency's proposal notice, before the rulemaking record closes.
  - (2) testifying at any agency rulemaking hearing.
- f. Object to committee presiding officer regarding all or a portion of the proposed rule in order to potentially delay adoption of all or a portion of the 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 objected portion of the proposal notice.

- g. Request, by motion, that interim committee take any of those actions authorized by law for committee to take (see 4b above).

## **Department of Revenue**

*Proposal and Adoption Notices are available on the Internet:*

Department of Revenue notices can be found on the Secretary of State's website at <http://www.mtrules.org/>. Under the Montana Administrative Register heading, type the number "42" in the "Search by Notice No." box and click on the "Go" icon.

### **Notice of Proposed Rules:**

None.

### **Adopted After RTIC Adjourned -- Not Reviewed by Committee:**

Property Tax -- Trended Depreciation Schedules for Valuing Personal Property. [MAR 42-2-999](#).  
Adopted February 12, 2019. A public hearing was held on December 28, 2018, the public comment period was extended until February 4, 2019, and the Department received written comments from 11 individuals. The Department amended three rules and repealed 12 rules as proposed, and revised amendments to one rule after consideration of public comment.

The rules pertain to various tables that are typically updated on an annual basis through Department rules. The rules generally show how the Department arrives at market value when valuing personal property, including rental equipment, farm machinery and equipment, heavy equipment, seismograph units and allied equipment, oil and gas field machinery and equipment, work-over and service rigs, oil drilling rigs, locally assessed cable television systems, ski lift equipment, and industrial machinery and equipment.

### **Notice of Adopted Rules -- Brought in Front of Committee at November 2018 Meeting:**

Property Tax -- Reappraisal Cycles for Residential, Commercial, Forest, and Agricultural Properties, and Development of a Reappraisal Plan and Valuation Manuals. [MAR 42-2-996](#).  
Adopted November 27, 2019. A public hearing was held, no public comments were received, and the Department amended four rules and repealed seven rules as proposed. The amendments incorporated language from other rules being repealed in this rulemaking notice, while also adopting a new reappraisal plan and valuation and classification manuals, all of which are

available on the internet at the following location:

<https://mtrevenue.gov/publications/property-reappraisal-plan-manuals/>

Administration -- Tax Increment Financing Districts. MAR 42-2-997. Adopted March 19, 2019. A public hearing was held, no one appeared at the hearing, and written public comment was received from one organization. The Department amended two rules and repealed five rules as proposed, and modified three proposed amendments based on public comment. The statement of reasonable necessity in the rule proposal states: "The department proposes amending and repealing rules in ARM Title 42, chapter 19, subchapter 14 to reorganize the subchapter, eliminate redundancies and unnecessary language, combine relevant and similar language for efficiency, and provide additional procedural guidance for local governments. The proposed actions in this notice incorporate recommendations received from the Legislative Audit Division following a recent performance audit regarding tax increment financing administration and impact. The department agreed to improve its current rules to make them more clear and concise and to make updates to ensure the rules provide better and necessary guidance to prospective and current districts. In all, the department proposes amending and repealing a total of ten rules."

Agricultural Land Valuation. MAR 42-2-998. A public hearing was held, no public comments were received, and the Department amended one rule to update year, price, and valuation references from the 2017 appraisal cycle data to the 2019-2020 appraisal cycle. The Department obtained the data from the Montana Agricultural Statistics Bulletin, as published by the USDA National Agricultural Statistics Service.

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