

RULE REVIEW COMMITTEE OPTIONS FOR INVOLVEMENT MAPA REQUIREMENTS AND TIMELINES

Prepared for the Children, Families, Health, and Human Services Interim Committee
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June 30, 2021

INTRODUCTION

The Montana Administrative Procedure Act (MAPA) sets forth numerous options for a rule review committee to become involved in the rulemaking process. Some of the more common actions taken in past interims are summarized below. In reviewing timeframe considerations, please note that a rule is adopted on the date that the adoption notice is filed with the Secretary of State (SOS) and is effective on the date the adoption notice is published in the Montana Administrative Register (MAR), unless a later date is specified in statute or in the adoption notice.

REVIEW AGENCY'S RULEMAKING RECORDS

Option: A rule review committee may request and obtain an agency's rulemaking records for the purpose of reviewing compliance with 2-4-305, MCA, which requires that the agency act within the authority delegated by the Legislature, demonstrate the necessity for the rulemaking, and respond to comments received in adopting the rulemaking.

Effect: Aids the committee in reviewing compliance with MAPA.

Timeframe Considerations: May request records regardless of whether the rulemaking is proposed or adopted.

SUBMIT COMMENT REGARDING RULEMAKING

Option: A rule review committee may prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the agency proposing the rule and submit oral or written testimony at a rulemaking hearing.

Effect: Agency is required to consider the comment and respond to the comment in adopting the rulemaking.

Timeframe Considerations: Subject to hearing and written comment deadlines contained in the proposal notice.

OBJECT TO ALL OR A PORTION OF A PROPOSED OR ADOPTED RULE

Informal Objection Option: If a majority of the committee notifies the presiding officer that the members object, the committee shall notify the agency in writing that the committee objects and will address the objection at the next meeting.

Effect of Informal Objection: Delays adoption of the proposed rule for up to about 6 months unless the committee withdraws the objection or does not renew the objection at any meeting held during that period.

Timeframe Considerations: Objection must be made before the rulemaking is adopted and must be renewed at each committee meeting.

Formal Objection Option: If a majority of the committee believes that all or a portion of a rule was not proposed in substantial compliance with 2-4-302 (notice, hearing, and submission of views requirements), 2-4-303 (emergency or temporary rules requirements), or 2-4-305 (authority and reasonable necessity¹ requirements), the committee may formally object to the proposed rule. The objection must be in writing and describe the reasons for the objection. The agency is required to respond in writing within 14 days.

Effect of Formal Objection: Delays implementation of the proposed rule until the day after the next regular session of the Legislature adjourns unless the committee withdraws the objection before the rule has been adopted or determines the rule has been adopted with changes that resolve the objection.

Timeframe Considerations: In order to delay implementation, the formal objection must be made before the rulemaking is adopted. Note: The committee may formally object to a rule that has already been adopted, but the objection only has an effect on a lawsuit challenging the validity of the rule.

POLL THE LEGISLATURE

Option: A majority of the committee may poll the Legislature to determine if a proposed rule is consistent with legislative intent. Note: The committee is *required* to poll the Legislature if 20 or more legislators object to the proposed rule.

Effect: If the poll determines that a majority of the members of both houses find that the proposed rule or adopted rule is contrary to the intent of the Legislature, the proposed rule or adopted rule must be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity. Under 2-4-506(2), MCA, a rule may be declared invalid in an action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute as evidenced by documented legislative intent. Note: A poll does not delay or prevent the agency from adopting the rule.

Timeframe Considerations: The poll must be triggered before the rule is adopted.

¹ 2-4-305, MCA, provides specific requirements for the necessity of the rulemaking: "(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule."