

# Montana Administrative Procedure Act (MAPA)

## Title 2, Chapter 4

June, 2021

# SAVA Oversight

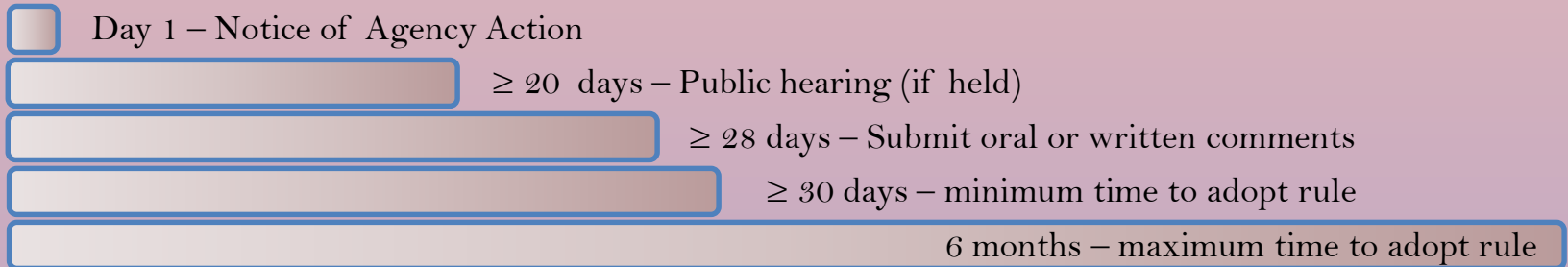
- Department of Administration and administratively attached entities\* (e.g. PERS / TRS)
  - Exceptions: State Fund, Office of Public Defender, Division of Banking and Financial Institutions, State Tax Appeal Board
- Department of Military Affairs
- Secretary of State and administratively attached entities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

## Committee Website – Rule Review

<https://leg.mt.gov/committees/interim/sava/rule-review/>

# MAPA Requirements

## Regular Rules Timeline



## 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.

## 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)

## Attorney Review

- Express statutory authority to adopt rules
- Statute being implemented by the rule
- Procedural requirements of MAPA

# 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).  
[requires renewal of objection at every meeting]
  - 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.)
- 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

- Object to an adopted 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.)
- 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 and 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)

# Updates to MAPA

## 2021 Session

### Chapter 102, L. 2021

- For the sole purpose of breaking a tie vote on a question before the committee involving an objection to an administrative rule under MAPA, the Speaker of the House and the President of the Senate are ex officio voting members of the administrative rule review committee [Immediate effective date]

### Chapter 519, L. 2021

- Requires an agency to send a copy of a proposal notice to the administrative rule review committee at the time it sends it to the Secretary of State for publication [Effective October 1]
- Prohibits agencies from adopting rules (may still propose rules) between October 1 and the end of the year
  - Emergency rule exception
  - Exception for rules adopted for implementation of a program or policy “if the unavailability of information, guidance, or notice precluded adoption of the rule before October 1.” The proposal notice must provide a statement as to why the unavailability of information, guidance, or notice precluded adoption of the rule before October 1.

### Chapter 199, L. 2021

- Provides a definition and requirements for “special notice” in the context of an agency providing notice to an administrative rule review committee when proposing emergency rules

# Committee Decisions

- How would the committee like to receive rule review briefings?
  - Traditionally the Committee receives a written memo and if there are problems identified by committee staff that staff is unable to resolve with the agency, the issues are briefed at the next committee meeting
- As of October 1, the agencies will start sending rule review proposal to the committee staff at the time at which they are sent to the SOS to prepare for publication. How would the committee like these notices handled? Would the committee like staff to forward these proposals as they are received?