



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: August 8, 2022

RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: 2-5-628

AGENCY/BOARD: Department of Administration

RULE CLASSIFICATION: (e.g., substantive/interpretive/emergency/temporary): Substantive

SUBJECT: Department of Administration Responsibilities, Delegation of Purchasing Authority, Small Purchases or Limited Solicitations of Supplies and Services, Sole Source Procurement, Exigency Procurement, and Minimum Refunds

NOTICE DESCRIPTION: (e.g., proposal notice/adoption notice): Notice of Proposed Amendment

SUMMARY OF RULE(S):

The Department of Administration proposes to amend five rules and repeal two rules.

The department proposes to amend several rules concerning the delegation of procurement authority to agencies by increasing the threshold for small purchase procurement from \$5,000 to a total value of less than \$10,000. The department notes that it "recently contracted with a third-party consultant and met with internal and external stakeholders to assess state procurement practices. The consultant compared the department's procurement practices to states identified as direct peers and recommended changes to procurement thresholds to align with peer states and industry best practices." The department further notes that "[t]he \$5,000 small purchase threshold has been in place since 1994. \$5,000 in today's dollar, with an average inflation rate of 2.21% between 1994 and 2022, would be \$9,010." The proposed changes also raise the threshold for sole source procurement from \$5,000 to \$10,000 and provide that exigency procurements of more than \$10,000 (rather than \$5,000) are limited to supplies or services necessary to meet the exigency.

The department proposes to amend one rule concerning the limited solicitation of supplies and services. The proposed amendments allow a state agency to procure supplies and services with a total contract value of \$10,000 or more and less than \$100,000 (increased from total contract values of between \$5,001 and \$25,000 for services and total contract values of between \$5,001 and \$50,000 for supplies) using a limited solicitation procedure, if authorized in a written delegation agreement. This would result in raising the formal solicitation threshold for supplies and services to \$100,000. The department notes that this "will provide one consistent threshold. Purchases greater than or equal to \$10,000 and less than \$100,000 will still require an informal limited solicitation process." The department further notes that these changes will "better align our thresholds with peers and be more in line with other current statutory thresholds. In comparison, the current formal solicitation threshold for Montana counties is \$80,000. The current state threshold for formal bidding for building construction projects is \$150,000."

The department proposes to repeal two rules concerning minimum refunds. The rules currently provide that a refund amounting to less than \$3 may not be paid by a state agency, except on the specific request of the person entitled to receive the refund in writing. The rules further provide that refunds may be paid where specifically provided by law or where required by federal regulations. The department notes that it proposes to repeal the rules "in an effort to streamline regulation and cut red tape as part of Governor Gianforte's Red Tape Relief Initiative. The substance of the rules will be incorporated in MOM Policy 330 - Payments, Suppliers, and Related IRS Reporting. By moving the language from rule to policy, it will allow for a more regular structured review and facilitate input from agencies which are directly affected by refund policies." Generally, policies, procedures, and regulations must go through the Montana Administrative Procedure Act process (MAPA), but there are limited exceptions, including statements that concern only the internal management of an agency, rules implementing the state personnel classification plan, the state wage and salary plan, and the statewide accounting, budgeting, and human resource system. The Department of Administration notes that it believes the refund process falls under the budgeting process and therefore may properly be placed into the Montana Operations Manual (MOM), which is not subject to the public rulemaking process.

NOTES: A public hearing will not be held. The public comment period ends on September 2, 2022.

FULL TEXT OF NOTICE: The full text of the proposal notice may be found at https://rules.mt.gov/gateway/Cycle_Home.asp?CID=3535.