

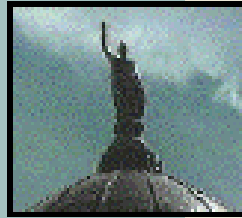
- Interim committees must review administrative rules (5-5-215, MCA).

- The Montana Administrative Procedure Act (MAPA), Title 2, chapter 4, MCA, governs how state agencies adopt administrative rules.

- An agency must have express statutory authority to adopt rules (2-4-301, MCA).

**Minimum requirements for content of notice of proposed rulemaking:**

1. Agency must have, and cite in notice, express statutory authority for rules.
2. Agency must have, and cite, statute being implemented by proposed rule.
3. Agency must state rationale, or statement of "reasonable necessity" for proposed rule.
4. Manner and date of notice to prime sponsor must be stated in notice of proposed rulemaking (SB 71, 2007).



-Rule proposal is filed with the Secretary of State-  
-this starts the clock ticking.

(see time periods on reverse side)

- Final rule is adopted when filed with the Secretary of State.

-Final rule is effective after publication in the MAR.

- Notice of a proposed rule adoption, amendment, or repeal must be published in the Montana Administrative Register (MAR), printed biweekly by the Secretary of State. Notice must comply with specific timelines and procedural requirements (2-4-302, MCA). A notice of an agency's rule adoption must be published in MAR. Final rules are published in Administrative Rules of Montana (ARM), published by the Secretary of State.

- An agency must consider all oral and written submissions received by the agency with respect to a proposed rule adoption or amendment (2-4-305, MCA).

**Questions?**

Contact Lisa Mecklenberg Jackson  
CFHHS Staff Attorney  
444-4024, Ljackson@mt.gov.

To receive copies of all DPHHS rule proposals and adoptions, e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

## Children, Families, Health, and Human Services Interim Committee

(2007-2008)

### Review of Administrative Rules for the Department of Public Health and Human Services

(<http://www.dphhs.mt.gov/>)

Administrative rules are laws adopted by executive branch agencies to implement statutory law. If a law is repealed or changed, the administrative rule must be repealed or changed to conform.

*A "rule" means a new rule, an amendment to an existing rule, or the repeal of an existing rule.*



## Under MAPA, a legislative interim committee may:

- Object to a proposed rule adoption, amendment, or repeal and require up to a 6-month delay in adoption (2-4-305(9), MCA).
- Request records for checking compliance with MAPA (2-4-402(2)(a), MCA).
- Submit written recommendations and participate in hearings on proposed rule (2-4-402(2)(b), MCA).
- Require that a hearing be held on proposed rule (2-4-402(2)(c), MCA).
- Institute or participate in legal proceedings relating to validity of the rules (2-4-402(2)(d), MCA).
- Commence a legislative poll to determine legislative intent upon an objection to a rule (2-4-403, MCA). — poll results are admissible in any court proceeding on the validity of the rule (2-4-404, MCA).
- Require an economic impact statement relating to a proposed rule (2-4-405, MCA).
- Object to a rule that is not adopted in conformance with MAPA (2-4-406, MCA). A committee objection filed with the Secretary of State must be published in the MAR adjacent to the notice and in the ARM adjacent to the rule. If a court invalidates a rule adopted over a legislative committee's objection, the court may award costs and attorney fees against an agency. Failure of a committee to object to a rule proceeding is not admissible in court. (2-4-412, MCA).
- Recommend adoption or changes to MAPA and any rule (2-4-411, MCA). The Legislature may repeal, by bill, any rule in the ARM (2-4-412, MCA).

An interested person, or a member of the legislature on behalf of an interested person, may petition an agency requiring the promulgation, amendment, or repeal of a rule (2-4-315, MCA).

## Hearings/time periods :

A **hearing** on a rule proposal is required in some instances. (2-4-302, MCA):

- (1) matter of significant interest to public.
- (2) request by a rule review committee.
- (3) request by minimum of 25 individuals or 10% of those affected by proposed rule.
- (4) request by an association.
- (5) request by an agency or political subdivision.

(An agency may also voluntarily hold a hearing. DPHHS almost always holds administrative rule hearings.)

### ***THE CLOCK IS TICKING!***

**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 approx. 2 weeks to publish adoption notice.
- (5) 6-month maximum for adoption and publication (2-4-302 and 2-4-305, MCA).