



# ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704  
HELENA, MONTANA 59620-1704  
(406) 444-3742

**GOVERNOR BRIAN SCHWEITZER**  
**DESIGNATED REPRESENTATIVE**  
MIKE VOLESKY

**HOUSE MEMBERS**  
DEBBY BARRETT  
NORMA BIXBY  
SUE DICKENSON  
CHRISTOPHER HARRIS  
WALTER MCNUTT  
JIM PETERSON

**SENATE MEMBERS**  
LANE LARSON  
GREG LIND  
DANIEL MCGEE  
JIM SHOCKLEY  
ROBERT STORY  
MICHAEL WHEAT

**PUBLIC MEMBERS**  
BRIAN CEBULL  
KRIS KOK  
BUZZ MATTELIN  
DOUGLAS MCRAE

**COUNCIL STAFF**  
KRISTA LEE EVANS, Research Analyst  
JOE KOLMAN, Research Analyst  
CYNTHIA PETERSON, Secretary  
TODD EVERTS, Legislative Environmental Analyst

August 31, 2005

TO: EQC Agency Oversight Subcommittee  
FR: Todd Everts, EQC Staff Attorney  
RE: EQC Administrative Rule Review Authority

The requirement that the EQC review administrative rules is found in 75-1-324(10), MCA.

The Montana Administrative Procedure Act (MAPA), Title 2, Chapter 4, MCA, governs how state agencies may adopt administrative rules. An administrative rule is a type of law that implements a law adopted by the Legislature or by initiative. If the law is repealed or changed, the administrative rule must be repealed or changed to conform. MAPA provides that:

- An agency must have specific authority in law to adopt rules (2-4-301, MCA).
- Notice of the proposed rule must be published in the Montana Administrative Register, which printed by the Secretary of State. The notice must comply with specific time lines and provision requirements. (2-4-302, MCA).
- An agency must consider all oral and written submissions respecting a proposed rule (2-4-305, MCA).
- A rule must include a citation to the specific grant of rulemaking authority and must be "reasonably necessary to effectuate the purpose of the statute " (2-4-305, MCA).

The provisions governing the Legislative review of rules is in Title 2, Ch. 4, part 4, MCA. The EQC may:

- Object to a proposed rule and require up to a 6-month delay in adoption (2-4-304, MCA).
- Request records for checking compliance with MAPA (2-4-402(2)(a), MCA).
- Submit written recommendations and participate in hearings on rule adoption (2-4-402(2)(b), MCA).
- Require that a hearing be held on rule adoption (2-4-402(2)(c), MCA).
- Institute or participate in legal proceedings relating to rules (2-4-402(2)(d), MCA).
- Commence a poll on an objection to a rule (2-4-403, MCA).
- Require an economic impact statement relating to the adoption of a rule (2-4-405).
- Object to a rule not adopted in conformance with MAPA (2-4-406, MCA).
- Recommend rule adoption or changes (2-4-411, MCA).

Failure of a committee to object to a rule proceeding is not admissible in court.

The Department must report judicial proceedings relating to the construction or interpretation of laws on committee review of rules and may report judicial proceedings relating to the agency's rules. (2-4-410, MCA).

CI0429 5242texc.