

1 ☐ **Committee Oversight of Agency Rulemaking**

2 ☐ **What's covered in this presentation?**

- A basic introduction to administrative rules
- A basic introduction to the Montana Administrative Procedures Act (MAPA) as it relates to rulemaking
- A basic introduction to the interim committee's role in rulemaking under MAPA
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3 ☐ **When may an agency make administrative rules?**

- Agencies may make rules only if the Legislature authorizes the agency to make rules to implement a statute
- An authorizing statute states that the agency has rulemaking authority, such as "The department shall adopt rules necessary to carry out the purposes of this Title/chapter/part/section"
- Rules must be consistent with the statute they implement
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4 ☐ **Where are the rules? (And where are the statutes?)**

- Bills passed by the Legislature become statutes and are published in the Montana Code Annotated (MCA)
 - The MCA is maintained by the Code Commissioner and the Legal Services Division of Legislative Services
- Rules adopted by agencies are published in the Administrative Rules of Montana (ARM)
 - The ARM is maintained by the Montana Secretary of State and is available online at <https://rules.mt.gov>
- Notices of proposed rules and notices of adoption are published in the Montana Administrative Register (MAR)
 - The MAR is published twice a month by the Secretary of State and is also available online at <https://rules.mt.gov>
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5 ☐ **How does an agency adopt a rule?**

- The Montana Administrative Procedures Act (MAPA) provides the required process for agency rulemaking
- Rules must go through the multi-step process outlined in MAPA, Title 2, chapter 4, parts 1 through 4
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6 ☐ **Basic Outline of MAPA Process**

- Agency contacts primary bill sponsor and drafts a proposed rule
- Agency publishes the proposed rule with a proposal notice in the MAR that complies with MAPA requirements
- Agency allows for public comment and may hold a public hearing on the proposed rule
- Agency publishes the adoption notice that complies with MAPA requirements to adopt the rule no less than 30 days or more than six months after the proposal notice is published
- The rule is incorporated into the ARM
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7 ☐ **Interim Committee Role in Rulemaking**

- CFHHS has administrative rule review for DPHHS
- The committee does not “approve” rulemaking
- MAPA allows the committee to:
 - Request rulemaking records from the agency
 - Submit written recommendations to the agency
 - Require that the agency hold a public hearing on a proposed rulemaking
 - Request a poll of the legislature to determine whether proposed rule is consistent with legislative intent
 - Require the agency to complete an economic impact statement
 - Object to a rule
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8 ☐ **Steps in the Objection Process**

1. Committee makes an informal objection under 2-4-406(1), MCA
 2. Committee makes a formal objection under 2-4-406(2), MCA
 3. Agency responds under 2-4-406(3), MCA
 4. Committee may withdraw, modify, vote to send the objection to the secretary of state, or do nothing under 2-4-406(4), MCA
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9 ☐ **Step 1: Informal Objection under 2-4-406(1), MCA**

- 1 ☐ • Committee Action
 - Committee votes to object to all or a portion of a proposed administrative rule
 - Committee sends letter to agency that it objects
 - Informal objection expires if Committee meets and does not vote to renew objection
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- 2 ☐ • Effect
 - Informal objection prevents agency from adopting a proposed rule until the objection expires or the end of the 6-month period during which an adoption notice must be published
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10 ☐ **Step 2: Formal Objection under 2-4-406(2), MCA**

- 1 ☐ • Committee Action
 - Committee determines by majority vote that it believes the rule was not proposed or adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-305
 - Committee sends written objection to the agency with a “concise statement of the committee’s reasons for its action”
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- 2 ☐ • Effect
 - If lodged after an informal objection and before adoption of the rule, a formal objection prevents the rule from going into effect until the day after sine die of the next regular session of the legislature under 2-4-306(4)(c), MCA
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11 ☐ **What’s in 2-4-302, 2-4-303, and 2-4-305, MCA?**

- 2-4-302 includes requirements for notice, hearing, and submission of views

- 2-4-303 provides requirements for emergency adoption of rules
- 2-4-305 provides requirements for validity and for the agency to provide authority for the rulemaking and a statement of reasons

12 ☐ **Step 3: Agency responds under 2-4-406(3), MCA**

- Within 14 days after the mailing of the formal objection, the agency is required to provide a response to the committee
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13 ☐ **Step 4: Committee action under 2-4-406(4), MCA**

- After receipt of the agency response, the committee may:
 - Withdraw its objection;
 - Modify its objection;
 - Vote to send the objection to the secretary of state for publication in the ARM; or
 - Do nothing
- Effect of publishing objection:
 - The burden of proof is shifted to the agency in any subsequent court case challenging the legality of the rule;
 - The court may award attorney fees against the agency if the agency loses
- NOTE: The committee must pay for the costs of publication
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14 ☐ **Step 5: Rescinding a formal objection**

- 2 ways for committee to rescind a formal objection:
 - Before adoption of the rule:
 - By a majority vote at a committee meeting after receiving the response from the agency under 2-4-406(4), MCA;
 - After adoption of the rule:
 - By a majority of the committee informing the presiding officer that the agency adopted the rule with changes that make it comply with the committee's objections and concerns under 2-4-305(4)(c)(ii), MCA.
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15 ☐ **Questions?**