

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW)	NOTICE OF PUBLIC HEARING ON
RULES I through XI and the repeal of)	PROPOSED ADOPTION AND
ARM 1.1.101, 1.2.101 through)	REPEAL
1.2.519, 1.3.101 and 1.3.102, and)	
1.3.301 through 1.3.313 pertaining to)	
State Agency Administrative)	
Rulemaking)	

TO: All Concerned Persons

1. On April 12, 2024, at 11:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., April 5, 2024, to advise us of the nature of the accommodation needed. Please contact Andy Ritter, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-7911; fax (406) 444-3976; TDD/Montana Relay Service 711; or email Andrew.Ritter@mt.gov.

3. The Secretary of State proposes to adopt the following rules:

NEW RULE I INTRODUCTION AND RULEMAKING REQUIREMENTS

(1) Agencies conducting administrative rulemaking must comply with Title 2, chapter 4, MCA, which outlines the requirements for administrative rulemaking, and the rules in this chapter, that guide agencies and supplement the statutory requirements. Additional guidance can be found on the Secretary of State's website at <https://rules.mt.gov>.

AUTH: 2-15-401, MCA
IMP: 2-15-401, 2-4-305, 2-4-306, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. Currently, many of the administrative rules implementing this chapter unnecessarily repeat statutory language. According to 2-4-305, MCA, rules may not unnecessarily repeat statutory language. In order to increase use and effectiveness of the administrative rules on this topic, this rulemaking notice proposes significant changes to the current organization of ARM Title 1, including the repeal of several subchapters and the

proposed adoption of similar but streamlined rules on agency rulemaking. The proposed new rules supplement and do not unnecessarily repeat statutory language, but given agencies' past reliance on administrative rules to reference statutory provisions, this rule directs agencies to the required statutory provisions regarding agency administrative rulemaking and identifies the availability of additional resources.

NEW RULE II FILING DATES AND EFFECTIVE DATES (1) The schedule established by the Secretary of State for publication of the Montana Administrative Register, including filing deadlines for agency submissions, is located on the SOS website at <https://sosmt.gov/arm>.

(2) An agency may submit notices in advance of the filing deadline for inclusion in a future issue of the Montana Administrative Register and, except as provided in 2-4-306, MCA, rule changes included in the adoption notice are adopted on the date the adoption notice is filed with the Secretary of State and are effective after publication in the Register.

AUTH: 2-4-302, 2-4-306, 2-15-401, MCA
IMP: 2-4-311, 2-4-312, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated.

According to 2-4-312, MCA, the Secretary of State shall publish the register at least once a month but not more often than twice a month. Statute gives the Secretary of State's Office the authority to determine the publication schedule. Historically, the Secretary of State has adopted the publication schedule in ARM 1.2.419; however, adopting the publication schedule through the administrative rule process is cumbersome and unnecessary. A publication schedule that is not in rule will allow the Secretary of State the flexibility to determine how and when to publish the Register, and it will simplify the manner in which agencies and the public can learn when the Register will be published, benefiting the state.

Additionally, the rule proposal provides agencies flexibility on when they submit notices to the Office for publication. However, by allowing agencies to submit notices in advance of the issue deadline, it is important to acknowledge the impact of the statutory provisions regarding the date of adoption and effective date.

NEW RULE III ADMINISTRATIVE RULES – GENERAL STRUCTURE

(1) Every rule must be assigned a name or catchphrase and a three-part numerical identifier, with each part separated by a decimal point. For example, if a rule is numbered 44.23.501:

- "44" represents the title number assigned to the department or agency;
- "23" represents the chapter number;
- "5" (the first one or two digits in the third part) represents the subchapter number; and
- "01" (the last two digits) represents the individual rule number.

(a) The entire number is referred to as the rule number. When a Montana administrative rule is referred to in a rulemaking notice or in rule text, it shall be cited as "ARM (rule number)". For example, "ARM 44.23.501".

(b) The name or catchphrase assigned to a rule must be a short phrase which summarizes the contents of a rule.

(2) Each rule is broken down into sections and subsections which cover a single idea. Each rule must be drafted in an outline form using the format standards developed by the Secretary of State to ensure consistency.

(3) For capitalization, hyphenation, punctuation, and grammar requirements, refer to the Gregg Reference Manual. The Secretary of State adopts and incorporates by reference the Gregg Reference Manual, 11th edition, which sets forth rules of style, grammar, and usage. A copy of the manual may be obtained from McGraw Hill on their website at mheducation.com.

AUTH: 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. This rule establishes formatting requirements to ensure a clear and logical organization, consistency, and professional publishing standards for the Administrative Rules of Montana.

NEW RULE IV ORGANIZATIONAL RULE (1) An agency shall adopt an organizational rule in accordance with 2-4-201, MCA. A model organizational rule contains:

(a) an overall description of the agency's history, purpose, and/or general duties;

(b) the organizational structure of the agency (i.e., list of divisions and/or organizational chart);

(c) a description of the functions of the agency divisions;

(d) a description of any boards, advisory committees, etc. attached to the agency;

(e) location and contact information where the public can obtain information or make requests; and

(f) any other information the agency deems beneficial.

AUTH: 2-4-202, 2-15-401, MCA
IMP: 2-4-201, 2-4-202, 2-4-302, MCA

REASONABLE NECESSITY: In accordance with 2-4-202, MCA, this rule gives a model form for agencies to use when developing an organizational rule. The proposed rule meets the statutory guidelines for what an agency shall include in accordance with 2-4-201, MCA.

NEW RULE V RULES OF PRACTICE (1) An agency shall adopt rules of practice in accordance with 2-4-201, MCA. Model rules of practice contain:

- (a) all formal and informal procedures available;
- (b) a description of where forms and instructions used by the agency can be obtained; and
- (c) any other overall office rules the agency deems necessary.

AUTH: 2-4-202, 2-15-401, MCA
IMP: 2-4-201, 2-4-202, MCA

REASONABLE NECESSITY: In accordance with 2-4-202, MCA, this rule gives a model form for agencies to use when developing the rules of practice or what is sometimes called "procedural rules." The proposed rule meets the statutory guidelines for what shall be included in accordance with 2-4-201, MCA.

NEW RULE VI PUBLICATION AND ARRANGEMENT OF THE MONTANA ADMINISTRATIVE REGISTER

(1) The Montana Administrative Register (MAR) is published at <https://rules.mt.gov> according to the schedule posted on the Secretary of State's website (<https://sosmt.gov/arm>).

(2) In accordance with 2-4-312, MCA, the MAR is arranged into sections.

(a) Rulemaking notices that propose changes to current rules are published in the section named "Proposal Notices."

(b) Adoption notices identifying the new official rule text are published in the section named "Adoption Notices."

(c) Attorney General opinions and declaratory rulings and other special informational notices of agencies are published in the section named "Other."

AUTH: 2-15-401, MCA
IMP: 2-4-312, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. The requirements for the Montana Administrative Register are outlined in 2-4-312, MCA. This rule prescribes how the Secretary of State will comply with the statutory requirements related to the publication of the Montana Administrative Register.

NEW RULE VII NOTICE FORMAT (1) Agencies submitting notices to the Secretary of State's Office for publication in the Montana Administrative Register must follow the format standards and use the system developed by the Secretary of State to ensure consistency and maintain professional publishing standards.

AUTH: 2-15-401, MCA
IMP: 2-4-306, 2-4-312, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. This rule establishes notice

formatting requirements for consistency and professional publishing standards for the Montana Administrative Register.

NEW RULE VIII PUBLIC COMMENTS (1) In accordance with 2-4-305, MCA, an agency shall consider all comments received regarding the proposed rulemaking. If the rule is adopted and comments were received, the adoption notice must include a brief statement of reasons for and against the adoption of the rule. The agency may choose to summarize comments and agency responses as its "Statement of Reasons" in the adoption notice. If an agency receives any comments urging against adoption and the agency proceeds to adopt the proposed rule, the reasons for overruling the considerations must be stated.

AUTH: 2-15-401, MCA
IMP: 2-4-305, 2-15-401, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. In 2-4-305, MCA, a requirement is established for an agency to include a "Statement of Reasons" in the adoption notice. In practice, agencies typically use public comments as the method for fulfilling the statutory requirement. The proposed rule clarifies how the practice relates to the statutory requirement.

NEW RULE IX AGENCY APPROVAL REQUIREMENTS (1) Prior to electronically submitting a notice for publication in the Register, the agency employee must ensure the head of the agency, chairperson of the governing board, or agency-selected designee approves the submission. The approval shall be indicated by inclusion of the approver's name on the notice submission.

(2) The agency rule reviewer appointed in accordance with 2-4-110, MCA, may provide an electronic signature to indicate the signer's affirmation that the review was performed to the best of the reviewer's ability.

AUTH: 2-15-401, MCA
IMP: 2-4-110, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. This rule provides an approval process for rule review and department authorization that can be accomplished in an electronic filing system.

NEW RULE X AGENCY FILING FEES (1) Starting in fiscal year 2026 and each fiscal year thereafter, an agency shall choose one of two methods for paying filing fees for the services provided by the Secretary of State in the review and publication of notices in the Montana Administrative Register (MAR).

- (a) Pay \$60 per page for each notice at the time of publication.
- (b) Pay on an annual basis a fee based on the volume of notice submissions.

- (i) 1 to 4 notices - \$550
- (ii) 5 to 9 notices - \$1,650
- (iii) 10 to 15 notices - \$3,475
- (iv) 16 to 25 notices - \$4,400
- (v) 26 to 35 notices- \$8,675
- (vi) 36 or more notices - \$16,750

AUTH: 2-15-401, 2-15-405, MCA
IMP: 2-4-313, 2-15-405, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated and 2-15-405, MCA requires fees charged by the Secretary of State to be set by administrative rule. Historically, ARM 1.2.423 established the filing fees. This rulemaking package proposes significant changes to the structure of the administrative rules related to the Administrative Procedure Act. One of the changes includes the repeal of ARM 1.2.423. The proposed rule substantially maintains the text of the repealed rule but also includes an additional payment option for agencies to allow flexibility for budgeting and publication options. In addition to ensuring fees are commensurate with cost, a comparison to agency payments in previous fiscal years was done to provide more flexibility without an increase in cost for the agencies. Delaying the effective date to fiscal year 2026 allows the agency time to evaluate usage in the new system.

NEW RULE XI BILL SPONSOR CONTACT (1) For efficiency and accuracy, the Secretary of State uses the Legislative Services Division's roster at leg.mt.gov as the contact list for legislators to meet the requirements of 2-4-302, MCA.

AUTH: 2-15-401, MCA
IMP: 2-4-302, 2-15-401, MCA

REASONABLE NECESSITY: Pursuant to 2-15-401, MCA, the Secretary of State may adopt rules to effectively administer Title 2, Chapter 4 (Administrative Procedure Act) of the Montana Code Annotated. This rule is proposed to guide agencies in how they can efficiently and accurately comply with the statutory provisions in 2-4-302, MCA, with regard to contacting bill sponsors.

4. The Secretary of State proposes to repeal the following rules:

1.1.101 DECLARATION OF PURPOSE

AUTH: 2-4-311, MCA
IMP: 2-4-311, MCA

1.2.101 GENERAL OVERVIEW OF ARM TITLE 1

AUTH: 2-4-311, MCA

IMP: 2-4-311, MCA

1.2.102 OFFICIAL VERSIONS

AUTH: 2-4-306, 2-15-401, MCA

IMP: 2-4-306, 2-4-311, 2-4-312, 2-4-313, MCA

1.2.104 ADMINISTRATIVE RULES SERVICES FEES

AUTH: 2-15-401, 2-15-405, MCA

IMP: 2-4-311, 2-4-312, 2-4-313, 2-15-405, MCA

1.2.201 TITLE NUMBER ASSIGNMENTS

AUTH: Not applicable

IMP: Not applicable

1.2.202 ARRANGEMENT OF THE ADMINISTRATIVE RULES OF MONTANA

AUTH: 2-4-306, 2-4-311, 2-15-401, MCA

IMP: 2-4-306, 2-4-311, MCA

1.2.204 ARRANGEMENT OF TITLE CONTENT

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA

IMP: 2-4-306, 2-4-311, MCA

1.2.205 RULE TYPES AND LOCATIONS

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA

IMP: 2-4-303, 2-4-306, 2-4-311, MCA

1.2.206 ARM PAGE UPDATES

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA

IMP: 2-4-306, 2-4-311, MCA

1.2.207 RETENTION OF OBSOLETE ARM PAGES

AUTH: 2-4-313, 2-15-401, MCA

IMP: 2-4-313, MCA

1.2.210 ADOPTION OF AN AGENCY RULE BY INCORPORATION BY REFERENCE

AUTH: 2-4-306, 2-15-401, MCA

IMP: 2-4-307, MCA

1.2.211 MODEL RULES: LOCATION AND INCORPORATION BY REFERENCE

AUTH: 2-4-202, 2-4-307, 2-15-401, MCA

IMP: 2-4-202, MCA

1.2.212 RULE NUMBERING METHOD FOR THE ADMINISTRATIVE RULES OF MONTANA

AUTH: 2-4-306, 2-15-401, MCA

IMP: 2-4-306, MCA

1.2.214 CATCHPHRASES

AUTH: 2-4-306, 2-15-401, MCA

IMP: 2-4-306, MCA

1.2.215 INTERNAL CATCHPHRASES

AUTH: 2-4-306, MCA

IMP: 2-4-306, MCA

1.2.216 OUTLINE FORM

AUTH: 2-4-306, 2-15-401, MCA

IMP: 2-4-306, MCA

1.2.217 RULE HISTORY NOTES

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA

IMP: 2-4-303, 2-4-306, 2-4-311, MCA

1.2.218 PAGE NUMBERING SYSTEM

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA

IMP: 2-4-306, 2-4-311, MCA

1.2.219 TABLE OF CONTENTS

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA

IMP: 2-4-306, 2-4-311, MCA

1.2.220 CROSS REFERENCE TABLE

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA

IMP: 2-4-306, 2-4-311, MCA

1.2.225 OLD-TO-NEW NUMBERING TABLE

AUTH: 2-4-306, 2-4-311, 2-15-401, MCA

IMP: 2-4-306, 2-4-311, MCA

1.2.226 NEW-TO-OLD NUMBERING TABLE

AUTH: 2-4-306, 2-4-311, 2-15-401, MCA

IMP: 2-4-306, 2-4-311, MCA

1.2.229 CITING THE ADMINISTRATIVE RULES OF MONTANA

AUTH: 2-4-201, 2-4-306, 2-15-401, MCA

IMP: 2-4-306, MCA

1.2.401 PROCEDURES FOR FILING PROPOSED RULE CHANGES

AUTH: 2-4-306, 2-4-312, 2-15-401, MCA

IMP: 2-4-306, 2-4-312, MCA

1.2.402 PREPARATION OF RULE CHANGES FOR INSERTION IN ARM

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA

IMP: 2-4-306, 2-4-311, MCA

1.2.404 ADMINISTRATIVE ORDER

AUTH: 2-4-306, 2-15-401, MCA

IMP: 2-4-303, 2-4-306, MCA

1.2.411 UPDATING PROCEDURES

AUTH: 2-4-201, 2-4-306, 2-15-401, MCA

IMP: 2-4-306, MCA

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA
ADMINISTRATIVE REGISTER

AUTH: 2-15-401, MCA

IMP: 2-4-312, MCA

1.2.420 SCHEDULED SUBMISSION DATES FOR REPLACEMENT PAGES
TO UPDATE THE ADMINISTRATIVE RULES OF MONTANA

AUTH: 2-4-306, MCA

IMP: 2-4-311, MCA

1.2.422 MONTANA ADMINISTRATIVE REGISTER

AUTH: 2-4-306, 2-4-312, 2-15-401, MCA

IMP: 2-4-306, 2-4-312, MCA

1.2.423 AGENCY FILING FEES

AUTH: 2-15-401, 2-15-405, MCA

IMP: 2-4-313, 2-15-405, MCA

1.2.519 BASIC FORMAT REQUIREMENTS

AUTH: 2-4-201, 2-4-306, 2-15-401, MCA

IMP: 2-4-110, 2-4-303, 2-4-306, MCA

1.3.101 INTRODUCTION AND DEFINITIONS

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

1.3.102 NOTICE OF AGENCY ACTION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC

AUTH: 2-4-202, MCA

IMP: 2-3-103, 2-4-202, 2-4-302, MCA

1.3.301 INTRODUCTION AND DEFINITIONS

AUTH: 2-4-202, MCA

IMP: 2-4-201, 2-4-202, MCA

1.3.302 APPLICATION OF MONTANA ADMINISTRATIVE PROCEDURE ACT

AUTH: 2-4-202, MCA

IMP: 2-4-102, 2-4-202, MCA

1.3.304 RULEMAKING, BIENNIAL REVIEW

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

1.3.305 ORGANIZATIONAL RULE

AUTH: 2-4-202, MCA

IMP: 2-4-201, 2-4-202, 2-4-314, MCA

1.3.307 RULEMAKING, INTRODUCTION

AUTH: 2-4-202, 2-15-401, MCA

IMP: 2-4-111, 2-4-202, 2-4-302, 2-4-303, 2-4-305, MCA

1.3.308 RULEMAKING, PETITION TO ADOPT, AMEND, OR REPEAL RULE

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-315, MCA

1.3.309 RULEMAKING, PROPOSAL NOTICE

AUTH: 2-4-202, 2-15-401, MCA

IMP: 2-4-111, 2-4-202, 2-4-302, 2-4-305, 2-4-307, MCA

1.3.311 RULEMAKING, OPPORTUNITY TO BE HEARD

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-302, 2-4-305, MCA

1.3.312 RULEMAKING, AGENCY ACTION

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-305, 2-4-307, MCA

1.3.313 RULEMAKING, TEMPORARY EMERGENCY RULES AND TEMPORARY RULES

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-303, 2-4-306, MCA

REASONABLE NECESSITY: The Secretary of State proposes this rulemaking to update, consolidate, simplify, and make more user friendly the administrative rules governing state agency rulemaking. There are currently 44 rules governing administrative rulemaking. These rules are contained in ARM Title 1, chapters 1 through 3. Many of these rules have not been updated in over 15 years and were designed for a paper-based system. The office has reviewed Title 2, chapter 4, MCA (Administrative Procedure Act) and assessed whether each current rule serves a legitimate purpose or whether it is repetitive of statute. The department is proposing to repeal each of the current rules and to adopt NEW RULES I through XI in their place. Many of the new rules consolidate and incorporate existing requirements from the current rules, where a legitimate purpose exists.

5. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that the proposed repeal of ARM 1.2.423 in combination with the proposal of NEW RULE X would provide approximately \$100,000 in cumulative savings for 21 state agencies in fiscal year 2025 and will not have a fiscal impact starting in fiscal year 2026. While NEW RULE X provides a new, more flexible payment option for agencies filing notices in the Montana Administrative Register starting in fiscal year 2026, NEW RULE X also allows agencies to continue to use the current fee structure without impact. It has been determined that the proposed repeal of ARM 1.2.104 would provide approximately \$300 in cumulative savings annually for five subscribers.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., April 19, 2024.

7. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

8. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at <https://sosmt.gov/arm/secretary-of-state-administrative-rules/> or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Austin Markus James
Austin Markus James
Rule Reviewer

/s/ Christi Jacobsen
Christi Jacobsen
Secretary of State

Dated this March 12, 2024.