

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment of ARM 1.3.101 and ) PROPOSED AMENDMENT,  
1.3.102, the amendment and transfer of ) AMENDMENT AND TRANSFER,  
ARM 1.3.203 through 1.3.210, and the ) AND ADOPTION  
proposed adoption of New Rules I )  
through III pertaining to model rules )

TO: All Concerned Persons

1. On June 11, 2008, a public hearing will be held at 10:30 a.m. in Room 455 of the State Capitol Building, Helena, Montana, to consider the proposed amendment, amendment and transfer, and adoption of the above-stated rules. This hearing is being held in conjunction with the Attorney General's Office public hearing on proposed changes to model rules regarding contested case hearings and declaratory rulings in this issue of the Montana Administrative Register in MAR Notice No. 23-20-192.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing 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. on June 4, 2008, to advise us of the nature of the accommodation that you need. Please contact Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5596; fax (406) 444-4263; e-mail jbranscum@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

1.3.101 INTRODUCTION AND DEFINITIONS (1) Montana statutes are referred to collectively as the Montana Code Annotated (MCA). ~~The term "MCA" is the abbreviation for Montana Code Annotated.~~

(2) Section 2-3-103, MCA, directs each agency to adopt procedural rules to facilitate public participation in agency actions that are of significant interest to the public, with exceptions listed in 2-3-112, MCA.

(3) "Agency" is defined by 2-3-102, MCA. Note that exceptions to the term "agency" are fewer under this section than under the Montana Administrative Procedure Act, 2-4-102, MCA.

(4) "Agency action" is defined by 2-3-102, MCA, ~~with exceptions listed in 2-3-112, MCA.~~

(5) ~~The term "r~~Register" refers to the Montana Administrative Register.

(6) "Sample form" is defined as an Attorney General's Office reference guide that depicts standard boilerplate language and layout for ~~notices published in the register~~ contested cases and declaratory rulings. An appendix of Attorney General sample forms follows the text of the rules in subchapter 2.

(7) "Template" refers to the Secretary of State's online forms depicting standard boilerplate language and layout for rulemaking petitions and notices published in the register, and are available at [www.armtemplates.com](http://www.armtemplates.com).

(a) The templates illustrate the Secretary of State's model rules in subchapter 3. The template number corresponds to the model rule number; for example, template 309b is connected to ARM 1.3.309.

(b) Hard copies of templates may be obtained from the Secretary of State's Office, Administrative Rules Services, P.O. Box 202801, Helena MT 59620-2801, telephone (406) 444-2055.

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

1.3.102 MODEL RULE 4 NOTICE OF AGENCY ACTION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC (1) In accordance with 2-3-102 through 2-3-114, MCA, prior to making a final decision that is of significant interest to the public, the agency shall afford reasonable opportunity for public participation. Public participation may be afforded by:

(a) any of the agency actions allowed pursuant to 2-3-104, MCA; or

(b) a notice of the proposed agency action published in the register in accordance with ~~sample form 4~~ template 102a ([www.armtemplates.com](http://www.armtemplates.com)). The agency may grant or deny an opportunity for hearing, except a hearing is required if the proposed action is the adoption of rules in an area of significant interest to the public.

(2) For purposes of (1)(b) only, significant interest to the public is defined at 2-4-102, MCA, as matters an agency knows to be of widespread citizen interest.

(3) Public comment on any public matter, as limited in 2-3-103(1)(b), MCA, that is within the jurisdiction of an agency must be allowed at any public meeting as defined by 2-3-202, MCA, and in accordance with 2-3-203, MCA. The opportunity for public comment must be reflected on the meeting agenda and incorporated into the official minutes of the meeting. For purposes of this rule and 2-3-103(1)(b), MCA, contested case is defined at 2-4-102(4), MCA.

AUTH: 2-4-202, MCA

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

4. The rules proposed to be amended and transferred provide as follows, stricken matter interlined, new matter underlined:

1.3.203 (1.3.305) ORGANIZATIONAL RULE (1) An agency need not comply with the Montana Administrative Procedure Act (MAPA) notice and hearing requirements when adopting an organizational rule, ~~per~~ per 2-4-201(1), MCA.

(2) The organizational rule must be reviewed biennially to determine whether it should be modified, ~~per~~ per 2-4-314, MCA.

(3) The organizational rule should contain the following as illustrated by ~~sample form 2~~ template 305a ([www.armtemplates.com](http://www.armtemplates.com)):

(a) the items required by 2-4-201(1), MCA;

(b) charts showing both the organization of the agency and the functions of each division, indicating those divisions without rulemaking authority; and

(c) ~~in the spirit of the rule,~~ a personnel roster of agency heads, division heads, and other key personnel should be ~~appended to~~ included in the rule.

AUTH: 2-4-202, MCA

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

1.3.204 (1.3.307) RULEMAKING, INTRODUCTION (1) Title 2, chapter 4, part 3, MCA, prescribes procedures to be followed by agencies when adopting, amending, or repealing rules.

(2) See 2-4-102, MCA for the definition of "rule". Because of the difficulty in determining whether an agency action falls within the definition of rule, construe the exceptions narrowly and if in doubt, consult legal counsel. Interpretative rules are statements issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers. Interpretive rules may be made under the express or implied authority of a statute, but are advisory only and do not have force of law.

(a) Among other limitations in 2-4-102, MCA, "rule" does not include statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system.

(3) Substantive rules must implement either:

(a) a statute which clearly and specifically includes the subject matter of the rule as a subject upon which rules can be adopted;

(b) subject matter which is clearly and specifically included in a statute to which the agency's rulemaking authority extends; or

(c) an agency function which is clearly and specifically included in a statute to which the agency's rulemaking authority extends, per: 2-4-305(3), MCA.

(4) ~~Rulemaking checklist.~~ Rulemaking under the Administrative Procedure Act MAPA involves ~~three~~ four steps.

(a) Notice to the primary sponsor. When an agency begins to work on the substantive content and the wording of a proposal notice for a rule that initially implements legislation, the agency shall notify the legislator who was the primary sponsor of the legislation. See 2-4-302(2)(d)(i), MCA.

~~(a)~~ (b) Notice of proposed agency action. Model Rule-3 See ARM 1.3.309 regarding the following components:-

(i) notice in the register;

(ii) notice to sponsor as required;

(iii) notice to interested persons; and

(iv) statement of reasonable necessity for the proposed action.

~~(b)~~ (c) Opportunity to be heard.

(i) The agency shall allow at least 28 days from the publication of the original notice of proposed action for interested persons to submit comments in writing via regular mail, e-mail, or fax to the agency. The agency may extend the response time in the event an amended or supplemental notice is filed; .

(ii) The agency shall schedule an oral hearing at least 20 days from the publication of the notice of proposed action if the proposed rules affect matters which are of significant interest to the public as defined at 2-4-102(12), MCA; .

(iii) Except where the proposed rules affect matters which are of significant interest to the public or otherwise required by law, a public hearing must be held only if the agency's proposed action affects a substantive rule and a hearing is requested by either:

(A) 10% or 25, whichever is less, of the persons who will be directly affected by the proposed action;

(B) a governmental subdivision or agency;

(C) an association having not less than 25 members who will be directly affected; or

(D) the appropriate administrative rule review committee of the Legislature.

~~Model Rule 4~~ See ARM 1.3.311.

~~(e)~~ (d) Agency notice of final action. ~~Model Rule 5~~ See ARM 1.3.312.

(5) Pursuant to 2-4-302, MCA, the agency shall create and maintain a list of interested persons and the subject(s) of their interest. Persons submitting a written comment or attending a hearing must be informed by the agency of the list and be provided an opportunity to place their names on the list.

(6) In the event of imminent peril to the public health, safety, or welfare, temporary emergency rules may be adopted without prior notice or hearing or after abbreviated procedures. However, special notice must be given the appropriate administrative rule review committee. ~~Model Rule 6~~ See ARM 1.3.313.

(7) In the event a statute is effective prior to October 1 of the year of enactment, temporary rules may be adopted with abbreviated notice or hearing, but with at least 30 days notice, and are effective through October 1 of that year. ~~Model Rule 6~~ See ARM 1.3.313.

AUTH: 2-4-202, MCA

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

1.3.205 (1.3.308) MODEL RULE 2 RULEMAKING, PETITION TO ADOPT, AMEND, OR REPEAL RULE (1) Section 2-4-315, MCA, authorizes an interested person or member of the Legislature acting on behalf of an interested person when the Legislature is not in session, to petition an agency to adopt, amend, or repeal a rule.

(a) The petition shall be in writing, signed by or on behalf of the petitioner and shall contain, as illustrated by ~~sample form 3~~ template 308a ([www.armtemplates.com](http://www.armtemplates.com)), a detailed statement of:

(i) the name and address of petitioner and of any other person known by petitioner to be interested in the rule sought to be adopted, amended, or repealed;

(ii) sufficient facts to show how petitioner will be affected by adoption, amendment, or repeal of the rule;

(iii) whether the rule petitioner requests the agency to adopt, amend, or repeal. Where amendment of an existing rule is sought, the rule shall be set forth in the petition with proposed deletions interlined and proposed additions underlined; and

(iv) facts and propositions of law in sufficient detail to show the reasons for adoption, amendment, or repeal of the rule.

(b) Legislators may petition an agency on behalf of interested parties through an informal letter or memorandum. The petition should include the name of the person or a description of a class of persons on whose behalf the legislator acts. Petitions filed by the appropriate administrative rule review committee of the Legislature need not be brought on the behalf of any specifically interested party. Any petition from the Legislature or its members should comply with (1)(a)(iii) and (iv) of this rule.

(2) The petition shall be considered filed when received by the agency.

(3) Upon receipt of the petition, the agency:

(a) may, but is not required to, schedule a hearing or oral presentation of petitioner's or interested person's views to assist in developing the record;

(b) shall, within 60 days after date of submission of the petition, either:

(i) issue an order denying the petition; or

(ii) initiate rulemaking proceedings in accordance with the ~~Administrative Procedure Act~~ MAPA.

(4) A decision to deny a petition or to initiate rulemaking proceedings must:

(a) be in writing;

(b) be based on record evidence, including any information submitted by petitioner, the agency, and interested persons; and

(c) include the reasons for the decision.

AUTH: 2-4-202, MCA

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

### 1.3.206 (1.3.309) MODEL RULE 3 RULEMAKING, PROPOSAL NOTICE

(1) How notice is given. 2-4-302, MCA. Per 2-4-302, MCA, a notice of proposed rulemaking involves the following:

(a) An agency shall notify the chief primary sponsor of any legislation when the agency begins work on the initial rule proposal implementing one or more sections of that legislation. If a proposed rule implements more than one bill, the chief primary sponsor of each bill must be notified. 2-4-302(2), MCA. If the legislation affected more than one program, notice must be given to the primary sponsor each time that a rule is being proposed to initially implement the legislation for a program, even if another agency has previously done rulemaking under that legislation.

(i) When the bill sponsor notice requirements apply, the proposal notice must state the date of primary sponsor notification, and the method of notification used, per 2-4-302(1)(b), MCA.

(b) An agency shall publish notice of intent to adopt, amend, or repeal a rule in accordance with 2-4-302(2) and (3), MCA.

(c) An agency shall post the notice on the state electronic ~~bulletin board~~ access system or other available electronic communications system available to the public. Posting on the agency's home page is adequate.

(d) Within 3 three days of publication pursuant to ARM 1.3.206(1)(b) this rule, an agency shall send copies of the notice to:

(i) ~~to~~ all interested persons; and  
(ii) ~~to~~ the ~~chief~~ primary sponsor of the legislation being implemented, if the notice is the initial rule proposal regarding that legislation. ~~2-4-302(2), MCA.~~ If a proposed rule implements more than one bill, the ~~chief~~ primary sponsor of each bill must receive a copy of the notice.

(e) Former legislators who wish to receive notice of initial proposals must keep their name, address, e-mail address, and telephone number on file with the Secretary of State. Agencies proposing rules shall consult that listing. ~~2-4-302(8), MCA.~~

(f) An agency may send a copy of the notice to a statewide wire service and any other news media it considers appropriate, per 2-3-105, MCA.

(g) Whenever practicable and appropriate, the agency may send written notice to licensees of the agency, per 2-4-631(3), MCA.

(2) Notice of agency action must be published within six months of the date on which notice of the proposed action was published, per 2-4-305(7), MCA.

(3) The c~~C~~ontents of the notice shall include the following.

(a) The n~~N~~otice of public hearing, :

~~(i) As illustrated by sample form 4 template 309a (www.armtemplates.com),~~  
the notice must include:

~~(A)~~ all notice items required by 2-4-302(1), MCA, summarized as follows:

~~(i)~~ (i) The agency may issue a single public notice that it intends to adopt, amend, and repeal several rules dealing with the same subject matter in a single proceeding.

~~(ii)~~ (ii) Whenever possible the agency should include in the notice the full text of any rule proposed to be adopted, amended, or repealed. ~~Summaries and paraphrasing may only be used when it is not possible to include a copy of the proposed rule in the notice. Such summaries and paraphrasing must accurately reflect the substance of the proposed agency actions. Unchanged sections and subsections may be referred to by the earmark and summarized as "remains the same." Numbered tables may be referred to by the number and summarized as "remains the same."~~

~~(iii)~~ (iii) The agency shall include in its notice an easily understood statement of reasonable necessity which contains the principal reasons and the rationale for each proposed rule. One statement may cover several proposed rules if appropriate, and if the language of the statement clearly indicates which rules it covers. An inadequate statement of reasonable necessity cannot be corrected in an adoption notice. The corrected statement of reasonable necessity must be included in a new notice or supplemental notice of proposed action.

(A) The statement of reasonable necessity must be more substantive than stating which statute authorized rulemaking. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule.

(B) When an agency proposes to change or introduce a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the statement of reasonable necessity must state an estimate of the number of persons affected and the cumulative amount of the change for all persons.

~~(IV)~~ (iv) The agency shall include in its notice information describing the interested persons list and explaining how persons may be placed on that list, per 2-4-302, MCA.

~~(V)~~ (v) An agency may adopt a rule which adopts by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient. The notice must contain a citation to the material adopted by reference, a statement of its general subject matter content, and must state where a copy of the material may be obtained. Amendments to incorporated material are not effective unless adopted pursuant to 2-4-307, MCA.

~~(B)~~ (vi) The agency shall include, at ~~At~~ the end of each rule noticed, a citation to the authority for the proposed rule, and citation to the MCA section or sections being implemented. When an amendment to a rule is proposed, the section(s) of the MCA that constitute authority for the amendment and sections implemented by the amendment must be underlined. If a proposed action implements a policy of a governing board or commission, the notice must include a citation to and description of the policy implemented.

~~(C)~~ (vii) The agency shall include a A designation of the officer or authority who will preside at and conduct the hearing.

(b) ~~Notice w~~When an agency does not plan to hold a public hearing,:

~~(i)~~ ~~As~~ illustrated by sample forms 5 through 8 template 309b (www.armtemplates.com), the notice must include:

~~(A)~~ (i) all notice items required by 2-4-302(1), MCA;

~~(B)~~ (ii) a statement that any interested person desiring to express or submit data, views, or arguments at a public hearing must request the opportunity to do so, and that if 10% or 25, whichever is less, of the persons directly affected; or a governmental subdivision or agency; or an association having not less than 25 members who will be directly affected; or the Legislature's appropriate administrative rule review committee request a hearing, a hearing will be held after appropriate notice is given. Reference to the appropriate administrative rule review committee is unnecessary if the full Legislature, by joint resolution, has ordered the repeal of a rule;

~~(C)~~ (iii) a statement of the number of persons which constitutes 10% of those directly affected;

~~(D)~~ (iv) the name and address of the person to whom request for public hearing must be submitted; and the date by which a request must be submitted; and

~~(E)~~ (v) at the end of each rule noticed, a citation to the authority for the rule and the code section or sections being implemented. When an amendment to a rule is proposed, the section(s) of the MCA that constitute authority for the amendment and the section(s) actually implemented by the amendment must be underlined.

~~(c) Notice of public hearing when a hearing has been properly requested.~~ When a hearing has been properly requested per 2-4-302, MCA, the agency shall ~~mail~~ send notice of the hearing to persons who have requested a public hearing. ~~2-4-302, MCA.~~ Also, notice must be published in the register, per 2-4-302(2), MCA.

(i) As illustrated by sample form 10 template 309c (www.armtemplates.com), the notice shall state that the hearing is being held upon request of the requisite

number of persons designated in the original notice, per 2-4-302(4), MCA, or the appropriate administrative rule review committee of the Legislature, 2-4-402(3)(1)(c), MCA, or a governmental agency or subdivision, or an association.

AUTH: 2-4-202, MCA

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

1.3.207 (1.3.311) MODEL RULE 4 RULEMAKING, OPPORTUNITY TO BE HEARD (1) ~~Written comment.~~

~~(a)~~ When the subject matter of a proposed rule is not of significant interest to the public, or an agency is not otherwise required and does not wish to hold a public hearing, written comments must be permitted.

(a) The person designated in the notice to receive written comments from interested persons shall review all submissions within a reasonable time after the period for comment has ended. ~~2-4-305(1), MCA.~~ That person then shall prepare and submit a written summary of the comments to the rulemaker.

(b) The agency shall notify all persons who submit written comments that a list of interested persons exists and provide each commenter the opportunity to have their name added to that list.

~~(2) Public hearing.~~

~~(a)~~ Except as otherwise provided by statute, public hearings shall be conducted in the following manner:

~~(i)~~ (a) The hearing shall be conducted by and under the control of a presiding officer. The presiding officer shall be appointed by the rulemaker; that is, the department, board, or administrative officer authorized by law to make rules for the agency. The rulemaker retains the ultimate authority and responsibility to ensure that the hearing is conducted in accordance with MAPA.

~~(ii)~~ (b) At the commencement of the hearing, the presiding officer shall ask that any persons wishing to submit data, views, or arguments orally or in writing submit their name, address, affiliation, whether they favor or oppose the proposed action, and such other information as may be required by the presiding officer for the efficient conduct of the hearing. The presiding officer shall provide an appropriate form for submittal of this information. The presiding officer may allow telephonic testimony at the hearing.

~~(iii)~~ (c) At the opening of the hearing, the presiding officer shall:

~~(A)~~ (i) read or summarize the notice that has been given in accordance with ~~Model Rule 3~~ ARM 1.3.309;

~~(B)~~ (ii) read the "Notice of Function of Administrative Rule Review Committee" appearing in the register and on [www.mtrules.org](http://www.mtrules.org); and

~~(C)~~ (iii) inform persons at the hearing of the interested persons list and provide interested parties the opportunity to have their names placed on that list.

~~(iv)~~ (d) Subject to the discretion of the presiding officer, the order of presentation may be:

~~(A)~~ (i) statement of proponents;

~~(B)~~ (ii) statement of opponents;

~~(C)~~ (iii) statements of any other witnesses present and wishing to be heard.



~~(v)~~ (e) The presiding officer or rulemaker has the right to question or examine any witnesses making a statement at the hearing. The presiding officer may, in ~~his~~ the officer's discretion, permit other persons to examine witnesses.

~~(vi)~~ (f) There shall be no rebuttal or additional statements given by any witness unless requested by the presiding officer, or granted for good cause. If such statement is given, the presiding officer shall allow an equal opportunity for reply.

~~(vii)~~ (g) The hearing may be continued with recesses as determined by the presiding officer until all witnesses present and wishing to make a statement have had an opportunity to do so.

~~(viii)~~ (h) The presiding officer shall, where practicable, receive all relevant physical and documentary evidence presented by witnesses. Exhibits shall be marked and shall identify the witness offering the exhibits. In the discretion of the agency the exhibits may be preserved for one year after adoption of the rule or returned to the party submitting the exhibits, but in any event the agency shall preserve the exhibits until at least 30 days after the adoption of the rule.

~~(ix)~~ (i) The presiding officer may set reasonable time limits for oral presentation.

~~(x)~~ (j) A record must be made of all the proceedings, either in the form of minutes or a verbatim written or mechanical record.

~~(b)~~ (k) The presiding officer shall, within a reasonable time after the hearing, provide the rulemakers with a written summary of statements given and exhibits received and a report of ~~his~~ the officer's observations of physical experiments, demonstrations, and exhibits.

(3) ~~Informal conferences or consultations.~~ In addition to the required rulemaking procedures, an agency may obtain viewpoints and advice concerning proposed rulemaking through informal conferences and consultations or by creating committees of experts or interested persons or representatives of the general public, ~~per~~ 2-4-304(2), MCA.

(a) An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the agency director determines that the use of the negotiated rulemaking procedure is in the public interest, per 2-5-104, MCA.

AUTH: 2-4-202, MCA

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

### 1.3.208 (1.3.312) MODEL RULE 5 RULEMAKING, AGENCY ACTION

(1) Thirty days after publication of proposal notice and following receipt of the presiding officer's report, the rulemaker may adopt, amend, or repeal rules covered by the notice of intended action. ~~2-4-302(2), MCA.~~

(2) ~~Notice of rulemaking.~~ Upon adoption, amendment, or repeal of a rule, the agency shall file notice of its rulemaking action with the Secretary of State, ~~per~~ 2-4-306, MCA.

(a) As illustrated by ~~sample form 13~~ templates 312a, 312b, and 312c (www.armtemplates.com), the adoption notice must include:

(i) either the text of the rule adopted or amended, or reference to the notice of proposed agency action in which the text of the proposed rule or rule as proposed

to be amended was printed in full, ~~or reference to the page number of the Administrative Rules of Montana on which the rule appears;~~

(ii) if the rule adopts a model code, rule, or other publication by reference, a citation to the material adopted, its year, a statement of the general subject matter thereof, and where a copy of the material may be obtained. The material adopted by reference need not be published if publication would be unduly cumbersome, expensive, or otherwise inexpedient. Upon request of the Secretary of State, a copy of the omitted material must be filed with the Secretary of State, per- 2-4-307(2), MCA.:-

(A) State agencies shall retain copies of all versions of previously incorporated material, for research and reference purposes, pursuant to state of Montana records and information management requirements.

(iii) a statement of the principal reasons for and against the adoption, amendment, or repeal of a rule that was presented by interested persons. The statement also must include the agency's reasons for overruling the considerations urged against the agency action. If substantial differences exist between the rule as proposed and as adopted, and the differences have not been described or set forth in the adopted rule, the differences must be described in the statement of reasons for and against the agency action. The statement may be omitted if no written or oral submissions were presented, per- 2-4-305(1), MCA. See Patterson v. Montana Department of Revenue, 557 P.2d 798 (1976).:-

(iv) an accompanying Administrative Order. See ARM 1.2.404 and template 312g (www.armtemplates.com).

(3) Objection by an administrative rule review committee made pursuant to 2-4-305(9), 2-4-306(4), or 2-4-406(1), MCA.

(a) If the appropriate administrative rule review committee objects to a proposed notice of adoption, the proposed rules cannot be adopted until either:

- (i) notification of withdrawal of the objection; or
- (ii) publication of the last issue of the register before expiration of the ~~6~~ six-month period during which the adoption notice must be published.

(b) If the agency adopts the rule to which the appropriate administrative rule review committee objects, the adopted rule cannot become effective until either:

- (i) withdrawal of the objection;
- (ii) amendment of the rule to meet the concerns of the committee; or
- (iii) the day after final adjournment of the regular session of the Legislature that begins after the notice proposing the rule was published.

(4) ~~Effective Date.~~ Absent an objection of the type referred to in (3) by an administrative rule review committee, the agency action is effective on the day following publication of the notice in the register, unless a later date is required by statute or specified in the notice.

(5) If an agency decides not to adopt, amend, or repeal the rules covered by the notice of intended action, the agency can publish a notice of agency decision stating why the action will not be adopted at this time, and whether the agency intends to repropose the changes in a subsequent rulemaking cycle. See template 312d (www.armtemplates.com).

AUTH: 2-4-202, MCA

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

1.3.209 (1.3.313) MODEL RULE 6 RULEMAKING, TEMPORARY EMERGENCY RULES AND TEMPORARY RULES (1) ~~Temporary Emergency Rules.~~

(a) If an agency finds that circumstances exist that truly and clearly constitute an imminent peril to the public health, safety, or welfare, that the circumstances cannot be averted or remedied by any other administrative act, and that the circumstances require a rulemaking action upon fewer than 30 days notice, it may adopt a temporary emergency rule without prior notice or hearing or, as illustrated by ~~sample form 14~~ template 313a (www.armtemplates.com), upon any abbreviated notice and hearing that it finds practicable, ~~per.~~ 2-4-303(1), MCA.

~~(b)~~ (a) To adopt an emergency rule the agency must:

(i) file with the Secretary of State a copy of the emergency rule containing a statement in writing of its reasons for finding that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days notice, ~~per.~~ 2-4-306(4), MCA;

(ii) provide special notice of its intent to the appropriate administrative rule review committee which is normally accomplished by the Secretary of State's office providing a copy to the Legislative Services Division;

(iii) take appropriate and extraordinary measures to make emergency rules known to persons who may be affected by them, 2-4-306(4), MCA, including delivery of copies of the rule to a state wire service and to any other news media the agency considers appropriate. Extraordinary measures include, but are not limited to, immediate personal delivery of copies of the rule to affected parties, and immediate delivery of copies of the rule to associations whose members are affected, ~~per.~~ 2-3-105, MCA.

~~(c)~~ (b) An agency's reasons for adopting a temporary emergency rule are subject to judicial review. In order to pass judicial review, the notice of adoption shall, standing on its own, provide compelling reasons for the emergency rule.

~~(d)~~ (c) A temporary emergency rule becomes effective immediately upon filing a copy with the Secretary of State or on a stated date following publication in the register, ~~per.~~ 2-4-306(4), MCA.

~~(e)~~ (d) An emergency rule may be effective for a period not longer than 120 days, and may not be renewed. The agency may, however, adopt an identical, permanent rule after notice and hearing in accordance with ~~Model Rules 2 through 5~~ ARM 1.3.308, 1.3.309, 1.3.311, and 1.3.312, ~~per.~~ 2-4-303(1), MCA.

(e) If no longer necessary, an emergency rule may be repealed before the end of the 120 day effectiveness period. See template 313b (www.armtemplates.com).

(2) ~~Temporary Rules.~~

(a) Temporary rules implementing a statute which becomes effective prior to October 1 of the year of enactment may be adopted through abbreviated procedures determined practicable by the agency as illustrated by templates 313c and 313d (www.armtemplates.com).

~~(b)~~ (a) The temporary rules cannot become effective until at least 30 days after the notice of proposal to adopt is published.

- (e) (b) The temporary rules expire October 1 of the year adopted.
- (d) (c) Permanent rules can be adopted during the period that the temporary rules are effective.

AUTH: 2-4-202, MCA

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

1.3.210 (1.3.304) MODEL RULE 7 RULEMAKING, BIENNIAL REVIEW

(1) Each agency shall at least biennially review its rules to determine whether any rule should be adopted or any existing rule should be modified or repealed, per 2-4-314, MCA.

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

5. The rules proposed to be adopted provide as follows:

NEW RULE I INTRODUCTION AND DEFINITIONS (1) Montana statutes are referred to collectively as the Montana Code Annotated (MCA).

(2) The Montana Administrative Procedure Act is referred to as "MAPA" and includes 2-4-101 through 2-4-711, MCA. MAPA outlines procedures that agencies must follow when:

- (a) adopting, amending, or repealing agency rules;
- (b) hearing contested cases; or
- (c) issuing declaratory rulings.

(3) Each agency subject to MAPA must adopt rules describing its organization and procedures, per 2-4-201, MCA. Section 2-4-202, MCA directs the Secretary of State to prepare a model form for a rule describing the organization of agencies and model rules of practice for agency guidance in fulfilling these requirements. The model rules have been adopted for that purpose. The model rules may be incorporated by reference to the model rules. Subsequent amendments may be adopted only by following the rulemaking procedure of MAPA. See 2-4-307, MCA.

(4) "Register" refers to the Montana Administrative Register.

(5) "Template" refers to the Secretary of State's online forms depicting standard boilerplate language and layout for rulemaking petitions and notices published in the register, and are available at [www.armtemplates.com](http://www.armtemplates.com). The templates illustrate the Secretary of State's model rules in this subchapter.

(a) The template number corresponds to the model rule number; for example, template 309b is connected to ARM 1.3.309.

(b) Hard copies of templates may be obtained from the Secretary of State's Office, Administrative Rules Services, P.O. Box 202801, Helena MT 59620-2801, telephone (406) 444-2055.

AUTH: 2-4-202, MCA

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

NEW RULE II APPLICATION OF MONTANA ADMINISTRATIVE PROCEDURE ACT (1) MAPA applies to all state agencies as defined in 2-4-102(2), MCA. Note that the state Board of Pardons and Parole is subject to only the sections enumerated in 2-4-103, 2-4-201, 2-4-202, and 2-4-306, MCA, and the requirement that its rules be published.

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

NEW RULE III MODEL RULES AND REQUIREMENTS FOR THE ADMINISTRATIVE RULES OF MONTANA (1) Rules relating to the fees, schedules, general provisions, and basic formatting requirements of the Montana Administrative Register and the Administrative Rules of Montana are located in ARM Title 1, chapter 2.

(2) Model rules relating to rulemaking are located in ARM Title 1, chapter 3, subchapter 3.

(a) The Secretary of State's online template forms depicting the model rules' standard boilerplate language and layout for rulemaking petitions and notices published in the register are available at [www.armtemplates.com](http://www.armtemplates.com).

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

6. STATEMENT OF REASONABLE NECESSITY: Effective October 1, 2007, House Bill 70 transferred to the Secretary of State some model rules previously assigned to the Attorney General. The reassigned rules describe the organization of agencies and model rules of practice for agencies to use as a guide for the rulemaking process and in fulfilling the requirements of 2-4-201, MCA. These rules are proposed for amendment, amendment and transfer, and adoption to:

a. separate the Secretary of State's model rules from the Attorney General's model rules. The Attorney General's model rules (ARM 1.3.211 through 1.3.233) pertaining to contested cases and declaratory rulings will remain in ARM Title 1, chapter 3, subchapter 2. The Secretary of State's model rules (ARM 1.3.203 through 1.3.210) pertaining to rulemaking will be transferred to a new subchapter 3. Proposed New Rules I and II will be placed in new subchapter 3, and proposed New Rule III will be placed in ARM Title 44;

b. define new terms;

c. allow for use of flexible online template forms in place of static sample forms. Sample Forms 1 through 17 in ARM Title 1, chapter 3 APPENDIX OF SAMPLE FORMS on pages 1-141 through 1-182 will be replaced by these online templates; and

d. update the model rules to conform to current user needs.

It is reasonable and necessary to reorganize the rules and illustrate standard language and formatting. These model rule changes will help integrate multiple agency notices into a cohesive, uniform publication. Up-to-date templates and standardization will aid agency staff in rulemaking. Register users will be able to rely

on a consistent product that will help them participate in state government. Changes are also being made to update rule language with language used in statute.

7. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing [jabranscum@mt.gov](mailto:jabranscum@mt.gov), and must be received no later than 5:00 p.m., June 19, 2008.

8. Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

9. 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 shall make a written request which includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, e-mailed to [jabranscum@mt.gov](mailto:jabranscum@mt.gov), faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

10. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems. If persons are unable to access the templates online, contact Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5596; fax (406) 444-4263; e-mail [jabranscum@mt.gov](mailto:jabranscum@mt.gov).

11. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified February 4, 2008, via U.S. Mail.

/s/ Brad Johnson  
BRAD JOHNSON  
Secretary of State

/s/ Janice Doggett  
JANICE DOGGETT  
Rule Reviewer

Dated this 12th day of May 2008.