

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 1.3.309 pertaining to rulemaking )  
notice requirements )

TO: All Concerned Persons

1. On June 20, 2013, the Secretary of State published MAR Notice No. 44-2-188 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1077 of the 2013 Montana Administrative Register, Issue Number 12.

2. The Secretary of State has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

1.3.309 RULEMAKING, PROPOSAL NOTICE

(1) through (3)(a)(ii) remain as proposed.

(iii) If an agency is proposing to adopt a ~~new~~ rule that it determines will significantly and directly impact small businesses, the agency shall include a statement of that determination in its proposal notice. This requirement begins on July 1, 2013, and expires on July 1, 2015.

(iv) through (4) remain as proposed.

3. The Secretary of State has thoroughly considered the comments and testimony received. A summary of the comments received and the Secretary of State's responses are as follows:

COMMENT #1: Glenn Oppel, Government Relations Director for the Montana Chamber of Commerce, attended the rule hearing and provided oral and written comments regarding the proposed amendments. His basic concern was that the rule does not provide complete guidance for agencies to comply with Senate Bill 139, which was passed by the 2013 Montana Legislature. He recommended that the rule be amended to provide guidance to agencies on what must be included in a rule notice.

RESPONSE #1: The Secretary of State is charged with the responsibility of compiling and publishing all rules filed pursuant to the Montana Administrative Procedure Act. Along with this responsibility, the Secretary of State is authorized to prescribe a format, style, and arrangement for the rules. Each state agency is responsible for preparing its portion of the rules in accordance with the format, style, and arrangement required by the Secretary of State. The Secretary of State provides tools for state agencies in the form of online templates that depict standard boilerplate language and layout for rulemaking notices. These templates provide skeletal rule notices which state agencies fill in and complete according to their own

needs. The purpose is to ensure that the Secretary of State's formatting requirements are met and that basic rulemaking requirements are met, i.e., whether sponsor notification is required or not and, in this instance, whether a small business impact analysis is required pursuant to the passage of Senate Bill 139. It is incumbent upon each agency to determine whether a small business impact analysis is required. The Governor's Office issued a memorandum on July 22, 2013, providing assistance and guidelines to state agencies on the implementation of Senate Bill 139. Therefore, the Secretary of State has not modified the rule as proposed by the Montana Chamber of Commerce because the suggested modifications repeat statutory language, which is prohibited pursuant to 2-4-305(2), MCA, and because the purpose of the rule amendment was not to provide guidance to state agencies on the implementation of Senate Bill 139, but to modify the rulemaking templates to include language regarding the new requirement to determine whether a small business impact statement was required or not. As directed by the Montana Legislature, the Governor's Office of Economic Development has provided guidance to agencies as to the implementation of Senate Bill 139 in the form of a memorandum as referenced above.

COMMENT #2: Cleo Anderson and Laurie Logan from the Montana Department of Revenue attended the hearing and proposed that the Secretary of State modify ARM 1.3.309(3)(iii) by deleting the word "new" and inserting the word "proposal."

RESPONSE #2: The Secretary of State agrees and has modified the rule as recommended.

COMMENT #3: Glenn Oppel, Government Relations Director for the Montana Chamber of Commerce, provided written comments requesting that ARM 1.3.307 be amended to include language regarding the requirements of a small business impact analysis to comply with Senate Bill 139.

RESPONSE #3: The Secretary of State will amend ARM 1.3.307 to include a statement regarding the requirement for a small business impact analysis in a future rule notice.

/s/ JORGE QUINTANA  
Jorge Quintana  
Rule Reviewer

/s/ LINDA MCCULLOCH  
Linda McCulloch  
Secretary of State

Dated this 12th day of August, 2013.