

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION AND
RULES I through XI and the repeal of	)	REPEAL
ARM 1.1.101, 1.2.101 through	)	
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 March 22, 2024, the Secretary of State (SOS) published MAR Notice No. 44-2-275 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 593 of the 2024 Montana Administrative Register, Issue Number 6.

2. On April 12, 2024, a public hearing was held on the proposed adoption and repeal of the above-stated rules.

3. SOS has adopted the following rules as proposed: NEW RULE III (ARM 1.4.102), NEW RULE IX (ARM 1.4.104), NEW RULE X (ARM 1.4.107), and NEW RULE XI (ARM 1.4.108).

4. SOS has repealed the following rules as proposed: ARM 1.1.101, 1.2.101 through 1.2.519, 1.3.101 and 1.3.102, and 1.3.301 through 1.3.313.

5. SOS has adopted the following rules as proposed, with the following changes from the original proposal, new matter underlined, deleted matter stricken:

NEW RULE I (ARM 1.4.101) INTRODUCTION AND AGENCY RULEMAKING REQUIREMENTS (1) Agencies conducting administrative rulemaking must comply with Title 2, chapter 4, MCA, which outlines the requirements for administrative rulemaking, and the model rules of practice 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: 2-4-202, 2-15-401, MCA

IMP: 2-4-202, 2-4-305, 2-4-306, 2-15-401, MCA

NEW RULE II (ARM 1.4.103) MONTANA ADMINISTRATIVE REGISTER SCHEDULE AND SUBMISSION STANDARDS 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://rules.mt.gov>.

(2) SOS will post on its website a draft of the next year's publication schedule on July 1 of each year. Agencies may provide feedback on the draft publication schedule. SOS will post an official publication schedule on September 1 of each year.

~~(2)~~ (3) 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.

(4) Agencies submitting notices to SOS for publication in the Register must follow the format standards and use the system developed by SOS to ensure consistency and maintain professional publishing standards.

AUTH: 2-4-302, 2-4-306, 2-15-401, MCA

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

NEW RULE IV (ARM 1.4.109) ORGANIZATIONAL RULE (1) remains as proposed.

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

IMP: 2-4-201, 2-4-202, ~~2-4-302~~, MCA

NEW RULE VI (ARM 1.4.105) 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 referenced in ARM 1.4.103 ~~posted on the Secretary of State's website (<https://sosmt.gov/arm>).~~

(2) remains as proposed.

AUTH: 2-15-401, MCA

IMP: 2-4-312, MCA

NEW RULE VIII (ARM 1.4.106) PUBLIC PARTICIPATION AND COMMENTS

(1) A public hearing related to a rulemaking notice shall be conducted by and under the control of a presiding officer designated by the agency.

~~(1)~~(2) 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: 2-4-302, 2-4-305, 2-15-401, MCA

6. The Secretary of State will not adopt the following rules as proposed: NEW RULE V and NEW RULE VII.

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

Comment #1: Comments were received expressing support of the overwhelming majority of changes proposed in the notice and noted that these changes and updates to the rules that govern rulemaking appropriately redirect users to the rulemaking statutes whenever possible.

Response #1: The Secretary of State's Office appreciates the comments and support of this significant change in the rulemaking landscape to improve the effectiveness and efficiency of rulemaking in this state.

Comment #2: A commenter noted their support for the Secretary of State's efforts to simplify, shorten, clarify, and make more user friendly the administrative rules relating to rulemaking.

Response #2: The Secretary of State's Office appreciates the comment and support of this significant change in the rulemaking landscape to improve the effectiveness and efficiency of rulemaking in this state.

Comment #3: A commenter noted that the catchphrase NEW RULE I (ARM 1.4.101) appears to be vague with the inclusion of the word "Introduction."

Response #3: The Secretary of State's Office appreciates the comment. SOS has updated the catchphrase to better reflect the scope of the rule.

Comment #4: A commenter suggested updates to the proposed authorizing and implementing statutes related to NEW RULE I (ARM 1.4.101).

Response #4: The Secretary of State's Office appreciates the comment and reviewed the suggested statutory references. SOS has updated the authorizing and implementing statutes to also include 2-4-202, MCA.

Comment #5: A commenter indicated that the catchphrase for NEW RULE II (ARM 1.4.103) does not accurately reflect the scope of the rule.

Response #5: The Secretary of State appreciates the comment. SOS has updated the catchphrase to further reflect the scope of the rule.

Comment #6: A comment was received in relation to NEW RULE II (ARM 1.4.103) regarding how the statutory provisions impact advance filing (2-4-302(2), 2-4-305(11), and 2-4-306(1), MCA).

Response #6: The Secretary of State believes the statutory provisions are clear. SOS will be available to assist agencies on specific questions as needed.

Comment #7: Comments were received regarding the publication schedule not being included in NEW RULE II (ARM 1.4.103) and recommended that SOS reincorporate the schedule back into the rule as it allows agencies to plan for future rulemakings.

Response #7: The Secretary of State's Office appreciates the comments received. SOS adjusted the rule to incorporate the long-standing informal practice of seeking agency feedback on the proposed schedule and added the timeline in which the schedule will be finalized to provide agencies assurance that they can rely on the published schedule to plan their rulemaking activities. SOS has declined to put the schedule in the new rule.

Comment #8: A commenter noted that NEW RULE II (ARM 1.4.103) should include the requirement that for a rulemaking to be valid, an agency must use the SOS electronic system.

Response #8: The Secretary of State's Office appreciates the comment and has amended NEW RULE II (ARM 1.4.103) to incorporate the recommendation.

Comment #9: A commenter suggested the term "catchphrase," as used in NEW RULE III (ARM 1.4.102), is an archaic term that is confusing to the public and recommended replacing it with a new term.

Response #9: The Secretary of State's Office appreciates the comment. The term "catchphrase" is still widely used by several agencies. NEW RULE III (ARM 1.4.102) also included the term "name" to further clarify that this is the descriptor for the content of the rule.

Comment #10: A commenter encouraged the Secretary of State's Office to require clear and encompassing rule titles for agency rules.

Response #10: The Secretary of State's Office appreciates the comment. This is addressed in NEW RULE II(1)(b) (ARM 1.4.103).

Comment #11: A commenter questioned the continued use of the Gregg Manual and suggested the adoption of an alternative style manual.

Response #11: The Secretary of State's Office appreciates the comment. SOS elects to use the Gregg Manual as proposed. The agency will evaluate a proposed amendment for options, including a Montana state-specific style guide as other states have done, at a future time.

Comment #12: Comments were received suggesting the addition of procedural guidance or clarification addressing the adoption of organizational rules outside of the regular notice submission process.

Response #12: The Secretary of State's Office appreciates the comment. However, SOS believes the statute (2-4-201, MCA) is clear and does not want to unnecessarily repeat statute in the rule. The agency will consider the request as resource documents for agencies are created.

Comment #13: A commenter noted that proposed NEW RULE IV (ARM 1.4.109) does not implement 2-4-302, MCA.

Response #13: The Secretary of State's Office appreciates the comment and has removed 2-4-302, MCA, as an implementing statute.

Comment #14: Comments were received indicating that NEW RULE V is duplicative of 2-4-202, MCA.

Response #14: The Secretary of State's Office appreciates the comments received and after further evaluation, SOS has determined NEW RULE V is not necessary. The rules adopted in this notice constitute the model rules of practice. In addition, the new system simplifies the rulemaking process by providing automated tools and built-in forms designed to assist agencies in fulfilling the statutory requirements.

Comment #15: A commenter suggested that NEW RULE VI(1) should be cross-referenced into NEW RULE II and recommended that these new rules should be assigned rule numbers in a consecutive order for ease of reference.

Response #15: The Secretary of State's Office appreciates the comment received. SOS has updated the language in NEW RULE VI (ARM 1.4.105) to include a reference to NEW RULE II (ARM 1.4.103).

Comment #16: A commenter indicated that the language proposed in NEW RULE VI(2)(a) is confusing as it refers only to rulemaking notices that propose changes to current rules, when it appears that proposed new rules would also fall within this section.

Response #16: The Secretary of State's Office appreciates the comment received. SOS intends the language ("changes to current rules") to broadly mean changes to the Administrative Rules of Montana including proposing new rules and amending and repealing current rules.

Comment #17: A commenter suggested transferring the content in NEW RULE VII to NEW RULE II.

Response #17: The Secretary of State's Office appreciates the comment received and agrees. SOS will not adopt NEW RULE VII as proposed. The content of the proposed rule has been transferred to NEW RULE II (ARM 1.4.103).

Comment #18: A commenter noted the broad language in the final sentence of proposed NEW RULE VIII(1) and raised concern about its potential implications.

Response #18: The Secretary of State's Office appreciates the comment. Upon review, SOS has determined that the underlying statute is clear and the last sentence unnecessary. Accordingly, the agency removed the last sentence from the proposed rule in the final adoption.

Comment #19: A commenter requested guidance as to the form to be used for statement of reasons in the adoption notice if the historical practice of comments and responses is no longer sufficient.

Response #19: The Secretary of State's Office appreciates the comment received. As proposed, SOS has determined NEW RULE VIII (ARM 1.4.106) addresses agencies' statutory requirement while allowing the historic practice of using comments and responses in adoption notices. SOS will consider including formatting guidance in future resource documents for agencies.

Comment #20: A commenter indicated that NEW RULE IX is not an adequate replacement to portions of ARM 1.2.519. The commenter further suggested that NEW RULE IX(2) unnecessarily duplicates 2-4-110, MCA.

Response #20: The Secretary of State's Office appreciates the comment received. In preparing for the launch of a new electronic system, SOS's review of ARM 1.2.519 found that there was unnecessary and outdated content. NEW RULE IX (ARM 1.4.104) was proposed to provide an approval process for rule review and department authorization that can be accomplished in an electronic filing system while providing flexibility to establish agency-specific processes in fulfilling the requirements of 2-4-110, MCA.

Comment #21: A comment was received regarding how the Secretary of State's Office would maintain a per-page fee in NEW RULE X(1)(a) with the transition from a paper-based process to an electronic process.

Response #21: The Secretary of State's Office confirmed when working with the new administrative rules system vendor that the new electronic system will include the number of pages in a notice. Therefore, SOS will continue to make the \$60/page option available to agencies.

Comment #22: Comments were received looking for additional clarification on whether NEW RULE X(1)(b) includes all notice types. Additionally, commenters asked for clarification on the effective date of the fees.

Response #22: The Secretary of State's Office appreciates the comments and confirms that the intent was that all notice types are included in the total volume count fee structure. Additionally, with the adoption of this rule, SOS will be waiving all fees charged to agencies related to rulemaking submissions in fiscal year 2025. The fees contained in NEW RULE X (ARM 1.4.107) will become effective starting fiscal year 2026.

Comment #23: An agency is seeking clarification regarding the fiscal impact statement included in the proposal notice, and how the agency costs are configured for the implementation of the new administrative rulemaking system.

Response #23: The Secretary of State's Office is authorized to establish fees commensurate with costs in accordance with 2-15-405, MCA. The fees proposed in NEW RULE X (ARM 1.4.107) related to the submission of notices for publication cover SOS costs for providing that service. The software used for the electronic filing system is managed through the statewide IT enterprise system, and costs are allocated through the information technology budgeting process.

Comment #24: A comment was received indicating that the adoption of NEW RULE XI was not necessary.

Response #24: The Secretary of State's Office appreciates the comment. This rule, NEW RULE XI (ARM 1.4.108), is proposed to guide agencies in how they can efficiently and accurately comply with the statutory provisions in 2-4-302(8)(a), MCA, with regard to contact information for bill sponsors.

Comment #25: A commenter noted that other style and drafting conventions, such as those found in ARM 1.2.215 and 1.2.216, are useful in keeping consistency in rulemaking and encouraged the Secretary of State's Office to include the information proposed to be repealed in ARM Title 1, chapter 2, subchapter 2 in its forthcoming guidance.

Response #25: The Secretary of State's Office appreciates the comment. SOS agrees consistency in rulemaking is important and is planning to transfer the instructional guidance into the rulemaking resources that will be made available to agency rulemakers. Additionally, the automation of the new administrative rules system will provide standardization and structured formatting.

Comment #26: A commenter opposed the repeal of ARM 1.3.308 and cited the requirement in 2-4-315, MCA, to "prescribe by rule the form for petitions and the procedures for their submission, consideration, and disposition." The commenter said that agencies have adopted this rule by reference.

Response #26: The Secretary of State's Office appreciates the comment. Section 2-4-315, MCA requires agencies to determine the form and procedures for submitting petitions. The statute does not require SOS to publish petitions in the

Montana Administrative Register. Therefore, it was determined unnecessary for inclusion in the model rules.

Comment #27: A commenter opposed the repeal of ARM 1.3.311(2) and requests that the Secretary of State's Office reevaluate whether its provisions can be incorporated within NEW RULE V or NEW RULE VIII (ARM 1.4.106).

Response #27: The Secretary of State's Office appreciates the comment. SOS updated NEW RULE VIII (ARM 1.4.106) to clarify that public hearings are conducted by and under the control of a presiding officer designated by the agency. SOS intends to include guidance based on the language in ARM 1.3.311 in the resource materials referenced in NEW RULE I (ARM 1.4.101).

Comment #28: A commenter noted that with the changes proposed in this notice, SOS may also be required to update or repeal ARM 44.17.101.

Response #28: The Secretary of State's Office appreciates the comment. SOS intends to include any necessary changes to ARM 44.17.101 in a future rulemaking notice.

Comment #29: A commenter noted that it is unclear whether existing agency requirements for the rulemaking process will be contained in SOS guidance and, if so, whether the SOS guidance will be adopted and incorporated by reference.

Response #29: The Secretary of State's Office appreciates the comment. SOS believes the rulemaking requirements are adequately outlined in statute and the proposed administrative rules. Any resource materials developed will be provided as guidance to agencies, particularly as they transition into the new electronic system. As future resources are developed, SOS will adopt and incorporate by reference materials when necessary in compliance with the statute.

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 11th day of June, 2024.