



Montana Legislative Services Division

Legal Services Office

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

TO: State Administration and Veterans' Affairs Interim Committee

FROM: Andria Hardin

DATE: March 13, 2024

RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: 44-2-275

AGENCY/BOARD: Secretary of State

RULE CLASSIFICATION (e.g., substantive/interpretive/emergency/temporary): Substantive

SUBJECT: State Agency Administrative Rulemaking

NOTICE DESCRIPTION (e.g., proposal notice/adoption notice): Notice of Public Hearing on Proposed Adoption and Repeal

SUMMARY OF RULE(S): The Secretary of State proposes to repeal all rules under [chapters 1, 2, and 3 of Title I](#) of the Administrative Rules of Montana (ARM) pertaining to the Secretary of State and administrative rulemaking, and in place of those rules adopt eleven (11) new rules. The Secretary of State reviewed the existing rules and found them outdated based on current technology and repetitive of statute. The proposed new rules seek to reflect the systems and processes being developed for administrative rulemaking.

Rule I cites MAPA for rulemaking requirements and a reference to the Secretary of States' [website](#) for informational purposes and further resources. In the near future, the website will also contain a new guided electronic system for agencies to submit rulemaking documents.

Rule II provides a reference to a Secretary of State [website](#) for filing deadlines and Montana Administrative Register (MAR) publication dates, and provides direction on how an agency may submit notices in advance of a particular MAR publication.

Rule III establishes formatting requirements for organization, consistency, and professional publishing standards for the ARM.

Rule IV provides a model rule for agencies to use in fulfilling the requirement under [2-4-201](#), MCA to adopt an organizational rule.

Rule V provides a model rule for agencies to use in fulfilling the requirement under [2-4-201](#), MCA to adopt rules of practice.

Rule VI provides reference to [where](#) and [when](#) the MAR is published and accessed electronically and how the MAR sections are arranged.

Rule VII provides that agencies must use the new guided electronic system for submitting notices to be published in the MAR.

Rule VIII provides that all public comments must be considered, and that if a rule is adopted and comments were received, an agency must include a statement of reasons in the adoption notice pursuant to [2-4-305](#), MCA. The rule establishes that the common practice of agencies listing comments and the agency's response to each comment is one method of complying with [2-4-305](#), MCA.

Rule IX provides the requirement for rule reviewer affirmation and department authorization of submissions for rulemaking in the new electronic system.

Rule X establishes filing fees for agencies submitting rules for publication in the MAR. Current ARM [1.2.423](#) setting these rules will be repealed as part of this MAR Notice No. 44-2-275. New Rule X will provide a similar fee structure but also provide an alternative pay structure for agencies to choose from based on their usage of the filing system.

Rule XI provides that agencies can comply with the requirements of [2-4-302](#), MCA of notifying bill sponsors of proposed rules by using the legislator contact information found on the Legislative Services Division's [online roster](#).

NOTES: A public hearing will be held on April 12, 2024 at 11:00 a.m. in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana. The public comment period ends on April 19, 2024 at 5:00 p.m.

STAFF COMMENT: Currently, ARM [1.2.419](#) sets out the MAR publication and submission deadline schedule and is adopted annually through the rulemaking process. This MAR Notice proposes to repeal that rule and substitute New Rule II, which cites a Secretary of State [webpage](#) as the location for the publication and deadline dates. New Rule VI also references that the MAR publication schedule can be found on the Secretary of State's webpage.

The Secretary of State must publish the MAR at least once a month, but no more than twice a month pursuant to [2-4-312](#), MCA. Additionally, [2-4-307](#), MCA provides that a model code, federal agency rule, rule of another state agency, or "other similar publication" may be adopted by reference under certain situations. While historically the deadline and publication schedule for the MAR has gone through the rulemaking process, there is no statutory requirement for the schedule to be adopted in such manner, only that it be published at least once and not more than twice a month. Furthermore, a deadline and publication schedule is not a model code, federal agency rule, rule of another state agency, nor does it appear to have the same characteristics of those types of publications so that it would qualify as "other similar publication"

requiring incorporation by reference under 2-4-307, MCA. Accordingly, the repeal and proposed new substitute rule appears to comport with MAPA.

FULL TEXT OF NOTICE: This rule has been submitted for publication in the Montana Administrative Register but has not been published as of the date this report. Once published, the full text of the proposal notice may be found online by searching for “44-2-275” in the box labeled “Search by Notice No.” found at <https://rules.mt.gov/default.asp>.